**About you**

What is your name?

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| --- |
| Chloë Trew |

What is your email address?

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| chloe.trew@scottishhumanrights.com |

Entering your email address allows you to return to edit your consultation at any time until you submit it. You will also receive an acknowledgement email when you complete the consultation.

Are you responding as an individual or an organisation?

Individual  Organisation

What is your organisation?

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| --- |
| Scottish Human Rights Commission |

If responding on behalf of an organisation, please enter the organisation's name here.

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| Scottish Human Rights Commission |

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

**(Required)**

Publish response with name

Publish response only (without name)

Do not publish response

**Info for organisations:**

The option 'Publish response only (without name)' refers only to your name, not your organisation’s name. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

(Required)

Yes

No

**Consultation questions**

We want the National Islands Plan to be a document that builds on what works well on Scottish islands, and which addresses the challenges faced by islands and their communities. The Plan will set out how the Scottish Government, local authorities and other public agencies might work to improve outcomes for island communities. Scottish Ministers will be asked to report back to Scottish Parliament every year on progress towards the goals included in the National Islands Plan.

The Plan, therefore, is key to how we will all work together with island communities in the future. It is therefore vital that as many people as possible who live, work and interact with Scotland’s islands and their communities take part in this consultation. We want to hear people’s experiences and especially, their views about what we can build on and do differently in the future. The questions set out below aim to give people the chance to shape the National Islands Plan in a way that truly responds to their interests and aspirations. Please take part.

The Scottish Human Rights Commission welcomes the opportunity to participate in the consultation on the National Islands Plan. Key points in relation to the development of the National Islands Plan are as follows:

* The Commission advocates for a [human rights based approach](http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/) to the planning and delivery of public services. Human rights based approaches aim to make human rights set out in both domestic and international frameworks real, following a process based upon human rights principles. These are set out in the acronym PANEL, which stands for Participation, Accountability, Non-discrimination, Empowerment and Law. (Q12)
* Many of the outcomes set out within section 3 (3) of the Islands (Scotland) Act 2018 engage human rights concerns, and in particular those economic, social, cultural and environmental rights which are protected in the international human rights law framework including the [International Covenant on Economic, Social and Cultural Rights](https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) (ICESCR). Scottish Ministers should take a rights based approach to developing the National Islands Plan to ensure that these rights are respected, protected and fulfilled for everyone on Scotland’s islands. (Q12)
* The Committee which monitors the compliance of the International Covenant on Economic, Social and Cultural Rights (ICESCR Committee) has made clear that place of residence cannot be a barrier to the realisation of rights.[[1]](#footnote-1) Public authorities have duties to respect, protect and fulfil human rights, which include eliminating ‘disparities between localities and regions….by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health-care facilities.’[[2]](#footnote-2) (Q14)
* Taking a rights based approach will, to some extent, future proof the National Islands Plan in relation to the on-going process to implement the recommendations of the [First Minister’s Advisory Group on Human Rights Leadership](https://humanrightsleadership.scot/). (Q14)
* The ICESCR Committee’s General Comment 21 on the Right to Cultural Life[[3]](#footnote-3) provides useful guidance with respect to the way in which the National Islands Plan addresses and engages with distinctive geographical, natural heritage and cultural characteristics (including the linguistic heritage) of local island communities, including the needs of Gaelic speakers within those communities. (Q11)
* In drafting the National Islands Plan, Ministers should take into account their own obligations to comply with the law, including the implementation of international treaty obligations, as well as duties on public authorities which arise from those treaty obligations. These include duties to take steps to realise economic, social and cultural rights; protect rights across geographical differences; use the maximum of available resources to realise rights; and make rights real as quickly and efficiently as possible. (Q14)

Q1. If applicable, which island(s) do you live on or do you relate to?

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| Comment |

**National Islands Plan**

Q2. If applicable, what is good about living on your island? Please state 3 things that you like about living on your island.

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| Comment |

Q3 If you’ve moved away from your island, please tell us why you left (for example, was it for work opportunities or for education)?

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| Comment |

Q4. If you’ve moved away from your island, please tell us what, if anything you miss about island life.

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| Comment |

Q5. If possible, please can you give us some examples of good local initiatives/projects/activities, etc?

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| Comment |

Q6. The Islands (Scotland) Act lists a number of areas that are relevant for islands and island communities. Please rank these in order of priority for you:

* Depopulation
* economic development
* environmental protection
* health and wellbeing
* community empowerment
* transport
* digital connectivity
* fuel poverty
* land management
* biosecurity

Do you feel that this list covers all aspects of island life?

Yes  No  Don’t know

Q7. If you answered no, is there anything else that you believe the National Islands Plan should address?

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| Comment |

Q8. If applicable, are there any specific challenges about living on your island? Please state 3 challenges about living on your island.

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| Comment |

Q9. If you’ve moved away, please tell us about any challenges that you experienced whilst you were living on your island.

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| Comment |

Q10. If applicable, what could be done to make living on your island better?

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| Comment |

Q11. How do you feel the National Islands Plan should address and respond to the distinctive geographical, natural heritage and cultural characteristics (including the linguistic heritage) of local island communities, including the needs of Gaelic speakers within those communities?

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| Comment  When seeking to address and respond to the distinctive geographic, natural heritage and cultural characteristics of local island communities, the National Islands Plan should have regard to relevant human rights provisions, in this case Article 15 of the International Covenant on Economic, Social and Cultural Rights. This sets out that:  “1. The States Parties to the present Covenant recognize the right of everyone:  (a) To take part in cultural life;”  In order to understand how to translate this right into a specific context, in this case the drafting of the National Islands Plan, the UN Committee on Economic, Social Cultural Rights has provided some guidance in its [General Comment No 21](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQc5ReG9hKvddWC2ML5U76E63nT%2beY%2btmSVIRS0ynN0q4EDmpjJye7rC1DxEtC%2fGxx7WLBcmnxGwpWSXy0fmnHDS) on the right to participate in cultural life. This sets out that the freedom to participate in cultural life belongs to ‘everyone, either as an individual, (b) in association with others, or (c) within a community or group.’ The Committee defines culture as ‘inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.’ Furthermore, according to the Committee, the right to take part in cultural life includes the opportunity to a) participate in, b) access and c) contribute to cultural life.  The Committee breaks the right to cultural life down into a set of different elements, which are as follows:   * Availability –the presence of cultural goods, services and facilities, literature, open spaces, natural heritage and intangible cultural heritage such as language and customs. * Accessibility – the provision of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. * Acceptability - the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. * Adaptability - the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities. * Appropriateness - refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.   In order to ensure proper consideration of the distinctive cultures upon the islands, the National Islands Plan should take this rights based framework as its starting point; the acceptability and adaptability elements of the right to cultural life will be particularly relevant to this process. Undertaking a participative process has the potential to support the Islands Plan to develop objectives and strategies which understand and are responsive to the particular geographic, cultural and linguistic characteristics of the different Islands and Island groups. |

**National Islands Plan: General Questions Section:**

So as many people and agencies as possible have an opportunity to help us shape the National Islands Plan, we would like to capture the views of relevant authorities, national, local and community groups, development trusts and other such partners with an interest in islands,

Q12. What should be the main objectives for the National Islands Plan?

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| Comment  The Commission notes that many aspects of the outcomes identified as relevant to island communities within section 3 (3) of the Islands (Scotland) Act 2018 are human rights concerns, in particular in relation to economic, social and cultural rights, such as the right to employment, education, health, social security, housing and participation in cultural life. These rights are set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Commission would therefore welcome a greater acknowledgement and framing of the Islands Plan as a delivery mechanism for the realisation of civil and political, economic, social and cultural rights for people who live on the islands.  For this reason, the Commission recommends Scottish Ministers take a human rights based approach to developing the National Islands Plan, i.e. one which seeks to realise the rights set out in the international human rights framework. This should reflect the principles of a human rights based approach, which are participation, accountability, non-discrimination and empowerment and law. |

Q13. What should be the key priorities for the Scottish Government in relation to the National Islands Plan?

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| Comment  In line with a human rights based approach, people who live on the islands will be best placed to determine the key priorities in relation to the National Islands Plan. |

Q14. What should be taken into account in terms of the functions of relevant authorities within the National Islands Plan?

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| Comment  The National Islands Plan seeks to define the ‘main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities that result from, or are contributed to by, the carrying out of functions of a public nature.’ The human rights framework at domestic and international level places duties upon public authorities, and those carrying out functions of a public nature to respect, protect and fulfil human rights. It will be important for the National Islands Plan to take this into account and articulate the duties upon public authorities which arise from human rights law. For example, the National Islands Plan should reiterate the domestic legal obligation upon public authorities to act compatibly with the rights set out in the European Convention on Human Rights under section 6 of the Human Rights Act 1998.  It should also be recognised that, following the [First Minister’s Advisory Group on Human Rights Leadership (FMAG),](https://humanrightsleadership.scot/) it is likely that rights which currently sit within international treaties (against which Ministers have an overarching duty to comply under section 1.3 of the Scottish Ministerial Code 2018), such as the right to health, the right to an adequate standard of living, environmental rights, and rights to participate in cultural and community life are likely to become part of domestic law in Scotland. The FMAG has recommended that a similar model to the Human Rights Act 1998 be adopted in the incorporation of these rights, which will initially require public authorities to pay due regard to incorporated rights and, after a specified period, will introduce a duty to comply with those rights. The forthcoming incorporation of the UN Convention on the Rights of the Child has the potential to feature a simultaneous duty to have due regard and a duty to comply with the rights in the Convention and Optional Protocols.  With this in mind, there are a number of general norms and standards in relation to economic, social and cultural rights, to which Scottish Ministers should have regard when setting objectives, strategies and identifying priorities for the National Islands Plan. These are set out in Article 2 of the ICESCR and indicate a number of immediate and progressive duties upon public authorities:  **“Each State Party to the present Covenant undertakes to take steps**... **to the maximum of its available resources**, with a view to **achieving progressively the full realization of the rights** recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”  The article, when read in conjunction with Article 2 (2) indicates that States and public authorities have:   * immediate obligations to **take steps** to realise economic, social and cultural rights (steps can be legislative, judicial, budgetary, administrative and other) * immediate obligations to eliminate discrimination within the law (de jure); discrimination occurring as a result of the unequal enjoyment of rights (de facto), should be ended ‘as speedily as possible’. With respect to the realization of economic, social and cultural rights, it should be noted that the UN Committee on Economic, Social and Cultural Rights in its [General Comment No 20](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en) on non-discrimination (paragraph 34) has set out that place of residence cannot be a barrier to the realisation of rights: “The exercise of Covenant rights should not be conditional on, or determined by, a person’s current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health-care facilities.” In the context of economic, social and cultural rights, this means that there will need to be dedicated action and spending to deliver rights such as health, education, social security, employment and etc in an island context. * Duties to progressively realise rights as expeditiously and efficiently as possible * Duties to use the maximum of available resources to realise rights (resources can include not only financial resources but also technological and natural resources etc) * Duties not to take steps which reduce the realisation of rights, unless these can be fully justified.   Both the obligations to respect, protect and fulfil human rights and the duties described under Article 2 ICESCR in relation to economic, social and cultural rights should be taken into account when considering the functions of public authorities under the National Islands Plan.  In addition, other General Comments by the UN Committee which monitors progress on the implementation of Economic, Social and Cultural Rights have set out normative elements of individual economic, social and cultural rights which can be broadly classified as follows:  Availability – this sets out that the specified right should be available in sufficient quantities.  Accessibility – this sets out that the specified right should bephysically and economically accessible, without discrimination.  Acceptability and adaptability – this sets out that the specified right should be culturally and socially acceptable and adapted to the local context.  Quality - this sets out that the specified right should be appropriate and adequate in standard and safety.  A dialogue (such as that which is taking place through this consultation and other participation events throughout the Islands) to identify where the different elements set out above could be improved in relation to individual rights will be an important way to frame the discussion about the objectives and priorities of the National Islands Plan, and thus how public authorities could carry out their functions in a rights-compliant way. |

Q15. How can we measure outcomes in relation to the National Islands Plan?

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| Comment |

Q16. If you have any further comments or points that you think should be taken into account in the development of the National Islands Plan, please state these below.

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| Comment |

**Island Communities Impact Assessment**

Island Communities Impact Assessments will be one way in which relevant authorities can consider the impact of new laws, policies, strategies or services on islands. Guidance will be developed on how these impact assessments will operate and we believe that your input to this consultation can help us with this:

Q17. Can you name any policies, strategies or services that don’t work very well for your island? Why do you feel they don’t work well?

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| Comment |

Q18. On the other hand, can you name any policies, strategies or services that **DO** work well for your island? Please tell us what it is about these that works so well.

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| Comment |

Q19. How can Scottish Ministers and other relevant authorities involve island communities in assessments?

online surveys

focus groups

public meetings

paper documents

other (please comment)

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| Comment  The Commission is pleased to see the focus and emphasis which has been placed upon the lived experience of people who call the islands home and also of those who have chosen to move away. This is key to understanding the needs and concerns of people who live on Scotland’s islands and is one of the foundations of a human rights based approach. The Commission notes that people who live on the islands themselves will be best placed to suggest methods of engagement which are the most successful; however, it will also be important to identify, take into account and mitigate any barriers to participation. These may include, but are not limited to, financial constraints, patterns of employment and educational attendance, caring roles, geography, limited digital access, the absence of multiple information formats, access for people with mobility, hearing or visual impairment, language barriers and timescales.  The Commission would also advocate for a meaningful and deliberative approach rather than a tokenistic or simply consultative approach. |

Q20. Is there anything else you would like to tell us?

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| Comment |

**Island Communities Impact Assessments – General Questions Section:**

Guidance on how an Island Communities Impact Assessment should be carried out is not present in the Islands (Scotland) Act. Rather, the Act enables Ministers to develop guidance about the duty to have regard to island communities, of which the Island Communities Impact Assessment forms part.[[4]](#footnote-4) The Scottish Ministers are also required to develop regulations “about reviews of decisions of relevant authorities relating to island communities impact assessments”.

So as many people and agencies as possible have an opportunity to help us shape guidance and templates for Island Communities Impact Assessments, we would like to capture the views of relevant authorities, national, local and community groups, development trusts and other such partners with an interest in islands.

Q21. What should be the main objectives for Island Communities Impact Assessments?

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| Island Communities Impact Assessment presents an opportunity to embed human rights considerations and a human rights based approach into policy and decision making. Best practice guidance on Human Rights Impact Assessment developed by the Commission can be seen here- <http://eqhria.scottishhumanrights.com/> |

Q22. What do you think needs to be considered in the guidance and templates which will be developed to support the carrying out of Island Communities Impact Assessments by relevant authorities?

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| Comment  Island Communities Impact Assessment presents an opportunity to embed human rights considerations and a human rights based approach into policy and decision making. Best practice guidance on Human Rights Impact Assessment developed by the Commission can be seen here- <http://eqhria.scottishhumanrights.com/> |

Q23. What should be taken into account in relation to the reviews of decisions of relevant authorities relating to Island Communities Impact Assessments?

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| Comment |

Q24. If you have any further comments or points that you think should be taken into account in the development of Island Communities Impact Assessments, please state these below.

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| Comment |

1. UN Committee on Economic, Social and Cultural Rights, 2nd July 2009, ‘GENERAL COMMENT No. 20, ‘Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ E/C.12/GC/20 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en> [↑](#footnote-ref-1)
2. Supra, para 34 [↑](#footnote-ref-2)
3. UN Committee on Economic, Social and Cultural Rights, , ‘GENERAL COMMENT No. 21, ‘Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)’ E/C.12/GC/21 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en> [↑](#footnote-ref-3)
4. Islands (Scotland) Act 2018, section 11. [↑](#footnote-ref-4)