

Item: 9

Policy and Resources Committee: 21 September 2021.

Island Communities Impact Assessments.

Report by Chief Executive.

1. Purpose of Report

To consider the requirements of the Council's new statutory duties in respect of Island Communities Impact Assessments and proposed associated governance arrangements.

2. Recommendations

The Committee is invited to note:

2.1.

The new duties that have arisen in terms of the Islands (Scotland) Act 2018 (the Act) relating to Island Communities Impact Assessments and the associated Regulations, which came into force on 23 December 2020.

2.2.

That governance arrangements require to be put in place to enable the Council to comply with its statutory duties relating to Island Communities Impact Assessments.

It is recommended:

2.3.

That, in order to comply with the Council's duty under Section 7 of the Act:

- An assessment shall be made by the relevant Executive Director as to whether an Island Communities Impact Assessment is required in relation to any policy, strategy or service.
- An Island Communities Impact Assessment shall be carried out, where required.
- Each existing policy, strategy and service shall be reviewed by the relevant Executive Director at regular intervals in line with agreed review periods or sooner at the discretion of the relevant Executive Director.

2.4.

That all Island Communities Impact Assessments be approved and signed off by a Head of Service, unless completed by a Head of Service, in which case, they shall be approved and signed off by an Executive Director.

2.5.

That requests for review of a decision in terms of Section 9 of the Act shall, where practicable, be considered by an Executive Director or Head of Service who was not involved in the original decision forming the subject of the application for review.

2.6.

That information regarding the steps that the Council has taken to comply with the new statutory duties shall be reported annually in the Council's Annual Performance Report, taking into account the requirements of the Annual Reporting Return detailed in the Scottish Government publication entitled Island Communities Impact Assessments: Guidance and Toolkit.

2.7.

That any request from an individual, group or organisation for the Council to submit a request to Scottish Ministers for a retrospective Island Communities Impact Assessment, shall be accompanied by information explaining why the legislation has an effect on an island community which is significantly different from its effect on other communities in Scotland; and that the decision as to whether to make such a request shall rest with the relevant Executive Director.

3. Background

3.1.

Sections 7 to 10 and 12 to 14 of the Islands (Scotland) Act 2018 (the Act) came into force on 23 December 2020. These provisions place new duties on public authorities to consider the effects of their policies, strategies and services on island communities (as defined in Section 2 of the Act).

3.2.

In particular, the Act places duties on public authorities to have regard to island communities in carrying out their functions; to prepare Island Communities Impact Assessments in certain circumstances; to respond to requests for review of Islands Communities Impact Assessments; and to publish information about the steps that they have taken to comply with their duty to have regard to island communities in carrying out their functions.

4. Relevant Authorities

4.1.

Section 7 of the Act states that relevant authorities must have regard to island communities in carrying out their functions.

4.2.

Relevant authorities for the purposes of the Act are listed in the Schedule to the Act and are grouped into the following categories:

- Scottish Administration.
- Scottish public authorities with mixed functions or no reserved functions.
- Health Boards (including Special Health Boards).
- Integration Joint Boards.
- Local Government.
- Regional Colleges.
- Regional Transport Partnerships.

4.3.

The Council is identified as such a relevant authority in Paragraph 65 of the Schedule to the Act.

5. Preparation of Island Community Impact Assessments

5.1.

In terms of Section 8(1) of the Act, the Council, as a relevant authority, must prepare an Island Communities Impact Assessment in relation to a policy, strategy or service, which, in the Council's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the Council exercises its functions. This duty applies to the development, delivery and redevelopment of the policy, strategy or service (as the case may be).

5.2.

The Island Communities Impact Assessment must describe the likely significant different effect of the policy, strategy or service and assess the extent to which the Council considers that the policy, strategy or service can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it.

5.3.

To assist in this process, an Islands Communities Impact Assessment template has been developed which is based on the model contained in the Scottish Government's "Island Communities Impact Assessments: Guidance and Toolkit". The said template is attached at Appendix 1 to this report. The template will be completed, approved and signed-off by a Head of Service or Executive Director to provide a record of the relevant assessment and decision-making process applied.

5.4.

The completed assessment shall thereafter be published on the Council's website, which is a legal requirement, and shall be shared with all stakeholders who have been consulted as part of the assessment.

5.5.

The template at Appendix 1 will require completion even where it is assessed that a given policy, strategy or service is **not** likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the Council exercises its functions. Page 2 of Appendix 1 provides further guidance as to when a full Island Communities Impact Assessment will (or will not) be required under the Act.

5.6.

Where the Council does not prepare an Island Communities Impact Assessment in relation to a policy, strategy or service, which has an effect on an island community, the Council is obliged, in terms of Section 8(4) of the Act, to publish, as soon as reasonably practicable afterwards, and in such manner as it considers appropriate, an explanation of its reasons for not doing so. It is proposed that the Council shall publish any such statement on its website.

6. Review of Decisions Relating to Island Community Impact Assessments

6.1.

Subordinate legislation has been passed under Section 9 of the Act regulating the review process relating to the Council's decisions concerning Island Communities Impact Assessments.

6.1.1.

The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 (the Regulations) provide that, in prescribed circumstances, a review of a Council decision relating to an Island Communities Impact Assessment may be requested by an "applicant".

6.1.2.

An "applicant" is defined to include an individual who is a resident of an island community at the time of the decision, or a community-controlled body. In such circumstances, the applicant is obliged under the Regulations to demonstrate that they have been directly affected (or are likely to be directly affected) by the relevant policy, strategy or service.

6.2.

Applications for review must be made by the applicant, within certain timescales, using the form prescribed in the Regulations and including any information specified within the prescribed form.

6.3.

In terms of the Regulations, there would need to be a “decision” before there could be a request for review under Section 9 of the Act. A “decision” is defined as:

(a) a published decision, or

(b) the decision of a relevant authority following review of a policy, strategy or service (as the case may be)

(i) not to prepare an Island Communities Impact Assessment, and

(ii) not to publish an explanation for not preparing an Island Communities Impact Assessment.

6.3.1.

A “published decision” means a published Island Communities Impact Assessment, or a published decision not to undertake an Island Communities Impact Assessment.

6.4.

In terms of the Regulations an application for review can be considered and determined by the same relevant authority that made the decision which is the subject of the application for review. There is no right of appeal in terms of the Regulations against the relevant authority’s determination of the application for review.

6.5.

It is proposed that, following receipt of such a request, the Council will consider the application in accordance with the Act and the Regulations. The request for review will, where practicable, be considered by an Executive Director or Head of Service who was not involved in the original decision forming the subject of the application for review.

7. Review of Policy, Strategy or Service

7.1.

In addition, in terms of Section 10 of the Act, the Council is obliged to demonstrate compliance with its Section 7 duty (duty to have regard to island communities in carrying out its functions) (a) by making such arrangements as it considers appropriate to review any policy, strategy or service which it develops or delivers in carrying out its functions, and (b) either (i) in the case where the Council must prepare an Island Communities Impact Assessment under Section 8(1), by preparing that assessment, or (ii) in any other case, by making such an assessment or taking such other steps as the Council considers appropriate.

7.2.

The effect of Section 10 is that existing policies, strategies and services must be reviewed by the Council, regardless of whether there is any formal application for review. This duty applies even if the policy, strategy or service in question had been developed before the duty to prepare Island Community Impact Assessments came into force (23 December 2020).

7.3.

The Act and the Scottish Government's Guidance are silent on the issue of when, or how often, a policy should be reviewed by a relevant authority.

7.4.

It is expected that the Council will make arrangements to review any policy, strategy or service and prepare an Island Communities Impact Assessment, where it is required to do so. It is recommended that this work shall be undertaken in line with agreed review periods of existing policies, strategies or services. Any request for a review date to be specified, or for a review to take place sooner than the next agreed review date, would be considered by the Council on a case-by-case basis.

8. Publication of Information

8.1.

Section 12 of the Act imposes a duty on a relevant authority to publish information about the steps which the authority has taken to comply with its Section 7 duty during each "reporting period", which is any period determined by the authority of up to a maximum of one year.

8.2.

The information to be published under Section 12 should take into account the requirements of the Annual Reporting Return detailed in the Scottish Government's "Island Communities Impact Assessments: Guidance and Toolkit" and should therefore:

- Describe how the Council has had regard to island communities in carrying out its functions.
- Provide a list of policies, strategies or services for which the Council has completed an Island Communities Impact Assessment under Section 10 of the Act.
- Describe what other steps the Council has taken for those policies for which an Island Communities Impact Assessment was not required.

8.2.1.

It is recommended that the information required under Section 12 is included for publication within the Council's Annual Performance Report.

9. Preparation of Island Communities Impact Assessment by Scottish Ministers

9.1.

In terms of Section 13 of the Act, the Scottish Ministers must prepare an Island Communities Impact Assessment in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Scotland.

9.2.

An Island Communities Impact Assessment prepared by the Scottish Ministers must:

- Describe the likely significant effect of the legislation.
- Assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation.
- Set out the financial implications of such steps taken to mitigate, for island communities, the outcomes resulting from the legislation.

9.2.1.

An Island Communities Impact Assessment under Section 13 is taken to be an Island Communities Impact Assessment under Section 8 in relation to the policy, strategy or service of the Scottish Ministers to be implemented by the legislation.

10. Retrospective Island Communities Impact Assessment

10.1.

In terms of Section 14 of the Act, an island local authority (including the Council) may make a request to the Scottish Ministers to prepare and publish a retrospective Island Communities Impact Assessment in relation to existing legislation or national strategies which have an effect on an island community which is significantly different from their effect on other communities (including other island communities) in Scotland.

10.2.

The power to make a request under Section 14 vests only in each of the six island local authorities in Scotland. There is no scope for individuals, community groups or any other local authorities to make a request under Section 14.

10.3.

In order to facilitate local community engagement, it is recommended that, if the Council receives a request from an individual, group or organisation to submit such a request, information to support such a request shall be sought from the requester, including an explanation as to why the requester considers that the given legislation or national strategy has an effect on an island community which is significantly

different from their effect on other communities in Scotland. A standard form will be developed to assist any individual, group or organisation to make such a request of the Council.

10.4.

The Council will then consider whether that information merits submission of a request to Scottish Ministers for a retrospective Island Communities Impact Assessment and then either: (a) make such a request to the Scottish Ministers; or (b) inform the requester of the reasons for the Council declining to do so. It is recommended that this decision is made by the Executive Director for the relevant service area.

10.5.

In terms of Section 14 of the Act, following receipt of a request for a retrospective Island Communities Impact Assessment, the Scottish Ministers must, within three months, either (a) confirm in writing their approval of the request; or (b) give reasons for not approving the request. If the request is approved, the Scottish Ministers must prepare and publish a retrospective Island Communities Impact Assessment within six months of the date of their decision.

10.6.

There is no right of review or appeal against a decision by the Scottish Ministers under Section 14 on whether or not to agree to a request for a retrospective Island Communities Impact Assessment. Accordingly, the Scottish Ministers' decision on a Section 14 request is final.

11. Human Resource Implications

A briefing note has been prepared (Appendix 2), which will be shared with all Members of the Corporate Management Team and Team Leaders, to ensure that all appropriate parties are familiar with the Act and any applicable subordinate legislation as well as their roles in meeting the new duties.

12. Equalities Impact

12.1.

Island Communities Impact Assessments will ensure that the needs of different island communities are considered at all stages of policy development, taking account of equity and equality issues. The review scheme under the Regulations allows a review of decisions by relevant authorities relating to Island Communities Impact Assessments to be requested.

12.2.

The Council's Equality Impact Assessment Form, which includes an element on "isles-proofing", has, to date, been used in the assessment of impacts on island communities of Council policies. In light of the provisions of the Islands (Scotland) Act 2018 and associated guidance, it is proposed henceforth to use the template

attached as Appendix 1 to this report when carrying out Island Communities Impact Assessments. The Council's Equality Impact Assessment template will therefore be updated by removing the reference to "isles-proofing" and that assessment form will continue to be used for assessing impacts in respect of areas governed by the Equality Act 2010.

13. Corporate Governance

This report relates to governance and the Council complying with new statutory duties and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

14. Financial Implications

14.1.

There are no direct financial implications arising from this report.

14.2.

There are potential financial implications associated with any adjustments required to mitigate negative impacts on island communities. It is for the Council, following the completion of a given Island Communities Impact Assessment, to decide whether to make any changes to existing or prospective policy, strategy or service delivery. Direct financial implications would be addressed through the usual decision-making processes and procedures relating to that given policy, strategy or service.

14.3.

The work involved in completing Island Communities Impact Assessments when reviewing any policy, strategy or service will be an additional burden in terms of current workload, but should also ensure that reviewed policies, strategies and services have regard to their impact on island communities and the Council's duty under the Islands (Scotland) Act 2018.

15. Legal Aspects

This report and the briefing note at Appendix 2 set out the Council's approach to meeting its statutory duties under Sections 7 to 14 of the Act. The briefing note draws on the Act and subordinate legislation passed under Section 9 of the Act to date, namely the Regulations.

16. Contact Officers

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17. Appendices

Appendix 1: Island Communities Impact Assessment Template.

Appendix 2: Island Communities Impact Assessment – Briefing Note.

Insert Policy, Strategy or Service Title

PRELIMINARY CONSIDERATIONS	Responses
Please provide a brief description or summary of the policy, strategy or service under review for the purposes of this assessment.	
STEP 1 - Develop a clear understanding of your objectives	Responses
What are the objectives of the policy, strategy or service?	
Do you need to consult?	
How are islands identified for the purpose of the policy, strategy or service?	
What are the intended impacts/outcomes and how do these potentially differ in the islands?	
Is the policy, strategy or service new?	
STEP 2 - Gather your data and identify your stakeholders	Responses
What data is available about the current situation in the islands?	
Do you need to consult?	
How does any existing data differ between islands?	
Are there any existing design features or mitigations in place?	
STEP 3 - Consultation	Responses
Who do you need to consult with?	
How will you carry out your consultation and in what timescales?	
What questions will you ask when considering how to address island realities?	

Island Communities Impact Assessment

Insert Policy, Strategy or Service Title

What information has already been gathered through consultations and what concerns have been raised previously by island communities?	
Is your consultation robust and meaningful and sufficient to comply with the Section 7 duty?	
STEP 4 - Assessment	Responses
Does your assessment identify any unique impacts on island communities?	
Does your assessment identify any potential barriers or wider impacts?	
How will you address these?	
<p>You must now determine whether in your opinion your policy, strategy or service is likely to have an effect on an island community, which is significantly different from its effect on other communities (including other island communities).</p> <p>If your answer is NO to the above question, a full ICIA will NOT be required and <u>you can proceed to Step</u></p> <p><u>SIX</u>. If the answer is YES, an ICIA must be prepared and <u>you should proceed to Step FIVE</u>.</p> <p>To form your opinion, the following questions should be considered:</p> <ul style="list-style-type: none"> • Does the evidence show different circumstances or different expectations or needs, or different experiences or outcomes (such as different levels of satisfaction, or different rates of participation)? • Are these different effects likely? • Are these effects significantly different? • Could the effect amount to a disadvantage for an island community compared to the Scottish mainland or between island groups? 	

Island Communities Impact Assessment

Insert Policy, Strategy or Service Title

STEP 5 – Preparing your ICIA	Responses
In Step Five, you should describe the likely significantly different effect of the policy, strategy or service:	
Assess the extent to which you consider that the policy, strategy or service can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it.	
Consider alternative delivery mechanisms and whether further consultation is required.	
Describe how these alternative delivery mechanisms will improve or mitigate outcomes for island communities.	
Identify resources required to improve or mitigate outcomes for island communities.	
STEP 6 - Making adjustments to your work	Responses
Should delivery mechanisms/mitigations vary in different communities?	
Do you need to consult with island communities in respect of mechanisms or mitigations?	
Have island circumstances been factored into the evaluation process?	
Have any island-specific indicators/targets been identified that require monitoring?	
How will outcomes be measured on the islands?	
How has the policy, strategy or service affected island communities?	
How will lessons learned in this ICIA inform future policy making and service delivery?	

Island Communities Impact Assessment

Insert Policy, Strategy or Service Title

STEP 7 - Publishing your ICIA	Responses
Have you presented your ICIA in an Easy Read format?	
Does it need to be presented in Gaelic or any other language?	
Where will you publish your ICIA and will relevant stakeholders be able to easily access it?	
Who will sign-off your final ICIA and why?	

ICIA completed by:	
Position:	
Signature:	
Date complete:	

ICIA approved by:	
Position:	
Signature:	
Date approved:	

Island Communities Impact Assessment Briefing



What is an Island Communities Impact Assessment?

The Island Communities Impact Assessment (ICIA) is designed to improve outcomes for island communities in meaningful ways and is a legal requirement.

An ICIA should be an early part of the development of any new strategy, policy or service development.

The assessment helps you look at the needs of different island communities and think about how the proposal will affect them. Some of these impacts may be positive and some negative. You can then think about ways to reduce the negative impacts so that everyone will be able to benefit from the proposal.

You should also carry out an assessment when you review an existing strategy, policy or service.

You may also receive requests from others to carry out an ICIA on an existing strategy, policy or service, where a review date is not specified or the policy is not due for review for some time (see page 3).

The ICIA focuses on the following areas:

- Developing a clear understanding of your objectives.
- Gathering your data and identifying your stakeholders.
- Consultation.
- Assessment.
- Preparing your ICIA.
- Making adjustments to your work.
- Publishing your ICIA.

The legal requirements

The Scottish Parliament passed the [Islands \(Scotland\) Act](#) (the Act) in 2018. The [Island Communities Impact Assessment](#) sections of the Act came into force on 23 December 2020, placing new duties on public authorities to consider the effect of their policies, strategies and services on an 'island community' (as defined under Section 2 of the Act).

Section 7 of the Act states that relevant authorities must have regard to island communities in carrying out their functions.

Relevant authorities are grouped into the following categories:

- Scottish Administration.
- Scottish public authorities with mixed functions or no reserved functions.
- Health Boards (including Special Health Boards).

- Integration Joint Boards.
- Local Government.
- Regional Colleges.
- Regional Transport Partnership.

The Council, as a relevant authority, must prepare an ICIA in relation to a policy, strategy or service, which is likely to have an effect on an island community, which is significantly different from its effect on other communities (including other island communities).

The Council will make arrangements to review any policy, strategy or service and prepare an ICIA, where it is required to do so.

Who is responsible for carrying out an Island Communities Impact Assessment?

Any council officer responsible for the development, delivery and redevelopment of policies, strategies or services.

A Head of Service should approve and sign off an ICIA Assessment. If a Head of Service has completed the assessment, an Executive Director should approve and sign it off.

Carrying out an ICIA

The Scottish Government's Islands Team have developed guidance and a toolkit to help you with these. You can view these at <https://www.gov.scot/publications/island-communities-impact-assessments-guidance-toolkit/>.

The following is a brief summary of the steps involved.

Step 1 – Develop a clear understanding of your objectives

- An ICIA will be most effective when considered early and then continually revisited throughout the duration of development and implementation.
- The first step should be to develop a clear understanding of the objectives and intended outcomes of the strategy, policy or service.
- Next, identify if there are explicit island needs or any potential direct or indirect impacts for island communities.

Step 2 – Gather your data and identify your stakeholders

- Dig deeper and examine the differences that occur in island communities in contrast to the Scottish mainland – you may need to gather additional data or stakeholder views at this stage.

Step 3 – Consultation

- Start to speak to the people likely to be affected, making it easy for them to give their views, giving particular consideration to island communities.

Step 4 – Assessment

- Set out your analysis of the results or outcomes, the needs of island communities and the potential impacts using the template provided.

- Even if you have assessed that there are no significant impacts on the island community, you should still use the template form to record this and evidence the process in reaching that conclusion.
- Decide if you need to do an ICIA. If yes, complete the assessment using the template form. If no, publish that decision as soon as reasonably practicable. (Information on how to publish is set out below at step 7.)

Step 5 – Preparing your Island Communities Impact Assessment

- Prepare the ICIA using the mandatory criteria and the template provided.

Step 6 – Making adjustments to your work

- Draw conclusions and make recommendations. Decide if you are rejecting, improving or adjusting the strategy, policy or service or adopting as proposed.

Step 7 – Publishing your ICIA

- You should publish the ICIA on the Council’s website, once it has been signed off by your Head of Service (or Executive Director).
- You should also record assessments where no ICIA was carried out.
- Share your ICIA with everyone you consulted with.

All decisions in relation to Island Communities Impact Assessments should be clearly set-out and well documented. A template Island Communities Impact Assessment form has been developed.

Who can ask me to review a decision relating to an ICIA?

In certain circumstances, an ‘applicant’ can request a review of a decision, where they can demonstrate that they have been directly affected (or likely to be directly affected) by a policy, strategy or service.

Applications for review must be made within certain timescales, using the form specified in the schedule, and include any information required in the regulations. The regulations and the specified form is available at <https://www.gov.scot/policies/community-empowerment/empowering-our-island-communities/>

Are the results of these assessments reported to Scottish Government?

As mentioned above, you must publish all ICIAAs you carry out, as well as all decisions not to carry one out.

The Council must also publish, at least annually, information about the steps taken to comply with the duty during that reporting period. This will be presented in the Council’s annual performance report.

In the annual return, the Council is expected to:

- Describe how it has had regard to island communities in carrying out its functions.
- Provide a list of policies, strategies or services for which it has completed an assessment ICIA.

- Describe what other steps it has taken for those policies for which an ICIA was not required.

Scottish Government Ministers also need to prepare these

Scottish Ministers must also prepare an Island Communities Impact Assessment in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Scotland.

Similarly, the Council may make a request to Scottish Ministers to prepare and publish a retrospective ICIA in relation to existing legislation or national strategies, which have an effect on an island community which is significantly different from their effect on other communities (including other island communities) in Scotland.

You may receive a request from an individual, group or organisation to make such a request. In those circumstances the individual, group or organisation should provide sufficient information to support such a request, explaining why the legislation has an effect on an island community, which is significantly different from their effect on other communities in Scotland. A standard form will be developed to assist any individual, group or organisation to make such a request of the Council, available on the Council's website.

The Council will then consider whether that information supports the request for a retrospective ICIA to Scottish Ministers before either making such a request, or informing the requester of the reasons for not doing so. This assessment should be completed by the officer responsible for the policy area, and approved by an Executive Director.

Following receipt of a request, Scottish Ministers must, within three months, confirm in writing their approval of the request, or their reasons for not approving the request. If the request is approved, Scottish Ministers must prepare and publish a retrospective ICIA within six months of the date of their decision.

Further information

Useful links

Islands (Scotland) Act 2018 [Islands \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

Islands (Scotland) Act 2018, section 7 [Islands \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

The National Islands Plan [The National Plan for Scotland's Islands - gov.scot \(www.gov.scot\)](#)

Scottish Government's Island Team – info@islandsteam.scot

[Community empowerment: Empowering our island communities - gov.scot \(www.gov.scot\)](#)

Scottish Islands Federation [The Scottish Islands Federation – Promoting the interests and sustainability of Scotland's island communities \(scottish-islands-federation.co.uk\)](#)