

Social Security Administration and Tribunals (Scotland) Bill 2020

Island Communities Impact Assessment

May 2020

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Social Security Administration and Tribunal Membership (Scotland)

1. Islands (Scotland) Act 2018 received Royal Assent on 06 July 2018. This piece of legislation places a duty on the Scottish Ministers to assess the impact of proposed 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. The act of carrying out this kind of assessment and taking account of the outcomes is commonly referred to as island-proofing. The importance of island-proofing was recognised in the "*Empowering Scotland's Island Communities prospectus*"¹ published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.
2. The sections of the Islands (Scotland) Act 2018 which contain the duty on the Scottish Ministers to island-proof proposed legislation have not yet been enacted into law. Nonetheless, the Scottish Ministers understand the importance of assessing the effect of the Bill on individuals living in island communities relative to its effects on individuals living in other communities in Scotland.
3. If the Scottish Ministers are of the opinion that any piece of proposed legislation is likely to have an effect on an island community which is significantly different from its effect on other communities, then the duty to island-proof legislation requires the Scottish Ministers to-
 - describe the likely significantly different 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; and
 - set out the financial implications of steps taken under this subsection to mitigate, for island communities, the outcomes resulting from the legislation.

The Scottish Ministers first assessed the Bill for the purpose of determining if its effect on island communities was likely to be significantly different from its effect on other communities in Scotland. The Scottish Ministers also assessed the Bill's effect on rural, mainland communities. The Scottish Ministers' opinion is that the Bill's effect on island and rural-mainland communities is not so significantly different from its effect on other communities in Scotland.

4. The overarching policy objectives of the Bill are to:
 - To allow for the appointment of a person to act on behalf of a child where there is no person with legal authority who is willing and able to so act;

¹ <https://www.gov.scot/publications/empowering-scotlands-island-communities/>

- To allow for the appointment of a person to act on behalf of an adult who does not lack capacity but due to difficult circumstances wishes for an appointee to act on their behalf;
- To ensure Scottish Ministers do not disclose information about an individual's health where that would be likely to cause serious harm to the recipient's physical or mental health;
- To introduce powers for the Scottish Ministers to make provision in regulations about the investigation of offences in relation to top up assistance created under section 79 of the 2018 Act;
- To create statutory fraud offences in relation to the types of top up assistance created under section 79 of the Social Security (Scotland) Act 2018 ('the 2018 Act');
- To enable the Scottish Ministers, by regulations, to transfer to the First-tier Tribunal (FTT) for Scotland some, or all of the competence and jurisdiction of the sheriff courts in relation to the recovery of top up assistance created under section 79 of the 2018 Act;
- To modify the power to make regulations under schedule 5 of the 2018 Act, to widen the category of qualified persons whose clinical judgement, based on the appropriate guidance, will be accepted in relation to a diagnosis of terminal illness for the purpose of entitlement to Disability Assistance; and
- To enable other types of judges to be temporarily authorised to sit in the First-tier Tribunal (FTT) and the Upper Tribunal.

Background

5. The policy background to the Bill and further information about the specific provisions are fully described in the Policy Memorandum published on the Scottish Parliament's website².
6. Rural Scotland accounts for 98% of the land mass of Scotland and 17% of the population are resident there³.
7. At the time of the 2011 Census, Scotland had 93 inhabited islands with a total population of 103,700 (which was 2% of Scotland's population)⁴.
8. The Islands Act identifies six local authorities representing island communities in Part 4 of the Act (Section 20 (2), which are Argyll and Bute Council; Comhairle nan Eilean Siar/Western Isles; Highland Council; North Ayrshire Council; Orkney Islands Council; and Shetland Islands Council. Amongst them, Orkney, Shetland and Western Isles are entirely island authorities, while Highland, Argyll and Bute and North Ayrshire local authorities cover island regions as well as mainland regions.

² <https://beta.parliament.scot/bills/social-security-administration-and-tribunal-membership-scotland-bill#target1>

³ Scottish Government (2018) [Rural Scotland: key facts 2018](#)

⁴ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

9. According to the 2011 Census, 83% of island residents reported their health as being 'Very good' or 'Good' compared with 82% for Scotland as a whole⁵. The proportion of island residents with a long-term (lasting 12 months or more) health problem or disability that limited their day-to-day activities was just under 20%, including 9% who reported their daily activities were limited a lot⁶. The corresponding proportions for Scotland as a whole were very similar.
10. As of August 2019 there were 3,800 DLA cases in payment for children under age 18 across the six local authorities listed above - compared to 41,600 in Scotland as a whole⁷.

Key Findings

11. The policy background to the Bill and further information about each of the specific provisions is fully described in the Policy Memorandum published on the Scottish Parliament's website⁸.

Appointment of a person to act on behalf of a child

12. The Scottish Ministers are not aware of any evidence to suggest that the positive effects of this provision will be felt any differently by island or mainland-rural communities compared to its effect on other communities in Scotland.

Appointment of person to act on behalf of adults with legal capacity and non-disclosure of harmful information

13. These two sections are considered to have a similarly positive effect on individuals living in island or mainland-rural communities, compared to their effect on other communities in Scotland and no negative effects.
14. We recognise that awareness and understanding of the current child disability benefit, Disability Living Allowance for Children (DLA Child) is often limited. Comprehensive guidance to the benefit and a communications strategy are being developed in advance of the launch of our replacement to DLA Child, named Child Disability Payment. This will ensure that those who might become an appointee for a child or young person are aware of the policy, know how to apply and understand the eligibility criteria.
15. The communication strategy will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people and for remote and island communities. This will ensure that the Bill provisions will be communicated as part of wider efforts to meet the needs of people living in island communities. We believe this will have a positive effect on children, young people and their carers living in island and rural communities.

⁵ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

⁶ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

⁷ Stat Xplore, accessed 17th March 2020, [Stat Xplore](#), and calculation

⁸ <https://beta.parliament.scot/bills/social-security-administration-and-tribunal-membership-scotland-bill#target1>

Offences

16. Section 3 of the Bill is not considered to impact individuals living in island and rural-mainland communities any differently to how it will impact individuals in other communities in Scotland.

Investigations

17. A consequential effect of the Bill modifying sections 71 - 73 is that the investigative powers exercisable under the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, which apply to the investigation of offences under section 71 – 73 of the 2018 Act, will also be exercisable in relation to the investigation of these new offences, allowing individuals authorised by these regulations to investigate suspected instances of top-up assistance fraud.

18. When developing the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, the Scottish Ministers appreciated the potential for any provision on the investigation of offences under the 2018 Act to have a significantly different effect on individuals in island and mainland-rural communities in Scotland and an Island Communities Screening Assessment was carried out⁹. For example, matters such as how visible counter-fraud officers are and the conclusions that members of the public could draw from their presence in community will depend on the population of the surrounding area. The Scottish Ministers will take account of the needs of island and mainland-rural communities when designing processes relating to the use of these powers in order to avoid the exercise of investigative powers having a negative impact which is not felt by other communities.

Assistance given in error

19. This provision is not considered to impact individuals living in island and rural-mainland communities any differently to how it will impact individuals in other communities in Scotland.

Diagnosing Terminal Illness

20. This provision is expected have a positive impact on terminally ill people in all communities in Scotland, and may have an especially positive impact on people in island and mainland-rural communities where access to all healthcare professionals involved in clinically supporting a patient is limited.

⁹ https://www.legislation.gov.uk/sdsi/2020/9780111043462/pdfs/sdsiod_9780111043462_en_001.pdf

Authorisation of judiciary to sit in Scottish Tribunals

21. The Scottish Courts and Tribunal Service ('SCTS'), as the administrator of the tribunal, has a presence across the country. Tribunal hearings can currently take place in Lerwick, Kirkwall, and Stornoway and the tribunal is also able to travel to other locations, subject to operational reasons and health and safety considerations. We do not consider that the provisions contained within this Bill in relation to tribunal membership would change this or impact individuals living in island and rural-mainland communities any differently to how it will impact individuals in other communities in Scotland.
22. Similarly there will be no financial impact for island communities in isolation resulting from the amendments of the 2014 Act.

Summary and Conclusion

23. The Scottish Government does not consider that the provisions within the Bill will negatively impact upon those in island and mainland-rural communities. A number of provisions in the Bill are identified as having a positive, but not significantly different, impact for individuals in island and rural communities compared to individuals in other communities.
24. As noted above, one of the Bill's effects is not to add or to modify the investigative powers exercisable under the Social Security Assistance (Investigation of Offences) Regulations 2020, but to widen the matters that may be investigated using these powers. It is recognised that the operational processes used when authorised officers exercise these powers may have a significantly different effect on individuals from island and other rural communities, and that the Scottish Ministers will need to plan for this.
25. The provision in the Bill which extends the type of healthcare professionals that can diagnose a person as terminally ill for social security purposes to include registered nurses is expected to have an especially positive effect on individuals from island and rural communities.
26. We do not consider that the provisions contained within this Bill in relation to tribunal membership make a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.



Signed
Ann McVie

Date 6 May 2020



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