

Scottish Languages Bill

Business and Regulatory Impact Assessment

February 2024

Title of Proposal

Scottish Languages Bill

Purpose and Intended Effect

Background

The Scottish Government made a number of manifesto commitments related to the Gaelic and Scots languages. These were gathered under four headings which were considered to be the key commitments:

- Establishing a new strategic approach to Gaelic medium education (GME)
- Exploring the creation of official Gàidhealtachd areas
- Reviewing the structures and functions of Bòrd na Gàidhlig (BnG)
- Taking action on the Scots language

The proposed legislative vehicle for these commitments is a Scottish Languages Bill. In addition to making provision for these commitments the Bill would also further enshrine the principle that Scotland is a multilingual country.

A public consultation was held on these commitments between August and December 2022. The consultation responses and analysis were published in June 2023.

The most recent Programme for Government 2023/24 includes the commitment to:

“introduce the Scottish Languages Bill to Parliament providing legal recognition for Gaelic and Scots, strengthening requirements for provision of Gaelic Medium Education, introducing measures to provide further protection for Gaelic within communities and introducing provisions to strengthen support for Scots”.

The provisions within the draft Scottish Languages Bill ensure that there is a structure in place across the Scottish Government and wider public sector to meet the needs of Gaelic and Scots communities and ensure the future of the languages in a modern, growing and diverse Scotland.

For Gaelic, the Scottish Languages Bill deals with three distinct areas of the language’s development: Gaelic in education; Gaelic’s development on the community level; Gaelic development within Scottish public authorities and the roles of Bòrd na Gàidhlig and Scottish Ministers in overseeing this. For Scots, the Bill proposes legislative measures on behalf of the language for the first time, and these relate to its role within education and support by public authorities.

Objective and Rationale

Gaelic medium education (GME) was first established in 1985 within a legislative framework derived from the Education (Scotland) Act 1980. This has since been augmented by other Acts – most notably the Schools (Consultation) (Scotland) Act 2010 and the Education (Scotland) Act 2016. In this time GME has grown to become a successful minority sector within the wider Scottish state school system. The most recent figures for 2022/23 shows that 5,533 pupils attend GME between primary and secondary across 16 local authorities. That figure is complemented by the 6,490 pupils who receive Gaelic learner education (GLE) at both levels across nine local authorities.¹ However, the maintenance and future growth of both GME and GLE face challenges ranging from insufficient early learning and childcare provision to teacher shortages and a lack of extracurricular opportunities for language use. The commitment to establish a new strategic approach was made in response to these issues and the public debate surrounding them. The provisions relating to Gaelic education within the Bill have been informed by the public response to this commitment through the consultation as well as discussions with colleagues within the Scottish Government and public bodies involved in education.

Since the passing of the Gaelic Language (Scotland) Act 2005 (“the 2005 Act”) it has been a key aspect of Gaelic policy that it is a national language for all of Scotland. However, in the generation since the 2005 Act, there has been an increasing recognition of the need for policies catered to the individual communities and networks which speak the language. There is also a desire for local organisations to have a greater involvement in the development and implementation of language policy. The commitment to explore the creation of official Gàidhealtachd areas was made in response to that. The term Gàidhealtachd – unlike the Irish equivalent Gaeltacht – has a precise territorial meaning in Scottish Gaelic, equivalent to “the Highlands” in English. Therefore in taking this commitment forward in the Bill the term has been replaced with the phrase “areas of linguistic significance”, in response to consultation feedback. The Bill makes it possible for local authorities to designate areas of linguistic significance within their local authority areas where Gaelic has particular strength. This will enable more proportionate delivery on behalf of the language within particular communities.

Bòrd na Gàidhlig was created through the 2005 Act. Its remit has been to serve as the national body for the promotion of Gaelic, to develop and implement the National Gaelic Language Plan, and to monitor and enforce the implementation of the individual public body plans that are produced within the National Plan. It also produces statutory guidance for both Gaelic Language Plans and Gaelic Education. The Bill introduces provisions which transfer some aspects of Bòrd na Gàidhlig’s current role to Scottish Ministers. Among these will be placing a duty on Scottish Ministers to produce a Gaelic Language Strategy in place of the current National Gaelic Language Plan. Scottish Ministers will also produce statutory guidance on Gaelic Language Plans and standards and regulations which determine the level of provision public bodies must make for the language.

The measures relating to Scots are the newest policy measures introduced by the Bill. The Scottish Government has had a Scots policy since 2015. However, until now, the language has not received legislative support or recognition. The Bill seeks to improve the support for Scots across Scotland’s public sector and within its school curriculum. This is in response to an

¹ Bòrd na Gàidhlig, [‘Dàta Foghlaim Gàidhlig/Gaelic Education Data 2021/22’](#), p.6

increasing demand among Scots language activists and speakers for it to have greater standing in public life. Scottish Ministers will have a duty to prepare a Scots Language Strategy as well as secondary legislation for the language.

The Scottish Languages Bill delivers on ministerial commitments. It also has the potential to make a significant contribution to the National Performance Framework Purpose and the following National Outcomes.²

- **Communities:** We live in communities that are inclusive, empowered, resilient and safe.
- **Human Rights:** We respect, protect and fulfil human rights and live free from discrimination.
- **Culture:** We are creative and our vibrant and diverse cultures are expressed and enjoyed widely.
- **Economy:** We have a globally competitive, entrepreneurial, inclusive and sustainable economy

Gaelic and Scots operate in a wide range of sectors including education, the arts, media and more – contributing to success in the country, providing opportunities, increasing the wellbeing of people living in Scotland, reducing inequalities and creating sustainable and inclusive growth. Supporting Gaelic and Scots through the Bill has the potential to have this impact in areas of low population. There is also an increasing recognition of the economic contribution of Gaelic. This is seen in the impact studies commissioned by various Gaelic initiatives such as the Royal National Mòd³, bodies like MG Alba⁴ and the research into Gaelic economies produced by organisations such as Highlands and Islands Enterprise⁵ and Glasgow City Council⁶.

In this regard, an important document in the formulation of the Scottish Languages Bill is the Report of the Short Life Working Group on Economic and Social Opportunities for Gaelic.⁷ This Short Life Working Group was formed by the then Finance Secretary Kate Forbes in March 2022 as part of the National Strategy for Economic Transformation (NSET). Its remit was to consider the ways in which the wider economy could benefit Gaelic and the ways in which Gaelic was an asset to the wider economy. The report was published in June 2023 and its ideas have shaped aspects of the Bill, especially the measures relating to areas of linguistic significance.

Consultation

Within Government

As part of the development of the Bill provisions, engagement has taken place with the following policy areas across the Scottish Government and other administrations:

² [National Performance Framework | National Performance Framework](#)

³ An Comunn Gàidhealach, [‘The Royal National Mòd brought £1.2m to Inverness and the Highlands’](#)

⁴ [Economic and Social Value of MG Alba](#)

⁵ [AR STÒRAS GÀIDHLIG The economic and social value of Gaelic as an asset – Full Report](#)

⁶ [Gaelic Economy in Glasgow](#)

⁷ [Short Life Working Group on Economic and Social Opportunities for Gaelic - Report to the Cabinet Secretary for Finance and the Economy \(www.gov.scot\)](#)

Scottish Government:

- More Homes Division
- Police Division
- Legal Directorate
- School Funding, Infrastructure and Digital Division
- Education Analytical Services
- Land Reform, Rural and Islands Policy
- Early Learning and Childcare
- Local Government Policy and Relationships
- Europe Division

UK:

- The Welsh Government
- Northern Ireland Executive

International governments and bodies:

- Government of Ireland
- British-Irish Council

Policy efforts on behalf of the United Kingdom's individual minority languages have always learnt from one another. This extends to minority languages spoken abroad – whether in Ireland, continental Europe or examples such as French in Canada, Hawaiian or the Maori language. The engagement outlined above was an opportunity to consider the latest thinking in neighbouring minority language communities and the successes or drawbacks of the policy measures taken on their behalf. It provided an opportunity to reflect on the progress achieved so far for Gaelic and Scots and which new approaches it would be beneficial to take within the Bill.

Public Consultation

A public consultation⁸ took place between August and December 2022. Engagement events with stakeholders were held online and in person in a range of rural and urban locations. The consultation process provided an opportunity for civic engagement and participation with the policy areas to be covered by primary legislation and helped gather further evidence to support policy development prior to the introduction of the Bill. The Scottish Government received over 750 responses and published the Analysis of Consultation Responses for the Gaelic and Scots Commitments relative to the Scottish Languages Bill⁹ along with the underlying responses to the consultation on 7 June 2023.

⁸ [Scottish Government Commitments to Gaelic and Scots and a Scottish Languages Bill: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-government-commitments-to-gaelic-and-scots-and-a-scottish-languages-bill-consultation/pages/10/)

⁹ [Scottish Languages Bill - Gaelic and Scots commitments: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-languages-bill-gaelic-and-scots-commitments-consultation-analysis/pages/10/)

Business

The public consultation was available and accessible to all parties including public bodies and third sector organisations. As the consultation was related to minority language support across the public sector businesses were not explicitly engaged. However, contributions were received from public bodies which represent regional business interests – for example, Highlands and Islands Enterprise. There were also submissions from a private publisher and a community interest company active on behalf of Gaelic.

Options

When developing the provisions within the Scottish Languages Bill, the Scottish Government gave consideration to the following options:

Option 1 – Do nothing

Under this option existing legislation would remain in place and primary legislation would not be brought. No changes would be made to current processes and policies if this position was adopted. If this approach were the preferred option, the Scottish Government would fail to live up to its manifesto commitments which recognised the need to take further action on behalf of Gaelic and Scots.

Option 2 – Non-regulatory changes

Under option 2 the Scottish Government would seek to implement changes to operational processes and guidance without introducing legislation. If this were to be the preferred option the improvements and changes that could be made would be limited and constrained. There is a need for pace and action to be taken in relation to the protection of Gaelic and Scots. Therefore a non-regulatory approach was not considered sufficient to ensure the progress that is required.

The majority of the proposals included in the Bill could only be enacted through primary legislation and giving secondary legislation making powers to ensure that appropriate frameworks are in place for the coming years. The structures put in place in the 2005 Act improved the circumstances of Gaelic. However merely refreshing these documents was not considered sufficient to bring about the level of change required for Gaelic and Scots.

For the proposal Scottish Government officials considered relevant literature and compared international practice in this area. The public consultation also brought forth the views of professionals active within the Gaelic sphere developed by previous legislation. Their views, and the extensive public debate they echoed, made clear the need for legislative change.

For the Scots language commitments, the absence of existing legislative support for the language meant that non-regulatory changes were not a possible route to achieving the desired goals.

Option 3 – Legislative change

This option would take the primary legislation forward as planned to amend, and repeal sections of the Gaelic Language (Scotland) Act 2005 and the Education (Scotland) Act 2016 Act as well as seeking to create new provisions in those Acts.

Option 3 is the Scottish Government's preferred approach. It will have the greatest policy impact. Primary legislation will enable the Scottish Government to fulfil its obligations to Gaelic and Scots. It will also ensure that the system is efficient and delivering value for money.

Sectors and Groups Affected

The proposed measures will affect the following sectors and bodies:

- Bòrd na Gàidhlig;
- Local Authorities;
- Other public bodies which have Gaelic language plans or otherwise make provision for Gaelic or Scots;
- Private and community organisations and initiatives on behalf of Gaelic in receipt of funding from the Scottish Government or Bòrd na Gàidhlig

The Bill modifies the role of Bòrd na Gàidhlig. The Bòrd currently develops the National Gaelic Language Plan as well as statutory guidance for both individual public body Gaelic Language Plans and Gaelic education. It is charged with monitoring and enforcing the implementation of individual Gaelic Language Plans. Through the Bill the duty to produce a National Gaelic Language Plan will be replaced by the duty upon Scottish Ministers to produce a Gaelic Language Strategy as well as standards and regulations. It will also fall upon Scottish Ministers to produce statutory guidance for Gaelic Language Plans and Gaelic education. Bòrd na Gàidhlig's role will become that of a monitoring body.

To address gaps in the provision of Gaelic education, local authorities will have to develop delivery plans outlining the extent of their provision. This will work towards ensuring that primary GME is supplemented by Gaelic medium early learning and childcare and Gaelic medium secondary schooling.

Through the measures for areas of linguistic significance, local authorities are able to designate specific areas within their districts which have a strong connection to Gaelic. Such a designation will allow for greater provision for Gaelic within an area of linguistic significance and ensure that this provision caters to the local circumstances of the language. The standards set by Scottish Ministers may be different for those areas. In their Gaelic language plans, relevant public authorities will have to include measures they will take to allow for a proportionate approach. The task of designation will be one that will incur a cost to local authorities.

There is unlikely to be any immediate significant impact on any sector or groups as a result of these regulation making powers. However there are likely to be impacts in future when

Scottish Ministers lay regulations. The impact of any such changes will be quantified as part of the regulation making progress and assessed as required.

Benefits

Option 1 – Do nothing

No benefits were identified if nothing was done. Each of the key commitments was a response to an ongoing public demand for change in their respective areas. This was reinforced by the submissions to the public consultation. Doing nothing would have represented a missed opportunity for significant reform to the support received by Gaelic and Scots.

Option 2 – Non-regulatory changes

The degree of action required on behalf of Gaelic and Scots meant that non-regulatory changes would not be sufficient to fulfil the commitments made to both languages. As explained elsewhere, the existing support for Gaelic would have allowed individual documents to be updated to provide greater support for the language.

For example, the Gaelic Language (Scotland) Act 2005 enables Bòrd na Gàidhlig to produce statutory guidance on Gaelic education. However, just updating this guidance would fall short of the stated aim of developing a new strategic approach to Gaelic medium education. It also would not allow for the steps taken within the Bill to further normalise Gaelic education as part of Scotland's general education provision, with a consequent duty for Scottish Ministers and education authorities to promote and support it or consider it when assessing ELC needs.

The same act also enables Bòrd na Gàidhlig to produce statutory guidance on Gaelic Language Plans. While this guidance could be strengthened, such an update would fall short of the steps taken in the Bill to allow for the establishment of areas of linguistic significance. Such a measure is necessary to fulfil the Scottish Government's commitment to allow for more localised, community based approaches to Gaelic development which was contained within the proposal to explore the creation of recognised Gàidhealtachd areas within Scotland.

The lack of existing legislative recognition for Scots meant that non-regulatory changes would neither meet Scottish Government commitments to the language nor the expectations of its speakers.

Option 3 – Legislative change

In giving official status to Gaelic and Scots as languages of Scotland it will enhance their standing in public life. For Gaelic it also recognises the advancement made by the language since the passage of the 2005 Act.

The measures outlined for Gaelic education are necessary amendments to a system of schooling which has grown significantly since its introduction in 1985. They will allow for a more consistent provision of GME across Scottish local authorities, easing the burden on education staff and reducing inequalities of access for pupils and parents/guardians.

Making possible the designation of areas of linguistic significance allows for policies which reflect the needs of individual Gaelic communities while maintaining Gaelic's status as a national language for all of Scotland. It also acknowledges a public demand – articulated in the consultation as well as in public debate – for Gaelic policy to cater to the circumstances of individual communities and give those communities greater agency in its direction.

Replacing the current system of Gaelic language planning with that proposed within the Bill will ease the burden on Bòrd na Gàidhlig, give the development and monitoring of Gaelic language plans greater authority and enable a more proportionate approach to Gaelic provision.

The action taken on behalf of the Scots language ensures that it also receives legislative recognition and support for the first time. This will enhance the standing of Scots in different aspects of Scotland's public life – most notably education.

Costs

Option 1 – Do nothing

The option of doing nothing would have incurred no immediate cost.

Option 2 – Non-regulatory changes

The option of non-regulatory changes would likely have incurred no immediate cost.

Option 3 – Legislative change

The costs of the Bill for the Scottish Government and its stakeholders are considered in detail in the Bill's Financial Memorandum.

Regulatory and EU Alignment Impacts

Intra-UK Trade

The Bill is not likely to impact on intra-UK trade.

International Trade

The Bill is not likely to impact on international trade and investment.

EU Alignment

The Bill is not likely to impact on the Scottish government's policy to maintain alignment with the EU.

Scottish Firms Impact Test

A Scottish Firms Impact Test was not undertaken.

Competition Assessment

The Scottish Government does not expect there to be any significant impact on competition between firms.

Consumer Assessment

Assuming that a school pupil or parent/guardian can be considered a consumer in the context of education, then the increased provision the Bill makes for Gaelic medium and Gaelic learner education will support greater choice for them. In areas where GME is provided at primary, but with shortfalls in provision at either ELC or secondary, the Bill aims to overcome the current process whereby pupils educated entirely in Gaelic for one part of their school career are deprived of the opportunity to learn through the language at an earlier or later stage.

Test Run of Business Forms

There will be no new forms for businesses to be introduced within the Scottish Languages Bill.

Digital Impact Test

The proposals included in the Bill do not change digital technologies (including platforms) and markets.

Legal Aid Impact Test

The Scottish Government does not anticipate significant impacts on the legal aid budget as a result of the Bill.

Enforcement, Sanctions and Monitoring

The Scottish Government does not anticipate any new burdens for businesses, local authorities or the third sector generated by the proposals in regard to enforcement, sanctions or monitoring. Under the Gaelic Language (Scotland) Act 2005 local authorities which have Gaelic Language Plans must submit annual monitoring reports to Bòrd na Gàidhlig and this process will continue, albeit with Bòrd na Gàidhlig reporting directly to the Scottish Parliament rather than the Scottish Government.

Implementation and Delivery Plan

The Scottish Government intends to take forward this legislation in the current Parliamentary session. Secondary legislation to amend existing regulations, or make new regulations, will then follow giving due consideration to consultation and engagement.

Post-implementation Review

The legislation will be reviewed within 10 years to ensure that it continues to be fit for purpose.

Summary and Recommendation

Option 3 – to bring forward primary legislation – is recommended.

Summary costs and benefits table

Option 1 – Do nothing

Benefit

Benefits were not identified for the option of doing nothing. There is a rising demand within both Gaelic and Scots language communities for greater government action in supporting the two languages. The current Scottish Government was elected on manifesto commitments pledging that action would be taken on behalf of Gaelic and Scots. To do nothing would be a failure to fulfil these commitments.

Costs

The option to do nothing would not incur any additional costs.

Option 2 – Non-regulatory changes

Benefit

Non-regulatory changes could be achieved through a refresh of existing statutory documents relating to Gaelic. As mentioned above, the Gaelic Language (Scotland) Act 2005 contains provisions for Bòrd na Gàidhlig to produce guidance relating to both Gaelic Language Plans and Gaelic education. Both these sets of guidance could have been updated to allow for stronger support of Gaelic by public authorities. However, this was not considered adequate for the range of actions which the Scottish Government committed to for Gaelic.

For Scots, lack of existing legislative support for the language made it necessary to go beyond non-regulatory changes. There is a need to ensure that the Scots language also receives support across the Scottish public sector and within Scotland's schools and legislative change was regarded as the means of achieving that.

Costs

The option of non-regulatory changes would not have incurred any immediate costs.

Option 3 – Legislative change

Benefit

As outlined above, legislative change makes possible the degree of action committed to on behalf of Gaelic and Scots.

The existing system of Gaelic education – both Gaelic Medium and Gaelic Learner – can be more efficiently organised with a greater duty for Scottish Ministers and education authorities to consider its promotion and requirements as part of wider Scottish educational provision.

The replacement of Bòrd na Gàidhlig's National Gaelic Language Plan by a Gaelic Language Strategy prepared by Scottish Ministers will lend greater weight to Gaelic development. Redefining Bòrd na Gàidhlig's role as a monitoring body will enable it to better direct its current resources towards reporting on the implementation of the Gaelic Language Strategy by public bodies. The Bòrd will also have more leeway to support and advise on delivery of the Gaelic Language Strategy at community level.

By allowing local authorities to designate areas of linguistic significance the Bill recognises the need for Gaelic policy to be more shaped by the needs of individual Gaelic communities.

Legislative change also allows for the Scots language to be recognised and supported within law for the first time. Measures enabling the creation of a Scots Language Strategy, standards and regulations and the greater support of the Scots language by education authorities are necessary to match the commitment made by the Scottish Government and the expressed desires of the Scots language community.

Costs

As stated above, the estimated costs for this option are outlined in the Scottish Languages Bill's Financial Memorandum. In terms of costs to the Scottish Administration, costs directly associated with the Bill provisions will be covered by the current staffing resource. Costs to local authorities and other bodies are not wholly new costs or a requirement for wholly new spend but a repurposing of current effort and resources.

In respect of Gaelic, the Bill policy priorities and proposed provisions are building on and streamlining structures that are already in place and required for a sustainable future for Scotland's indigenous minority languages. For example, many Scottish public bodies are already working positively for Gaelic and Scots as part of their usual activity. Powers being taken in the Bill however will allow for greater standardisation through strategies, language plans, standard-setting and statutory guidance and therefore support greater efficiency in public sector spend.

In respect of Scots, although this legislation is the first of its kind, there are also delivery structures in place. In both cases, the provisions of the Bill aim to put in place effective structures for the progress that is needed for Gaelic and Scots.

Declaration and Publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Jenny Gilruth

Date: 13 February 2024

Minister's name Ms Jenny Gilruth MSP

Minister's title Cabinet Secretary for Education and Skills

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