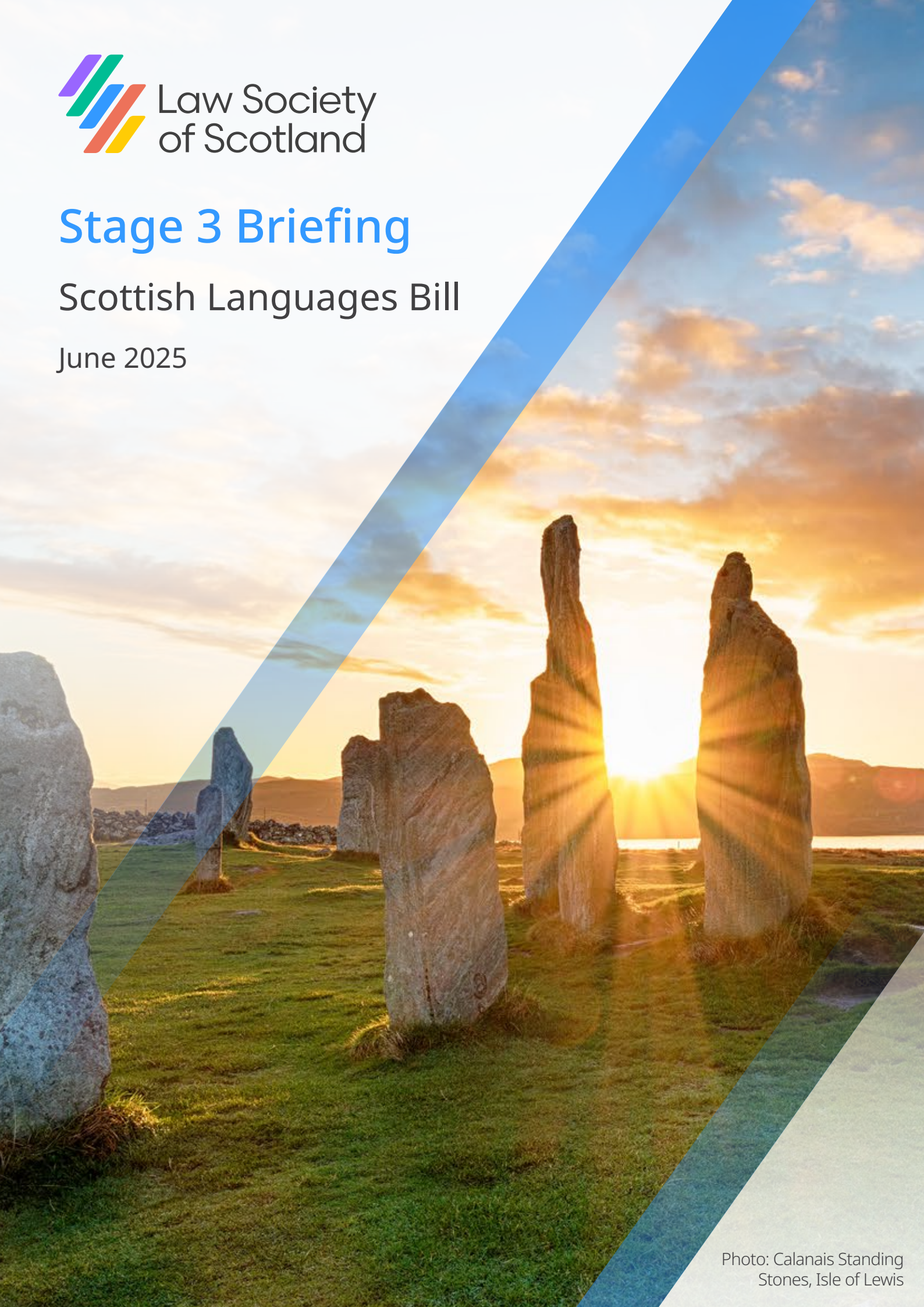


Stage 3 Briefing

Scottish Languages Bill

June 2025





The Scottish Languages Bill

Stage 3 Briefing

June 2025

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 Bill (“the Bill”) was introduced on 29 November 2023. We submitted written evidence to the Education, Children and Young People Committee of the Scottish Parliament in February 2024. The lead Committee’s Stage 1 Report on the Scottish Languages Bill 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 3 debate scheduled for 17 June 2025.

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: “...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. These concerns were noted by the lead Committee in the Stage 1 Report and section 5, 6, 7, 12 and 27 of the bill were duly amended at Stage 2.

We noted 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”. We note that the Scottish Government has provided reassurance that “where possible consultations will be consolidated and the impact on bodies and authorities will be considered.” We endorse the need for consultation to be carried out in line with established principles of good consultation.

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.

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.”

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.”

Whilst we noted the Scottish Government’s response on these points we consider that these aspects of the Bill require further consideration.

We also noted 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. Clarity on these matters would avoid any confusion as to the effect of these provisions.

Comments on sections of the Bill

Section 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) conferring on Bord na Gaidhlig an obligation to ensure “that the Gaelic language is treated with equal respect to the English language.”. Scottish Government response to the Stage 1 Report, at page 11 and page 25 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 continue to 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 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 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 noted 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.

We also noted 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.” We welcomed these recommendations.



For further information, please contact:

Michael P Clancy, OBE,WS,FRSE
Director of Law Reform
Law Society of Scotland
michaelclancy@lawscot.org.uk