

**Island Communities Impact Assessment
(ICIA) Of The First-Tier Tribunal For Scotland
Social Security Chamber And Upper
Tribunal For Scotland (Rules Of Procedure)
(Miscellaneous Amendments)
Regulations 2022**

May 2022



Scottish Government
Riaghaltas na h-Alba
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Island Communities Impact Assessment - Screening

Step one – Develop a clear understanding of your objectives

This policy will allow the First-tier Tribunal and Upper Tribunal, respectively, to issue a direction prohibiting the disclosure of a document or information to a person (“the recipient”) if a registered medical practitioner or a registered nurse has advised that the information is likely to cause serious harm to the person’s physical or mental health.

The General Medical Council’s Guidance on Consent¹ sets out that “in very exceptional circumstances” it may be appropriate for the non-disclosure of information to a patient if it would cause them serious harm. The guidance goes on to say that ‘serious harm’ means more than that the patient might become upset, decide to refuse treatment, or choose an alternative. In the context of people who are applying for disability assistance under Special Rules for Terminal Illness, the Chief Medical Officer’s guidance for doctors and nurses completing the Benefits Assessment for Special Rules in Scotland (BASRiS) form for terminal illness² also notes the limited exception of “serious harm” where it may be appropriate to withhold the information from the patient. The guidance states that harmful information is anything that would be considered to cause serious harm to an individual’s mental or physical health if they were to become aware of it (e.g. a diagnosis of malignancy).

Under section 62A of the Social Security (Scotland) Act 2018, Scottish Ministers have powers for the non-disclosure of information to a recipient if it relates to the physical or mental health of an individual and if a registered medical practitioner or a registered nurse has advised Scottish Ministers that the information is likely to cause serious mental or physical harm to the recipient if disclosed. The recipient could be the patient or the parent/individual with legal parental responsibilities for a child.

However there are no provisions in The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 or The Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 to allow the First-tier Tribunal or the Upper Tribunal to prohibit the disclosure of a document or information to a person if that information is likely to cause them serious mental or physical harm.

There is a risk that harmful information that is shared with the First-tier Tribunal or the Upper Tribunal during an appeal could be shared with the individual. Although we expect that the need for either Tribunal to issue a direction will only occur in exceptional circumstances, the repercussions of disclosing information that would cause serious harm to an individual could be devastating for individuals and their families.

The aim of this approach would be to reduce the possibility of this happening in cases involving some of the most vulnerable clients. The approach is in line with

¹ [Decision making and consent - GMC \(gmc-uk.org\)](https://www.gmc-uk.org/standards/decision-making-and-consent)

² [Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf \(socialsecurity.gov.scot\)](https://www.socialsecurity.gov.scot/Document/Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf)

Scottish social security principles to respect the dignity of individuals and the client's right to choose. The proposed change will be applied equally to all clients on the basis of their individual circumstances. We do not anticipate island communities to be impacted in a different way.

Step two – Gather your data and identify your stakeholders

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 whole³. 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 lot⁴. The corresponding proportions for Scotland as a whole were very similar.

62% of island residents are aged between 16-65 with the median age being 45 which is higher than the average across Scotland as a whole (41)⁵.

The change will apply across all benefits that carry a right of appeal to the First-tier Tribunal and Upper Tribunal for Scotland. However, in practice, as this policy will allow the First-tier Tribunal and the Upper Tribunal to give a direction prohibiting disclosure of a document or information to an individual if it will cause them serious harm, it is expected that people in receipt of disability assistance will be the most likely to be affected. This is because applications for disability assistance generally include consideration of a person's physical or mental health, while applications for some devolved benefits such as the Five Family Payments do not generally include consideration of a person's physical or mental health.

We expect that it will be more likely that adults and young people aged 16 and 17 will be impacted by this policy. This is partly because children who are eligible for disability assistance are generally not responsible for communicating with Social Security Scotland or with the Tribunal. Instead it is generally a parent, guardian or appointee who makes the application on behalf of the child and who receives communications about the child's disability benefit from Social Security Scotland and from the Tribunal.

Nearly 9.5% of people in receipt of Personal Independence Payment in Scotland live in remote and island communities across the six local authority areas as of January 2022⁶. This accounts for 28,986 people.

³ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

⁴ Ibid.

⁵ [Inhabited islands analytical report: A report presenting key results relating to Scotland's 93 inhabited islands, based on the results of the 2011 Census](#)

⁶ Department for Work and Pensions Stat Xplore

Step three – Consultation

A consultation was carried out by the Scottish Government's Chief Medical Officer on the statutory guidance that registered medical practitioners and registered nurses must follow when diagnosing an individual as terminally ill for social security purposes. Clinicians who will use the guidance and organisations who will support terminally ill clients took part in the managed (non-public) consultation.

Scottish Ministers have consulted the President of the Tribunals in the making of the regulations that will allow the Tribunal to give a direction prohibiting disclosure of a document or information to an individual at appeal if it could cause serious harm to a person's physical and/or mental health. Members of the National Implementation Group on Terminal Illness were also consulted on this policy and they supported the introduction of measures to ensure that harmful information is not disclosed during an appeal.

Step four – Assessment

We do not consider that there will be any new unique impacts on remote and islands communities as a result of the provisions in these Amendment Regulations, nor will there be a specific financial impact for island communities in isolation resulting from the provisions. Positive impacts on people in receipt of receiving devolved benefits under Agency Agreements are expected to have a similar impact on remote and island communities as the rest of Scotland.

Is a full Islands Communities Impact assessment Required?

This policy could affect people living in Scotland who are in receipt of any devolved benefits that carry a right of appeal to the First-tier Tribunal and Upper Tribunal. However, in practice, adults and young people aged 16 and 17 in receipt of disability benefits will be the most likely to be affected. It is possible that some clients who apply for disability assistance under Special Rules for Terminal Illness will be impacted by this policy.

Therefore, this policy is more likely to impact on people living with a disability and they are potentially proportionately more affected by the proposal than people in receipt of other devolved benefits.

We consider that this policy will have a similarly positive effect on people living in island or mainland-rural communities, compared to their effect on other communities in Scotland.

A Full Islands Community Impact Assessment is NOT required

In preparing the ICIA, I have formed an opinion that our policy, strategy or service is NOT likely to have an effect on an island community which is NOT significantly different from its effect on other communities (including other island communities). The reason for this is detailed below.

Reason for not completing a full Islands Communities Impact Assessment

Scottish Ministers are aware of the duty to consult island communities before making 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.

We have not identified any evidence that these Amendment Regulations will directly or indirectly discriminate against remote and island communities. This is an extension of existing policy and will mitigate the risk of people being exposed to harmful information during a social security appeal. This safeguarding policy is expected to have a positive impact on disabled people across Scotland, regardless of location or the community they live in.

Screening ICIA Completed by: Nathalie Leger

Position: Policy Manager, Social Security Policy Division

Signature and Date: Nathalie Leger 12 April 2022

ICIA Authorised by: Lynn Forsyth

Position: Head of Unit, Five Family Payments, Funeral Support and Challenge Rights Unit

Signature and Date: Lynn Forsyth 12 April 2022



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