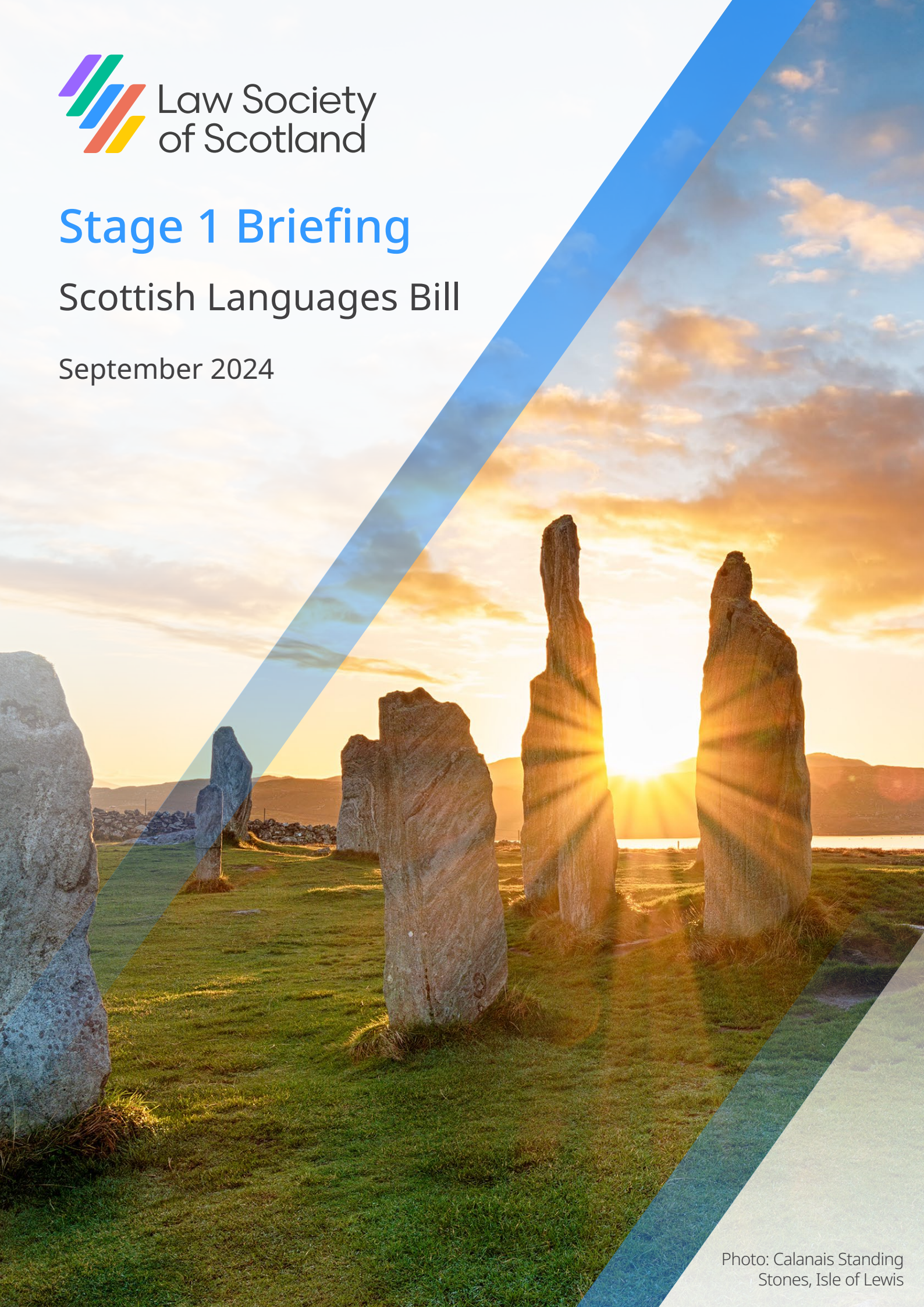


Stage 1 Briefing

Scottish Languages Bill

September 2024





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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Scottish Languages Bill¹ (“the Bill”) was introduced by the Cabinet Secretary for Education and Skills, Jenny Gilruth MSP, on 29 November 2023. We submitted written evidence to the Education, Children and Young People Committee of the Scottish Parliament (“the lead Committee”) in February 2024.² The lead Committee’s Stage 1 Report on the Scottish Languages Bill (“the Stage 1 Report”)³ was published on 24 July 2024.

Our Constitutional Law and Human Rights sub-committee welcomes the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 17 September 2024.

General Comments

We note 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 2020⁴ 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:

¹ [Scottish Languages Bill \(parliament.scot\)](https://www.parliament.scot/Bills/Scottish-Languages-Bill)

² [29022024-iss-constitutional-law-and-human-rights-subcommittee-response-to-the-scottish-languages-bill-002.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/29022024-iss-constitutional-law-and-human-rights-subcommittee-response-to-the-scottish-languages-bill-002.pdf)

³ [Scottish Languages Bill - Stage 1 Report | Scottish Parliament](https://www.parliament.scot/Bills/Scottish-Languages-Bill-Stage-1-Report)

⁴ [A consultation on the future of the Land Court and the Lands Tribunal - Scottish Government consultations - Citizen Space](https://www.scotland.gov.uk/consultations/citizen-space)

“...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 Rules of the Scottish Land Court Order 2014⁵ 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.”*

In our written evidence to the lead committee, we identified a number of sections within the Bill as introduced creating consultation requirements, and noted that there was no requirement for Scottish Ministers to publish the results of these consultations. We suggested that Scottish Ministers should be required to publish the results of these consultations.⁶ These concerns have been noted by the lead Committee in the Stage 1 Report.⁷ We note that Scottish Government’s view that the wording in the Bill is already sufficient to provide for full public consultation and welcome the commitment to considering how this can be made clearer on the face of the Bill.⁸

We also note the lead committee’s request for assurances from the Scottish Government that “it will consolidate consultations as much as possible, to take into account the impact on resources of multiple consultation on public bodies and interested parties and when it proposes to undertake these consultations”.⁹ We note that the Scottish Government has provided reassurance that “where possible

⁵ [The Rules of the Scottish Land Court Order 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁶ See for example our comments on sections 5, 6, 7, 12, 27, 30, 32 and 33.

⁷ Stage 1 Report, at para 162

⁸ Scottish Government response to the Stage 1 Report <https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/scottish-languages-bill-response-to-stage-1-report-from-scottish-government-10-september-2024.pdf> at page 6

⁹ Stage 1 Report, para 390



consultations will be consolidated and the impact on bodies and authorities will be considered.”¹⁰ We would endorse the need for consultation to be carried out in line with established principles of good consultation.¹¹

In our written evidence we also identified a number of sections within the Bill which would create a duty to comply with a direction, but which do not provide for sanction in the event of non-compliance.¹² We highlighted the absence of provision for an appeal in connection with such directions. These comments have been noted by the lead Committee. The lead Committee has asked the Scottish Government “to set out its rationale for this approach and make clear whether, on reflection, there should be provision for an appeal and, if so, what that appeal process might look like.”¹³ We also note that the lead committee has asked the Scottish Government “to set out whether it intends to streamline the range of direction-making powers in the Bill and, if so, to set out details of how this will be done.”¹⁴ Whilst we note the Scottish Government’s response on these points¹⁵ we consider that these aspects of the Bill which requires further consideration.

We also note the Delegated Powers and Law Reform Committee’s specific concerns regarding the guidance-making provisions in the Bill, whether these are legislative or administrative, and if they are intended to assist rather than direct whether the duty to have regard is appropriate.¹⁶ Clarity on these matters would avoid any confusion as to the effect of these provisions.

Comments on sections of the Bill

PART 1 - GAELIC

CHAPTER 1- SUPPORT FOR THE GAELIC LANGUAGE

Section 1- Status of the Gaelic language

The Gaelic Language Act 2005 Section 1(3) contained provisions conferred on the Bòrd na Gàidhlig “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) conferring on Bord na Gàidhlig an obligation to ensure “that the Gaelic language is treated with equal respect to the English language.”

¹⁰ Scottish Government response to the Stage 1 Report, at page 22

¹¹ See the UK Government’s Consultation Principles 2018 ([Consultation principles: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/consultation-principles-guidance)), as referred to in the Scottish Government’s public guidance for consultations ([Consultations in the Scottish Government: guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations-in-the-scottish-government-guidance/gov.scot))

¹² See for example our comments on sections 7, 9, 12, 14 and 17.

¹³ Stage 1 Report, para 217

¹⁴ Stage 1 Report, at para 451

¹⁵ Scottish Government response to the Stage 1 Report, at page 11 and page 25

¹⁶ Stage 1 Report, at paras 441-444



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) 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 2011¹⁷ 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.

[Section 2- Functions of Bòrd na Gàidhlig](#)

See our comments on section 1 above.

[Section 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.

[Section 4- Areas of linguistic significance](#)

We have no comment to make.

[Section 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.

¹⁷ [Welsh Language \(Wales\) Measure 2011 \(legislation.gov.uk\)](#)



Section 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.

Section 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, although judicial review may be available.

Section 8- Reporting on Gaelic language strategy, standards and duties

We have no comment to make.

Section 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.

We note that the Scottish Government has indicated that it intends to remove the direction making power provided for at section 9(6), having “confirmed that their use may be quite remote and limited and could be covered by clear standards or guidance.”¹⁸ We would welcome further clarity on how this will operate in practice.

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

We have no comment to make.

¹⁸ Scottish Government response to the Stage 1 Report, at page 25



CHAPTER 2 - EDUCATION

Functions of Scottish Ministers

Section 11- Duty of Scottish Ministers to promote Gaelic education

We have no comment to make.

Section 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.

We note the lead committee’s comments in respect of the potential impact of measures that could be brought under regulations issued in terms of this section, and the lead committee’s recommendation that regulations containing Gaelic education standards are also subject to the affirmative procedure.¹⁹ Whilst we note the Scottish Government’s response to this recommendation²⁰ we do consider that the reasoning for difference procedures being applied is not clear.

Section 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

¹⁹ Stage 1 Report, at paras 281-283

²⁰ Scottish Government response to the Stage 1 Report, at page 16



include consultation with “groups which appear to the Scottish Ministers to represent the interests of parents of children in Gaelic-medium education.”.

Section 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.

We note that the Scottish Government has indicated that it intends to remove the direction making power provided for at section 14(2), having “confirmed that their use may be quite remote and limited and could be covered by clear standards or guidance.”²¹ We would welcome further clarity on how this will operate in practice.

Section 15- General duty to provide education includes Gaelic education

We have no comment to make.

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

We have no comment to make.

Section 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.

Section 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.

Section 19- Duty to support access to Gaelic medium education

We have no comment to make.

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

We have no comment to make.

²¹ Scottish Government response to the Stage 1 Report, at page 25



Section 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.

Section 22- Assessments: power to make different provision for different areas

We have no comment to make.

Section 23- Extension of assessments to early learning and childcare

We have no comment to make.

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

We have no comment to make.

Section 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

Section 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. We would query whether that definition is clear enough to take account of regional variations within Scotland.

We note that the comments of the lead Committee in the Stage 1 Report that "if the purpose of official status is to give recognition to Scots in all its forms, there must be more explicit reference to those forms" and the lead Committee's recommendation that the Bill sets this out more clearly.²² We also note the lead committee's request for the Scottish Government "to consider whether the Bill, as currently drafted, adequately encompasses the range of languages and dialects which it considers constitute the umbrella term 'Scots', in order to provide a meaningful definition and sufficient clarity for the targeting of the 'support' the Bill envisages."²³ We welcome these recommendations.

²² Stage 1 Report, at para 71

²³ Stage 1 Report, at para 376



Section 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.

Section 28- Reporting on Scots language strategy

We have no comment to make.

Section 29- Effect of Scots language strategy

We have no comment to make.

Section 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

Section 31- Scots language education in schools

We have no comment to make.

Section 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.

Section 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.

Section 34- Reporting on Scots language education

We have no comment to make.

Section 35- Interpretation of Chapter 2

We have no comment to make.

PART 3 - FINAL PROVISIONS

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



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