

Guidance on the Promotion and Use of Mediation in the Scottish Planning System

Island Communities Impact Assessment

July 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Island Communities Impact Assessment

Guidance on the Promotion and Use of Mediation in the Scottish Planning System

Background

1. This assessment relates to the development of guidance on the promotion and use of mediation in the Scottish planning system. The requirement to prepare guidance was introduced in the Planning (Scotland) Act 2019.
2. This document seeks to identify whether there are issues which merit further exploration through an Island Communities Impact Assessment (ICIA). Where significant issues are identified, a full ICIA should be carried out.
3. The Scottish Government has consulted on draft guidance during early 2021. Further details are set out below.

The Islands (Scotland) Act 2018 (the 2018 Act)

4. The Islands (Scotland) Act 2018 provides for a duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation.
5. The 2018 Act lists the following areas that are relevant considerations for islands and islands communities:
 - Depopulation
 - Economic development
 - Environmental protection
 - Health and wellbeing
 - Community empowerment
 - Transport
 - Digital connectivity
 - Fuel poverty
 - Land management
 - Biodiversity
6. The planning system has a role to play in the development and use of land in the long term public interest, including the future development of communities, and so may have a relevance to each of the considerations listed above.

Implications of Proposed Changes for Island Communities

7. Desk top analysis was undertaken of the evidence gathered for the development of the Planning Bill, including the equality impact assessment¹ and ICIA², plus the integrated impact assessment accompanying the early engagement³ on National Planning Framework 4. Additional information was drawn from the screening ICIA⁴ on changes to pre-application consultation requirements and a report prepared by Scottish Mediation / PAS⁵ containing proposals for the scope of mediation.
8. Key data from the analysis included:

Population demographics: NRS Scotland Mid-Year Population Estimates Scotland, Mid-2019 (2020)⁶ indicate that Na h-Eileanan Siar and the Orkney Islands are among the local authority areas with an older population in Scotland, with Shetland closer to the overall figures for Scotland. The Transport and Travel in Scotland Results from the Scottish Household Survey 2018 (2019)⁷ indicates in turn that older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.

That survey also identified a variation in mode of travel by age. The older age group were more likely to catch a bus than younger children (33% compared to 9%), which may indicate older populations are more reliant on public transport.

Settlements data: National Records of Scotland (NRS) - Population Estimates for Settlements and Localities in Scotland, Mid-2016 (2018)⁸ states that:

“The council areas with the lowest proportion of people living in a settlement⁹ are Na h-Eileanan Siar (30%) and Shetland Islands (38%). Many communities in these islands are sparser than those in the rest of Scotland, due to crofting and other factors, and so do not fulfil the density requirements needed to be counted as a settlement.”

¹ <https://www.gov.scot/publications/planning-bill--post-stage-2-equality-impact-assessment/>

² <https://www.gov.scot/publications/planning-bill--post-stage-2-island-communities-impact-assessment/>

³ <https://www.transformingplanning.scot/national-planning-framework/resources/> (under impact assessment tab)

⁴ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/> (Annex D)

⁵ Paper to accompany consultation

⁶ <https://www.nrscotland.gov.uk/files//statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf> - Figure 13, page 26

⁷ <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-results-from-the-scottish-household-survey-1/>

⁸ <https://www.nrscotland.gov.uk/files//statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

⁹ A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. They are separated by low density postcodes

Internet use: is less in older age groups than younger, and that there are fewer premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland. (see Appendix A)

Numbers of planning applications for major applications: Appendix B indicates the location of applications for major development in the different planning authority areas of Scotland. It indicates that the three island authorities are amongst those with the lowest number of such applications. Information for Highland Council, Argyll and Bute Council and North Ayrshire Council is not broken down to allow their island areas to be considered separately.

9. This section considers the potential for differential impacts on island communities of each element of the draft guidance. The two specific areas covered by the draft guidance are:
 - Development Planning – Development Plan Schemes and Development Plan Examinations
 - Development Management – procedures around pre-application consultation

Development Planning

10. All of the relevant local authorities (Comhairle nan Eilean Siar, Highland Council, Shetland Islands Council, Orkney Islands Council, Argyll & Bute Council and North Ayrshire Council) are covered by local development plans prepared under the provisions contained in the amended Town and Country Planning (Scotland) Act 1997.
11. Scottish Government guidance would require local authorities to consider the potential use of mediation between parties when developing the participation statement element of their Development Plan Scheme. These Schemes are prepared on an annual basis with the participation statement element setting when consultation is likely to take place on the Local Development Plan, with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.
12. Proposals in the draft guidance would provide for planning authorities to consider the use of mediation in resolving issues in advance of any development plan examination.

Development management

13. Elements of the draft guidance relating to development management focus on pre-application consultation (PAC) between the prospective developers of national and major developments and communities. National developments are set out in the National Planning Framework whilst the range and scale of major developments are set out in the planning hierarchy. These include developments relating to housing, renewable energy and retail developments.

14. It is noted that even though the numbers of applications to which PAC applies (see Appendix B) is relatively low in the islands, the significance of individual cases may as a result be greater. As noted above Highland Council, Argyll and Bute Council and North Ayrshire Council data is not broken down to allow their island areas to be considered separately.

Consultation

15. The Scottish Government consulted on draft guidance between November 2020 and March 2021. The consultation was promoted through twitter and the Scottish Government's e-alert system.

16. The consultation paper¹⁰ contained a draft Island Communities Impact Assessment which screened out the need for a full assessment. It asked people to give us their views on the Island Communities Impact, the Fairer Scotland Duty and Strategic Environmental Assessment screening documents and our conclusion that full assessments were not required.

17. The Scottish Government received 41 responses. The responses of those respondents who agreed to have them published are available online¹¹. One of the six relevant local authorities responded to the consultation, though no comments relevant to this assessment were received.

18. The following comments were received

- It was suggested that island communities may see more stakeholder interest in the mediation process, and may therefore be subject to a greater impact on timescales than other areas.
- It was noted that work may be required to ensure access to the digital connectivity required to enable island residents to participate in remote mediation.

Potential issues and mitigation

19. The main potential issue for communities is having access to any mediation event proposed by the developer or local authority. This may be similar to communities and the public having access to other public events, such as those organised under PAC requirements.

20. One can anticipate that in locations with more scattered and / or older communities, where convenient locations for such events may be limited, or transport connections are more limited, there may be difficulties in interested members of the public physically attending such events.

¹⁰ <https://www.gov.scot/publications/guidance-promotion-use-mediation-scottish-planning-system-consultation/pages/6/>

¹¹ https://consult.gov.scot/local-government-and-communities/mediation-in-planning/consultation/published_select_respondent

21. A Scottish Mediation / PAS paper which accompanied the consultation asked about the scope for online mediation. Just under 90% of respondents agreed / strongly agreed that online mediation may be an option in appropriate circumstances.
22. There is also evidence that given a more scattered and older population and the availability of, and reliance upon, public transport, may mean island populations may be less able to physically attend mediation events, or that it is more difficult and costly to do so. However, it is hard to make any conclusion as to the significance of any such challenges compared to other more remote parts of mainland Scotland, where populations may also be more scattered, older and where access to public transport at least may be more difficult compared to larger urban areas.
23. During the COVID-19 emergency, the requirement for a physical public event as part of PAC has been suspended. Guidance indicates online measures for engagement which should be used instead. While this would suggest the need for an internet enabled device, we note that online mediation is provided by the RICS Digital Resolution Service. Whilst its guidance¹² notes that ideally there should be access to a secure internet connection, plus appropriate device such as a smartphone, tablet or laptop, it can also be undertaken with access to a telephone and e-mail address.
24. We do not require mediation to be undertaken face to face, and note that there is an opportunity for mediation to be undertaken under appropriate circumstances particular to a local area.
25. This would not necessarily be a total solution for island communities. Whilst setting out the way to try to close the gap in digital connectivity, The National Plan for Scotland's Islands (2019)¹³, does indicate a gap between the number of premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland – See Appendix A. Also, in their response to the 'Call for Ideas' on the Scottish Government's National Planning Framework 4 (NPF4), Orkney Islands Council indicated "the islands still experience some of the poorest broadband and mobile phone connectivity speeds in the UK. Improved digital connectivity and investment in digital infrastructure to ensure equal coverage across Scotland should remain as a key objective in NPF4"¹⁴.
26. In addition, above we indicated that Na h-Eileanan Siar and the Orkney Islands have a higher proportion of older people in their population, and that older people are less likely to be able to travel. The Scottish Household Survey 2020¹⁵ refers to a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2019, nearly 100 per

¹² Online Mediation: A guide to negotiating disputes digitally (2020)
<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/drs/client-guide-online-mediation/>

¹³ <https://www.gov.scot/publications/national-plan-scotlands-islands/>

¹⁴ <https://www.transformingplanning.scot/media/1692/305-orkney-islands-council.pdf> - paragraph 1.20

¹⁵ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/pages/8/>

cent of adults aged 16 to 24 reported using the internet compared to 43 per cent of those aged 75 and over. This gap is, however, narrowing.

Conclusion

27. It seems likely that Island communities would welcome the opportunities provided by guidance on the promotion and use of mediation. There may be some issues around ability to attend face-to-face events, given the specific nature of island communities, such as the potential need to travel between islands. With the information we have identified at this stage, the significance of these issues, as distinct from those in other remote parts of mainland Scotland, is difficult to gauge.
28. Our conclusion is that there does not appear to be significant implications from the proposed guidance for Island Communities specifically. However, the Scottish Government will conduct a review of the first 24 months of the operation of the guidance. That review may include approaching planning authorities, the development industry and a survey of public views.

Planning and Architecture Division
Scottish Government
July 2021

Appendix A - The National Plan for Scotland's Islands (2019) – Digital Connectivity

Percentage of premises with access to broadband

Local Authority	Percentage of premises with access to superfast broadband (2014)	Percentage of premises with access to superfast broadband (2019)	Percentage of premises with access to fibre broadband (2014)	Percentage of premises with access to fibre broadband (2019)
Orkney ¹	11.1	65.7	12.0	82.5
Shetland ²	28.9	74.2	35.1	86.3
Comhairle nan Eilean Siar	1.3	76.5	1.6	89.8
Argyll & Bute	0.9	83.3	0.9	92.5
Highland	20.3	80.1	21.8	93.6
North Ayrshire	40.9	96.3	43.3	99.3

1. Data only available from December 2014.
2. Data only available from September 2014.

Appendix B – Numbers of Applications for Major Developments determined by year and by planning authority area

Area	2018/19	2017/18	2016/17
Aberdeen City	16	14	19
Aberdeenshire	18	15	22
Angus	3	4	8
Argyll and Bute	7	5	10
Cairngorms National Park	0	0	3
Clackmannanshire	1	1	0
Dumfries and Galloway	15	11	7
Dundee City	4	7	10
East Ayrshire	6	8	6
East Dunbartonshire	2	4	3
East Lothian	12	13	9
East Renfrewshire	1	7	3
City of Edinburgh	26	26	34
Falkirk	10	6	7
Fife	15	26	20
Glasgow City	39	53	37
Highland	27	17	26
Inverclyde	3	2	1
Loch Lomond and The Trossachs National Park	1	0	1
Midlothian	6	7	6
Moray	9	8	4
Na h-Eileanan Siar	1	1	1
North Ayrshire	6	7	7
North Lanarkshire	16	20	22
Orkney Islands	2	0	0
Perth and Kinross	15	10	14
Renfrewshire	8	3	12
Scottish Borders	6	10	7
Shetland Islands	1	1	1
South Ayrshire	11	12	3
South Lanarkshire	20	15	18
Stirling	5	9	6
West Dunbartonshire	4	4	6
West Lothian	9	5	8
SCOTLAND	325	331	341



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-124-1 (web only)

Published by The Scottish Government, July 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS898366 (07/21)

W W W . g o v . s c o t