



Law Society
of Scotland

Law Society of Scotland Response

Constitutional Law and Human Rights Subcommittee
response to the Scottish Languages Bill

February 2024



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Law Society of Scotland's Constitutional Law and Human Rights Subcommittee welcomes the opportunity to consider and respond to the Scottish Languages Bill. The Constitutional Law and Human Rights Subcommittee has the following comments to put forward for consideration.

General Comments

The Society notes that this bill builds on and amends the Gaelic Language (Scotland) Act 2005. That Act established Bòrd na Gàidhlig to secure in terms of section 1(3) the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language. Bòrd na Gàidhlig was also empowered to carry out other functions to support the Gaelic language and ensure that public authorities prepared Gaelic language plans.

Gaelic already has a particular place in the Scottish legal system. The Scottish Land Court Act 1993 section 1(5) provides that "One of the members of the Land Court shall be a person who can speak the Gaelic language."

When the Scottish Government consulted on *The future of the Scottish Land Court and the Lands Tribunal for Scotland in July 2020* [A consultation on the future of the Land Court and the Lands Tribunal - Scottish Government consultations - Citizen Space](#), we responded to consultation question 5 which asked if it were necessary to continue to have a Gaelic speaker as one of the members of the Land Court as follows: "*... We consider that there remains benefit in having a Gaelic speaking member of the Land Court, particularly in terms of the historical and cultural background of the language which will be important to some parties. It is important to consider this matter in the context of having a modern and diverse Scotland, and existing policies which encourage a diversified country and consider how to support Gaelic culture. We recognise that the requirement may reduce the pool of possible appointees. We note that an amalgamation of the Land Court and Lands Tribunal would open the scope to some extent*".

Rule 103 of the [The Rules of the Scottish Land Court Order 2014 \(legislation.gov.uk\)](#) provides:

"(2) A party may employ Gaelic in any part of the proceedings if the party—

(a) requests to do so; and

(b) gives reasonable notice in that regard to the court,

unless the court is satisfied that it would be unjust or unfair to grant the request.

(3) Where the court grants such request, it is to make such arrangements for the attendance at the proceedings of an interpreter as appear to it to be appropriate.

Furthermore, in the reserved area of Immigration and Nationality Schedule 5 of the Scotland Act 1998 section B6, the British Nationality Act 1981 schedule 1(1)(c) provides that: “the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it... (c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language.

Particular Comments

PART 1 - GAELIC - CHAPTER 1

SUPPORT FOR THE GAELIC LANGUAGE

Status of the Gaelic language

1. Status of the Gaelic language

The Gaelic Language Act 2005 Section 1(3) contained provisions conferred on the Bòrd na Gaidhlig “to be exercised with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language.”. This is amended by the bill by section 2(b)(i) by conferring on Bord na Gaidhlig an obligation to ensure “that the Gaelic language is treated with equal respect to the English language.”.

Section 1 of the bill inserts a new section A1 into the Gaelic Language Act 2005. Section A1(1) confers "official status" on Gaelic. However, “official status” is not defined in the bill. We suggest that there should be an explanatory provision giving clarity to this expression.

Section A1(2) and provides that new section A1(1) is given legal effect by the bill “conferring functions on Bòrd na Gàidhlig, the Scottish Ministers and other persons in relation to promoting, facilitating and supporting the use of the Gaelic language, (b) enactments relating to Gaelic education.”. However, this provision for giving legal effect to the official status of Gaelic seems limited to those functions of promoting, facilitating and supporting Gaelic and laws relating to Gaelic education.

This bears some similarity to the Welsh Language (Wales) Measure 2011: [Welsh Language \(Wales\) Measure 2011 \(legislation.gov.uk\)](https://legislation.gov.uk/ukmg/ml/2011/1) in as much as there is a declaratory provision concerning the Welsh language’s official status and further explanation about how that status has effect through various enactments in section 3 of the Measure.

Bòrd na Gàidhlig

2. Functions of Bòrd na Gàidhlig

See our comments on section 1 above.

3. Bòrd na Gàidhlig corporate plan

Section 3 inserts a new section 7A into the Gaelic Language Act 2005 for a Bòrd na Gàidhlig Corporate Plan. The Bòrd has no obligation to consult on the creation or revision of the corporate plan. We think this is an omission from the bill and that the Bòrd should be obliged to consult with the Parliament and such other persons who may have an interest its functioning.

Furthermore, under new section 7A(3)(c) Scottish Ministers are under no obligation to provide reasons for the rejection of the corporate plan – this too is an omission which should be rectified.

Areas of linguistic significance

4. Areas of linguistic significance

We have no comment to make.

Gaelic language strategy and standards

5. Gaelic language strategy

Section 5 (3) amends the Gaelic Language Act 2005 by inserting a new section 2A. New section 2A requires Scottish Ministers to prepare a Gaelic language strategy. In advance of preparing the strategy Scottish Ministers must publish a draft strategy and consult such persons as they consider appropriate. We consider that Scottish Ministers must also publish the results of that consultation. The consultation requirements should apply to any revision of the strategy.

6. Gaelic language standards

Section 6(2) amends the Gaelic Language Act 2005 by inserting a new section 2C. New section 2C provides Scottish Ministers with regulation making powers to specify standards concerning promoting, facilitating and supporting the use of the Gaelic language which apply to relevant public authorities. Under new section 2C(3) Scottish Ministers must publish a draft strategy and consult a number of bodies. We consider that Scottish Ministers must also publish the results of that consultation.

Functions of relevant public authorities

7. Functions of relevant public authorities

Section 7(2) amends the Gaelic Language Act 2005 by inserting a new section 2E. New section 2E provides Scottish Ministers with guidance making powers to public authorities relating to their duties under

this section to promote Gaelic language and develop Gaelic culture. Scottish Ministers are required to consult on the formulation of the guidance but there is no requirement to publish the results of the consultation. We consider that Scottish Ministers must also publish the results of that consultation.

Under new section 2F a public authority must comply with a direction given to it under this section. There appears to be no sanction for non-compliance – an issue which occurs in various provisions in the bill. There is no provision for an appeal in connection with such a direction.

Reporting

8. Reporting on Gaelic language strategy, standards and duties

We have no comment to make.

Gaelic language plans

9. Gaelic language plans

Under new section 7A(5) a public authority must comply with a direction given to it under this new section. There is no provision for enforcement in the event of non-compliance with the direction and no provision for an appeal in connection with such a direction.

Land rights and responsibilities statement

10. Land rights and responsibilities statement: regard to be had to supporting Gaelic.

We have no comment to make.

CHAPTER 2 - EDUCATION

Functions of Scottish Ministers

11. Duty of Scottish Ministers to promote Gaelic education

We have no comment to make.

12. Power for Scottish Ministers to set standards relating to Gaelic education

Section 12(2) amends the Education (Scotland) Act 2016 by inserting a new section 6B. New section 6B(1) provides Scottish Ministers with regulation making powers to set Standards relating to Gaelic education on which ministers must consult. We consider that Scottish Ministers must also publish the results of that consultation.

In new section 6B(5) which inserts new subsections into section 7A of the Gaelic Language (Scotland) Act 2005, Scottish Ministers are empowered to “give a direction to that authority relating to the application of the standards and requirements specified in regulations made under section 6B of the Education (Scotland) Act 2016”. Under new subsection 7A(8) an education authority must comply with the direction.

There is no provision for enforcement in the event the education authority does not comply with the direction.

13. Guidance to public authorities relating to Gaelic education

Section 13(2) amends the Education (Scotland) Act 2016 by inserting a new section 6C. New section 6C is about Scottish Ministers giving guidance to Scottish public authorities relating to Gaelic learner, medium and further education. In preparing that guidance under new section 6C(3)(c), the Scottish Ministers must consult: (a) Bòrd na Gàidhlig, (b) education authorities, (c) the body known as Comann nam Pàrant (Nàiseanta), and (d) such other persons as the Scottish Ministers consider appropriate. The Explanatory notes are silent about the nature of the “body known as Comann nam Pàrant (Nàiseanta)”. We suggest this section should provide more information about the legal standing of the organisation (eg a company registration number or OSCR number) given that it will be a statutory consultee and certainty about which body is so identified is important in such circumstances alternatively the section could be amended to include consultation with “groups which appear to the Scottish Ministers to represent the interests of parents of children in Gaelic-medium education.”.

14. Directions to education authorities relating to Gaelic education

Section 14(2) amends the Education (Scotland) Act 2016 by inserting a new section 6D. New section 6D is about Scottish Ministers consulting with and giving a direction to an education authority about its functions relating to Gaelic learner, medium and further education. An education authority must comply with a direction given to it. There is no provision for enforcement in the event the education authority does not comply with the direction.

General duties of education authorities relating to Gaelic education

15. General duty to provide education includes Gaelic education

We have no comment to make.

16. Duty to promote Gaelic education in exercising functions under the Education (Scotland) Act 1980

We have no comment to make.

17. Information-sharing about Gaelic education

Section 17(2) amends the Education (Scotland) Act 2016 by inserting a new section 16A. New section 16A is about information sharing following on a notice from Bòrd na Gàidhlig. New section 16A(2) requires the education authority to comply with the notice. There is no provision for enforcement in the event the education authority does not comply with the direction.

Gaelic education delivery planning

18. Gaelic education delivery planning

Our comments about the body known as Comann nam Pàrant (Nàiseanta) in the comment about section 13 are relevant in respect of this section.

Access to Gaelic education

19. Duty to support access to Gaelic medium education

We have no comment to make.

20. Duty to establish a catchment area for schools providing Gaelic medium education

We have no comment to make.

21. Transport to Gaelic medium education: application of Schools (Consultation) (Scotland) Act 2010 Our comments about the body known as Comann nam Pàrant (Nàiseanta) in the comment about section 13 are relevant in respect of this section.

Assessments: Gaelic medium primary education

22. Assessments: power to make different provision for different areas

We have no comment to make.

Early learning and childcare

23. Extension of assessments to early learning and childcare

We have no comment to make.

24. Duty to consult and plan on delivery of early learning and childcare

We have no comment to make.

Further and higher education

25. Conditions of grants to the Scottish Further and Higher Education Funding Council

We have no comment to make.

PART 2 – SCOTS - CHAPTER 1 - SUPPORT FOR THE SCOTS LANGUAGE

Status of the Scots language

26. Status of the Scots language

Section 26(1) confers "official status" on the Scots Language. However, "official status" is not defined in the bill. We suggest that there should be an explanatory provision giving clarity to this expression.

Section 26(4) defines "the Scots Language" as the Scots language as used in Scotland. Is that definition clear enough to take account of regional variations within Scotland?

27. Scots language strategy

Section 27(3) requires the Scottish Ministers to prepare and consult upon a Scots language strategy.

We consider that Scottish Ministers must also publish the results of that consultation.

28. Reporting on Scots language strategy

We have no comment to make.

29. Effect of Scots language strategy

We have no comment to make.

Power for Scottish Ministers to give guidance

30. Power for Scottish Ministers to give guidance

Section 30(3) requires the Scottish Ministers to prepare and consult upon a Scots language guidance for relevant public authorities. We consider that Scottish Ministers must also publish the results of that consultation.

CHAPTER 2 - SCHOOL EDUCATION

31. Scots language education in schools

We have no comment to make.

32. Guidance to education authorities relating to Scots language education

Section 32(3) requires the Scottish Ministers to prepare and consult upon a Scots language guidance for education authorities. We consider that Scottish Ministers must also publish the results of that consultation.

33. Standards relating to Scots language education

Section 33 requires the Scottish Ministers to prepare and consult upon regulations on the standards and requirements to which an education authority must conform in discharging its functions relating to Scots language education in the schools under its management.

We consider that Scottish Ministers must also publish the results of the consultation on those regulations.

34. Reporting on Scots language education

We have no comment to make.

35. Interpretation of Chapter 2

We have no comment to make.

PART 3 - FINAL PROVISIONS**36. Ancillary provision****37. Commencement****38. Short title**

We have no comments on sections 36,37 or 38.

BUSINESS

For further information, please contact:

Michael P Clancy

Director Law Reform

Law Society of Scotland

DD: 07785 578333

michaelclancy@lawscot.org.uk