

Gaelic Language (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Gaelic Language (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to establish a body having functions exercisable with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language, including the functions of preparing a national Gaelic language plan, of requiring certain public authorities to prepare and publish Gaelic language plans in connection with the exercise of their functions and to maintain and implement such plans, and of issuing guidance in relation to Gaelic education.

Bòrd na Gàidhlig

1 Constitution and functions of Bòrd na Gàidhlig

- (1) There is established a body corporate to be known as Bòrd na Gàidhlig (in this Act referred to as “the Bòrd”).
- (2) The Bòrd has the general functions of—
 - (a) promoting, and facilitating the promotion of—
 - (i) the use and understanding of the Gaelic language, and
 - (ii) Gaelic education and Gaelic culture,
 - (b) advising (either on request or when it thinks fit) the Scottish Ministers, public bodies and other persons exercising functions of a public nature on matters relating to the Gaelic language, Gaelic education and Gaelic culture,
 - (c) advising (on request) other persons on matters relating to the Gaelic language, Gaelic education and Gaelic culture,
 - (d) monitoring, and reporting to the Scottish Ministers on, the implementation of the European Charter for Regional or Minority Languages dated 5 November 1992 in relation to the Gaelic language.
- (3) The functions conferred on the Bòrd by this Act are 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 through—
 - (a) increasing the number of persons who are able to use and understand the Gaelic language,
 - (b) encouraging the use and understanding of the Gaelic language, and

- (c) facilitating access, in Scotland and elsewhere, to the Gaelic language and Gaelic culture.
- (4) The Scottish Ministers may give the Bòrd directions (of a general or specific character) and guidance as to the exercise of the Bòrd's functions.
- 5 (5) The Scottish Ministers may vary or revoke any directions or guidance given under subsection (4).
- (6) Schedule 1 makes further provision with respect to the status, constitution, proceedings, etc. of the Bòrd.

National Gaelic language plan

10 **2 National Gaelic language plan**

- (1) The Bòrd must—
 - (a) within 12 months of the commencement of this section,
 - (b) no later than 5 years after the date on which the most recent plan is published under subsection (6), and
 - 15 (c) whenever required to do so by the Scottish Ministers,
prepare and submit to the Scottish Ministers a national Gaelic language plan which must include proposals as to the exercise of its functions under this Act.
- (1A) Those proposals must include a strategy for promoting, and facilitating the promotion of—
 - 20 (a) the use and understanding of the Gaelic language, and
 - (b) Gaelic education and Gaelic culture.
- (2) In preparing the plan, the Bòrd must—
 - (za) consult the Parliament,
 - (a) publish a draft of the plan,
 - 25 (b) publicise the opportunity to make representations about the draft plan under subsection (3) within such period of not less than 3 months as the Bòrd may specify, and
 - (c) take into account any representations received by it within that period.
- (3) Any person who wishes to make representations to the Bòrd about the draft plan may do so within the period specified in pursuance of subsection (2).
- 30 (4) The Scottish Ministers must, within 6 months of receiving the plan—
 - (a) approve the plan, or
 - (b) make such comments on the plan as they think fit and require the Bòrd to prepare and submit to them, within such period as they may specify, a further plan taking account of those comments.
 - 35 (5) Where a further plan is submitted, the Scottish Ministers must, within 3 months of receiving it—
 - (a) approve the plan, or
 - (b) order the Bòrd to publish the plan in such terms as the Scottish Ministers think fit.

- (6) On the plan being approved or, as the case may be, ordered to be published by the Scottish Ministers, the Bòrd must—
- (a) publish it in such manner as it thinks fit, and
 - (b) lay a copy of it before the Parliament.

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*Gaelic language plans***3 Gaelic language plans**

- (1) The Bòrd may give a notice in writing to any relevant public authority requiring the authority to prepare a Gaelic language plan.

- (2) The notice must—

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(a) state that the authority is required to prepare a Gaelic language plan in accordance with this section and submit it to the Bòrd,

(b) specify a date (being no earlier than 6 months after the date the notice was given) by which the authority must submit the plan to the Bòrd, and

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(c) inform the authority of its rights under section 4 to request a review and to appeal to the Scottish Ministers.

- (3) In deciding whether to give a notice under subsection (1) to an authority, the Bòrd must have regard to—

(za) the most recent national Gaelic language plan published under section 2 (if any),

(a) the extent to which—

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(i) the Gaelic language is used by persons in relation to whom the functions of the authority are exercisable, and

(ii) in the Bòrd's opinion, there is potential for the authority to develop the use of the Gaelic language in connection with the exercise of those functions,

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(b) any representations made to it in relation to the use of the Gaelic language in connection with the exercise of those functions, and

(c) any guidance given by the Scottish Ministers.

- (4) A Gaelic language plan must—

(a) set out the measures to be taken by the relevant public authority in relation to the use of the Gaelic language in connection with the exercise of the authority's functions,

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(b) specify the date by which the measures are to be taken, and

(c) contain such other information as may be prescribed in regulations made under subsection (7).

- (5) A relevant public authority, in preparing a Gaelic language plan, must have regard to—

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(za) the most recent national Gaelic language plan published under section 2,

(a) the extent to which the persons in relation to whom the authority's functions are exercisable use the Gaelic language,

(aa) the potential for developing the use of the Gaelic language in connection with the exercise of those functions,

(b) any representations made to the authority in relation to the use of the Gaelic language in connection with the exercise of those functions, and

(c) any guidance given by the Scottish Ministers or the Bòrd.

(6) In preparing a Gaelic language plan, a relevant public authority must consult persons appearing to it to have an interest.

(7) The Scottish Ministers may, after consulting the Bòrd, by regulations make further provision in relation to the content of Gaelic language plans.

(8) Those regulations may make different provision for different purposes or for different types of authority.

4 Review of, and appeal against, notices

(1) Where a relevant public authority receives a notice under subsection (1) of section 3 and considers that the date specified in it by virtue of subsection (2)(b) of that section is unreasonable, it may within 28 days of receipt of the notice request the Bòrd to review the date.

(2) A request under subsection (1) must set out the authority's reasons for its view.

(3) The Bòrd must within 28 days of receipt of the request review the date and—

(a) confirm the date, or

(b) substitute a later date (in which case that date is deemed to be the date specified in the notice by virtue of section 3(2)(b)).

(4) In intimating to the authority its decision under subsection (3) the Bòrd must, if the decision is to confirm the date, set out its reasons for the decision.

(5) If the authority is aggrieved by the Bòrd's decision under subsection (3), it may, within 28 days of receiving intimation of the decision, appeal to the Scottish Ministers.

(5A) The Scottish Ministers must determine an appeal under subsection (5) no later than 2 months after the date on which the appeal was made.

(6) If the Scottish Ministers uphold an appeal under subsection (5) they must specify another date by which the authority must submit a Gaelic language plan to the Bòrd.

(7) Where a relevant public authority receives a notice under subsection (1) of section 3 it may, within 28 days of such receipt, appeal to the Scottish Ministers against the notice on the grounds that, having regard to the matters specified in subsection (3)(za) to (c) of that section, the Bòrd's decision to give the notice to the authority was unreasonable.

(7A) The Scottish Ministers must determine an appeal under subsection (7) no later than 6 months after the date on which the appeal was made.

(8) If the Scottish Ministers uphold an appeal under subsection (7)—

(a) the notice ceases to have effect, and

(b) the Bòrd may not give a further notice under section 3(1) to the authority until the expiry of the period of 2 years beginning with the date on which the notice to which the appeal relates was given.

5 Approval of plans

(1) Where a Gaelic language plan is submitted to the Bòrd by a relevant public authority pursuant to a notice under section 3(1) or under subsection (2)(b) of this section, the Bòrd must—

- (a) approve the plan, or
- (b) propose modifications to it.

(1A) In considering the plan for the purposes of subsection (1), the Bòrd must have regard to—

- (a) the matters referred to in section 3(5)(za) to (b), and
- (b) any guidance given by the Scottish Ministers.

(2) If the Bòrd proposes modifications, the authority must—

(a) within one month of the date on which the proposed modifications are intimated to the authority, notify the Bòrd that it does not agree with all or any of the modifications, giving reasons for that disagreement, or

(b) by a date specified by the Bòrd, amend the plan to take account of the modifications and resubmit the plan to the Bòrd.

(3) The date referred to in subsection (2)(b) must be no less than 3 months and no more than 6 months after the date on which the proposed modifications are intimated to the authority.

(3A) Where notification is given under paragraph (a) of subsection (2), the Bòrd, having considered the reasons referred to in that paragraph, must—

- (a) approve the plan as originally submitted to the Bòrd,
- (b) approve the plan subject to such modifications (including all or any of those proposed under subsection (1)(b)) as the Bòrd and the authority may agree, or
- (c) if, on the expiry of the period of 2 months beginning with the date on which the authority gave notice to the Bòrd under subsection (2)(a), the Bòrd has not approved the plan under paragraph (a) or (b), refer the matter to the Scottish Ministers.

(4) On a reference to them under subsection (3A)(c), the Scottish Ministers after complying with subsection (5), must—

- (a) approve the plan as originally submitted to the Bòrd, or
- (b) approve the plan subject to such modifications (including all or any of those proposed under subsection (1)(b)) as they think fit.

(5) Before approving a plan under subsection (4), the Scottish Ministers—

(za) must have regard to the matters mentioned in section 3(5)(za) to (aa),

(a) must give the Bòrd and the authority an opportunity to make representations about the plan, and

(b) may consult any other person whom they think fit,

and must take account of any representations made by the Bòrd or the authority and any views expressed by a person consulted under paragraph (b).

(5A) Approval of a plan under subsection (4) must be given no later than 6 months after the date on which the matter was referred to the Scottish Ministers under subsection (3A)(c).

(6) On the plan being approved by the Bòrd or the Scottish Ministers, the authority must—

- (a) publish it in such manner as it thinks fit (having regard to any guidance given by the Bòrd), and
- (b) implement the measures in accordance with the plan.

6 Monitoring of implementation

(1) This section applies where—

- (a) a relevant public authority's Gaelic language plan has been approved by the Bòrd or the Scottish Ministers under section 5, and
- (b) at least 12 months have elapsed since the date of approval.

(2) The Bòrd may require the authority to submit to it, by a date no earlier than 3 months after the date of the requirement, a report on the extent to which the authority has implemented the measures set out in the plan.

(3) The Bòrd may not make a second or subsequent requirement under subsection (2) within 12 months of the date of the previous requirement.

(4) Where the Bòrd considers that a relevant public authority is failing to implement adequately measures in its Gaelic language plan, it may submit to the Scottish Ministers a report setting out its reasons for that conclusion.

(5) On receipt of the report, the Scottish Ministers may take either or both of the following steps—

- (a) they may lay a copy of the report before the Scottish Parliament,
- (b) they may direct the authority in question to implement any or all of the measures in its Gaelic language plan by the date specified in the direction.

(6) Before giving a direction under subsection (5)(b), the Scottish Ministers must—

- (a) consult the authority about the terms of the proposed direction, and
- (b) take account of any representations made by the authority.

7 Review of plans

(1) This section applies where a Gaelic language plan has been approved by the Bòrd or the Scottish Ministers under section 5 (including that section as applied by subsection (3) of this section).

(2) Where this section applies, the relevant public authority which prepared the plan must, no later than 5 years after the date of approval of the plan—

- (a) review the plan,
- (b) make such amendments (if any) to the plan as the authority considers necessary or expedient, and
- (c) submit it to the Bòrd.

(3) Sections 3(4) to (6) and 5 apply in relation to the review and amendment of a plan under subsection (2) of this section as they apply in relation to the preparation of a plan pursuant to a notice under section 3(1).

(4) A relevant public authority may, without undertaking a review, at any time amend a Gaelic language plan published under section 5(6) (for example, by correcting an error or by updating factual information which has changed) in a way that does not alter the plan substantially.

8 Guidance, assistance, etc. by the Bòrd

(1) The Bòrd must, from time to time when it thinks fit, prepare and submit to the Scottish Ministers guidance for relevant public authorities in relation to the operation of sections 3 to 7.

(2) In preparing the guidance, the Bòrd must—

(a) publish a draft of the guidance,

(b) publicise the opportunity to make representations about the draft guidance under subsection (3) within such period of not less than 3 months as the Bòrd may specify, and

(c) take into account any representations received by it within that period.

(3) Any person who wishes to make representations to the Bòrd about the draft guidance may do so within the period specified in pursuance of subsection (2).

(4) The Scottish Ministers must—

(a) approve the guidance with or without modifications, or

(b) reject the guidance and, where they do so, may require the Bòrd to prepare and submit to them, within such period as they may specify, revised guidance.

(5) Where revised guidance is submitted, the Scottish Ministers must—

(a) approve the guidance, or

(b) order the Bòrd to publish it in such terms as the Scottish Ministers think fit.

(6) On such guidance being approved or, as the case may be, ordered to be published by the Scottish Ministers, the Bòrd must publish it in such manner as it thinks fit.

(6A) The Bòrd may vary or revoke guidance published under subsection (6), and subsections (2) to (6) apply to a variation.

(6B) Before revoking guidance published under subsection (6), the Bòrd must obtain the consent of the Scottish Ministers.

(7) The Bòrd must, on the request of a relevant public authority, provide the authority free of charge with advice and assistance in relation to the application of this Act to the authority.

(8) In preparing guidance under subsection (1) and giving advice and assistance under subsection (7), the Bòrd must seek to give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the Gaelic and English languages should be accorded equal respect.

*Gaelic education***9 Guidance on Gaelic education**

(1) The Bòrd may prepare and submit to the Scottish Ministers guidance in relation to the provision of Gaelic education and the development of such provision.

5 (2) Subsections (2) to (6B) of section 8 apply to guidance under subsection (1) as they apply to guidance under subsection (1) of that section.

(5) After subsection (4) of section 5 (education authority's annual statement of improvement objectives) of the Standards in Scotland's Schools etc. Act 2000 (asp 6), insert—

10 “(4A) In complying with subsection (2)(c) above, an education authority shall have regard to—

(a) any Gaelic language plan published by the authority under section 5(6) of the Gaelic Language (Scotland) Act 2005 (asp 00), and

15 (b) any guidance published by Bòrd na Gàidhlig under section 9 of that Act.”.

*General***10 Interpretation**

(1) In this Act—

20 “Gaelic culture” includes the traditions, ideas, customs, heritage and identity of those who speak or understand the Gaelic language,

“Gaelic education” means education—

(a) in the use and understanding of,

(b) about, or

(c) by means of,

25 the Gaelic language,

“the Gaelic language” means the Gaelic language as used in Scotland.

(2) References in this Act to a relevant public authority are to—

(a) a Scottish public authority,

30 (b) so far as not falling within paragraph (a), a cross-border public authority (but only in relation to functions exercisable in or as regards Scotland which do not relate to reserved matters), and

(c) the Scottish Parliamentary Corporate Body.

(2A) For the purposes of this Act, the Food Standards Agency is to be regarded as a cross-border public authority.

35 (3) For the purposes of this Act, the functions of a relevant public authority include—

(a) functions relating to its internal processes, and

(b) the provision by the authority of any services to the public.

11 Regulations and orders

- (1) Regulations and orders under this Act are to be made by statutory instrument.
- (2) An instrument containing regulations under section 3(7) or an order under paragraph 2(2) of schedule 1 is subject to annulment in pursuance of a resolution of the Scottish Parliament.

5

12 Consequential amendments

Schedule 2 (consequential amendments) has effect.

13 Short title and commencement

- (1) This Act may be cited as the Gaelic Language (Scotland) Act 2005.
- (2) This Act (except section 11 and this section) comes into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include such transitional, transitory or saving provision in connection with the coming into force of the provisions brought into force as the Scottish Ministers think fit.

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SCHEDULE 1
(introduced by section 1(6))

BÒRD NA GÀIDHLIG

Status

- 5 1 The Bòrd—
- (a) is not to be regarded as the servant or agent of the Crown,
 - (b) does not enjoy any status, immunity or privilege of the Crown,
- and the Bòrd’s property is not to be regarded as property of, or held on behalf of, the Crown.

10 *Membership*

- 2 (1) The Bòrd is to consist of—
- (a) no fewer than 5, nor more than 11, ordinary members, and
 - (b) a person whose function is to chair the Bòrd, (in this schedule referred to as the “Cathraiche”) who is to be an ex officio member,
- 15 appointed by the Scottish Ministers.
- (2) The Scottish Ministers may by order amend sub-paragraph (1)(a) by substituting for the minimum or maximum number of ordinary members for the time being specified there such other number as they think fit.
- (3) The members and the Cathraiche are to be appointed for such period as the Scottish
- 20 Ministers think fit.
- (4) Where the office of Cathraiche is vacant, the ordinary members must elect from amongst themselves a person to chair the Bòrd until an appointment is made under sub-paragraph (1)(b).
- (5) Each member—
- 25 (a) may, by written notice to the Scottish Ministers, resign as a member,
- (b) in other respects, holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
- (6) The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- 30 (a) the member’s estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or
- (b) the member—
- (i) is incapacitated as a result of physical or mental illness,
 - (ii) has been absent from meetings of the Bòrd for a period longer than 3 consecutive months without the permission of the Bòrd, or
 - (iii) is otherwise unfit or unable to discharge the member’s functions as a member.
- 35

- 3 A person may not be appointed to or continue as a member of the Bòrd if that person is or (as the case may be) becomes—
- (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament, or
 - 5 (c) a member of the European Parliament.

Remuneration and allowances

- 4 The Bòrd must pay the Cathraiche and the ordinary members such remuneration and allowances as the Scottish Ministers may determine.

Ceannard and other staff

- 10 5 (1) The Bòrd must, with the approval of the Scottish Ministers, appoint a person to the post of chief executive (“Ceannard”) on such terms and conditions as it may with the approval of the Scottish Ministers determine.
- (2) The Bòrd may appoint on such terms and conditions as it may with the approval of the Scottish Ministers determine such other employees as it considers appropriate.
- 15 (3) The Bòrd must, as regards such of its employees as it may with the approval of the Scottish Ministers determine, make such arrangements as it considers appropriate for providing, to or in respect of those employees, pensions, allowances or gratuities.
- (4) Such arrangements—
- 20 (a) may include the establishment and administration, by the Bòrd or otherwise, of one or more pension schemes, and
 - (b) must, in any case, be approved by the Scottish Ministers.
- (5) The reference in sub-paragraph (3) to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.

25 *Committees*

- 6 (1) The Bòrd may establish committees for or in connection with such of its functions as it may determine.
- (2) The Bòrd may appoint persons who are not members of the Bòrd to be members of a committee.
- 30 (3) A person appointed under sub-paragraph (2) is not entitled to vote at meetings of the committee.

Proceedings and meetings

- 7 (1) The Bòrd may determine its own procedure and that of its committees, including a quorum for meetings.
- 35 (2) The validity of any proceedings of the Bòrd and of any committee established by it is not affected by any vacancy among its members or the members of the committee or by any defect in the appointment of any member of the Bòrd.

- (3) Members of the Scottish Executive, junior Scottish Ministers and persons authorised by the Scottish Ministers may attend and take part in meetings of the Bòrd and any committee established by it, but are not entitled to vote at such meetings.

Accounts and annual report

- 5 8 The Bòrd must—
- (a) prepare for each financial year, in accordance with directions given by the Scottish Ministers, an account of the Bòrd’s expenditure and receipts, and
- (b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.
- 10 9 As soon as practicable after the end of each financial year, the Bòrd must prepare a report on the exercise of its functions during that year and must—
- (a) publish the report and send a copy to the Scottish Ministers, and
- (b) lay the report before the Parliament.

Delegation of functions by the Scottish Ministers

- 15 10 (1) The Scottish Ministers may make arrangements for any of their functions which relate to the subject matter of this Act to be exercised on their behalf, subject to such conditions as they may impose, by the Bòrd; and the Bòrd may exercise those functions accordingly.
- (2) An arrangement under sub-paragraph (1) does not affect the responsibility of the Scottish Ministers for the exercise of their functions.
- 20 20 (3) In sub-paragraph (1), “functions” does not include the function of making, confirming or approving subordinate legislation.

General powers

- 25 11 (1) The Bòrd may do anything (whether in Scotland or elsewhere) which is conducive or incidental to the exercise of its functions, and may in particular—
- (a) engage in any business or undertaking,
- (b) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 1985 (c.6)),
- (c) form partnerships with others,
- 30 30 (d) with the consent of the Scottish Ministers, establish or take part in the setting up of organisations having functions similar to the functions of the Bòrd,
- (e) enter into contracts,
- (f) make grants and loans,
- 35 35 (g) make charges for the provision of advice or other services in such circumstances and of such amounts as the Bòrd may, with the consent of the Scottish Ministers, determine,
- (h) accept gifts of money or other property,
- (i) invest sums not immediately required in relation to the exercise of its functions,

(j) commission research.

- (2) Sub-paragraph (1)(g) does not entitle the Bòrd to make charges for the provision of advice and assistance to relevant public authorities under section 8(7).

Grants

- 5 12 (1) The Scottish Ministers may make grants to the Bòrd for such purposes and of such amounts as they think fit.
- (2) Any grant made under sub-paragraph (1) may be made subject to such conditions as the Scottish Ministers think fit.
- (3) The Bòrd does not have power to borrow money or to give guarantees.

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SCHEDULE 2
(introduced by section 12)

CONSEQUENTIAL AMENDMENTS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 15 1 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies) insert at the appropriate place “Bòrd na Gàidhlig”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 2 In Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities amendable by Order in Council) insert at the appropriate place “Bòrd na Gàidhlig”.

20 *Freedom of Information (Scotland) Act 2002 (asp 13)*

- 3 In Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities subject to the duty to provide certain information) insert at the appropriate place “Bòrd na Gàidhlig”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 25 4 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (authorities appointments to which are governed by a code of practice) under the heading “Executive bodies” insert at the appropriate place “Bòrd na Gàidhlig”.

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