

# GAELIC LANGUAGE (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### *Bòrd na Gàidhlig*

#### *Section 1 – Constitution and functions of Bòrd na Gàidhlig*

8. This section establishes the Bòrd with the functions of promoting the use and understanding of the Gaelic language; promoting Gaelic education and Gaelic culture; advising on Gaelic language, culture and education matters; and monitoring and reporting to the Scottish Ministers on the implementation of the European Charter for Regional or Minority Languages in relation to the Gaelic language.
9. Subsections (2) and (3) specify the general functions of the Bòrd and the outcomes the Bòrd should seek to achieve in exercising those functions.
10. Subsection (4) enables the Scottish Ministers to issue directions or guidance to the Bòrd.
11. Subsection (6) introduces schedule 1 which makes detailed provision concerning the status, membership etc. of the Bòrd.

#### *National Gaelic language plan*

#### *Section 2 – National Gaelic language plan*

12. This section requires the Bòrd to develop a national Gaelic language plan which must set out how it proposes to carry out its functions. Those functions include the general functions under section 1(2) of promoting the use and understanding of the Gaelic language; promoting Gaelic education and Gaelic culture; advising on Gaelic language, culture and education matters; and monitoring and reporting to the Scottish Ministers on the implementation of the European Charter for Regional or Minority Languages in relation to the Gaelic language. Other more specific functions are provided for elsewhere in the Act.
13. Subsection (1) places a duty on the Bòrd to submit a national Gaelic language plan to the Scottish Ministers within 12 months of the commencement of section 2. The Bòrd must submit a new national plan at any time if required to do so by the Scottish Ministers, or at least within 5 years from the date of publication of the most recent plan.
14. Subsection (2) requires the Bòrd to include in the national Gaelic language plan a strategy for promoting, and facilitating the promotion of, Gaelic education and Gaelic culture, and the use and understanding of the Gaelic language.
15. Subsections (3) and (4), which apply to any plan prepared under subsection (1), require the Bòrd to publish and consult on a draft plan. The Bòrd must allow at least 3 months for the submission of views and take into account any views submitted in that period. The Bòrd is required to consult the Parliament in preparing the plan.

16. Subsection (5) requires the Scottish Ministers, within 6 months of receiving the national plan from the Bòrd, to approve the plan or make comments on it. If the Scottish Ministers make comments on the plan, the Bòrd must submit a further plan taking account of those comments.
17. Subsection (6) provides that if the Bòrd submits a further plan under subsection (5), the Scottish Ministers must approve the plan within 3 months or order the Bòrd to publish the plan in terms which the Scottish Ministers shall decide.
18. Subsection (7) requires the Bòrd to publish the national Gaelic language plan in its final form and to lay a copy of it before the Parliament.

### ***Gaelic language plans***

#### ***Section 3 – Gaelic language plans***

19. **Section 3** introduces a power for the Bòrd to issue a notice to any relevant public authority requiring them to prepare a Gaelic language plan. ‘Relevant public authority’ is defined in section 10 and covers any Scottish public authority, the Scottish Parliamentary Corporate Body and (in relation to functions exercisable in or as regards Scotland which do not relate to reserved matters) any cross-border public authority and the Food Standards Agency. A cross-border public authority is any body, government department, office or office-holder designated as such by Order in Council which has, in addition to other functions, functions exercisable in or as regards Scotland and which do not relate to reserved matters.
20. Subsection (2) specifies the information which the Bòrd must provide in the notice it issues to a public authority.
21. Subsection (3) sets out the considerations the Bòrd must have regard to in deciding whether to issue a notice to a public authority.
22. Subsection (4) sets out the information which a Gaelic language plan must contain.
23. Subsection (5) specifies the issues which a public authority must have regard to when preparing its plan.
24. Subsection (6) requires a public authority to consult with any person who it thinks has an interest in the plan it is preparing.
25. Subsection (7) gives the Scottish Ministers a power to make regulations specifying further the content of language plans. The Scottish Ministers must consult the Bòrd before making any regulations.

#### ***Section 4 – Review of, and appeal against, notices***

26. **Section 4** provides a mechanism for a relevant public authority to seek to extend the length of time given to it to prepare a plan and for appealing against a notice issued by the Bòrd.
27. Subsection (1) enables a public authority to ask the Bòrd to reconsider the date set for the submission of a Gaelic language plan under section 3. The Bòrd must either confirm the date (subsection (3)(a)) or specify a later date when the plan must be submitted (subsection (3)(b)). If the Bòrd confirms the date it initially set for the submission of a plan or sets a later date which the public authority finds unreasonable, the authority has a right of appeal to the Scottish Ministers under subsection (5). Subsection (6) requires the Scottish Ministers to determine an appeal under subsection (5) within a period of 2 months. The effect of subsection (7) is that if the Scottish Ministers uphold an appeal from a public authority under subsection (5) they must specify an alternative date by which a plan must be submitted to the Bòrd.

28. Subsection (8) enables a public authority to appeal to the Scottish Ministers against the issue of a notice under section 3. Subsection (9) requires the Scottish Ministers to determine an appeal under subsection (8) within a period of 6 months. The effect of subsection (10) is that where the Scottish Ministers uphold an appeal by a public authority against having to produce a plan, that authority does not have to submit a plan to the Bòrd and cannot be requested to do so by the Bòrd again until a period of 2 years from the date of the issuing of the first notice has passed.

### ***Section 5 – Approval of plans***

29. Section 5 makes provision for the procedure to be followed for approving Gaelic language plans submitted to the Bòrd.
30. Subsection (1) provides that when a relevant public authority submits a plan to meet the requirements of a notice issued by the Bòrd under section 3, or resubmits a plan under subsection (3)(b) taking account of modifications proposed by the Bòrd, the Bòrd must approve the plan or propose modifications to the plan. Subsection (2) requires the Bòrd, when determining whether to approve or propose modifications to the plan under subsection (1), to have regard to the same matters it must have regard to when determining whether to issue a notice to a public authority requiring the preparation of a Gaelic language plan (section 3(5)(a) to (d)) and to any guidance given by the Scottish Ministers.
31. The effect of subsection (3) is that if the Bòrd proposes modifications to a plan submitted by a public authority, the authority must either notify the Bòrd within one month that it does not agree with all or any of the proposed modifications, giving reasons for any disagreement, or submit a revised plan which takes account of the proposals. The Bòrd must allow at least 3 months, but not more than 6 months, for the submission of a revised plan (subsection (4)).
32. The effect of subsection (5) is that if the Bòrd receives notification from a public authority under subsection (3)(a) that it does not agree with any or all of the modifications to its plan proposed by the Bòrd, the Bòrd must either approve the plan as originally submitted; approve the plan subject to any modifications agreed with the authority; or, if the Bòrd has not approved the plan within 2 months of the plan being referred to it, refer the matter to the Scottish Ministers.
33. The Scottish Ministers must, if a plan is referred to them under subsection (5)(c), either approve the plan as originally submitted by the public authority to the Bòrd, or approve the plan subject to any modifications they consider appropriate. Before doing so, the Scottish Ministers must take into consideration a number of factors mirroring some of those the public authority itself has considered when preparing its plan, and take account of comments from the Bòrd and the relevant authority, and others consulted by the Scottish Ministers. Subsection (8) requires the Scottish Ministers to approve a plan referred to them within a period of 6 months.
34. Subsection (9) requires a public authority to publish its Gaelic language plan in a manner approved by the Bòrd and implement the measures in it after the plan is approved.

### ***Section 6 – Monitoring of implementation***

35. This section makes provision for the Bòrd to monitor the implementation of Gaelic language plans.
36. Subsection (1) provides that the section applies where a plan has been approved by either the Bòrd or the Scottish Ministers under section 5, the plan having been in effect for at least 12 months.

37. Subsection (2) enables the Bòrd to request a report on the implementation of the measures set out in a relevant public authority's plan. The Bòrd must allow the public authority at least 3 months to comply with that request.
38. Subsection (3) provides that the Bòrd may not ask for a subsequent report from a public authority within 12 months of the date of the last time it requested a report from that particular authority.
39. Subsection (4) enables the Bòrd, if it considers that a public authority is failing to implement adequately measures in its Gaelic language plan, to submit a report to the Scottish Ministers setting out why it considers the authority is failing in that regard.
40. The effect of subsection (5) is that where the Scottish Ministers receive a report from the Bòrd under subsection (4) they may bring the report to the attention of the Scottish Parliament and/or issue a direction to the relevant public authority to implement any or all of the measures in its language plan. Subsection (6) requires the Scottish Ministers to consult with the relevant public authority on the terms of a direction they may be minded to issue. The Scottish Ministers must take into account any views expressed by the public authority before issuing that direction.

### ***Section 7 – Review of plans***

41. This section makes provision for the review of Gaelic language plans.
42. Subsection (1) provides that this section applies to a Gaelic language plan approved under section 5 or to a plan which has been reviewed and subsequently approved under this section.
43. Subsection (2) requires a relevant public authority which has a Gaelic language plan to review that plan within 5 years and to make any amendments to the plan which it considers necessary. The public authority must then submit the plan, amended or unamended, to the Bòrd.
44. Subsection (3) specifies that the provisions in section 3(4) to (6) and section 5 are also to operate in relation to a plan which is being reviewed under subsection (2). Before submitting a reviewed plan to the Bòrd, therefore, a public authority must comply with the same requirements regarding content, consultation, approval etc. as applied when the plan under review was prepared.
45. Subsection (4) enables a public authority to make minor amendments to its plan at any time without having to submit the plan for reapproval to the Bòrd.

### ***Section 8 – Guidance, assistance, etc. by the Bòrd***

46. This section makes provision for the Bòrd to issue guidance in relation to the development of Gaelic language plans under sections 3 to 7. Subsection (2) sets out the steps that the Bòrd must follow when preparing that guidance. These include a duty (under subsection (2)(b)) to publish and consult on draft guidance. Views on this draft guidance must be made known to the Bòrd within a period specified by the Bòrd which, under subsection (3), must be at least 3 months.
47. Subsection (4) provides for the Scottish Ministers to approve guidance submitted by the Bòrd either in the form submitted to them or with modifications which they determine to be appropriate. Alternatively, the Scottish Ministers may reject the guidance submitted and may require the Bòrd to submit revised guidance. Subsection (5) specifies that where revised guidance is submitted by the Bòrd, the Scottish Ministers must approve the guidance, or order the Bòrd to publish the guidance in such terms as the Scottish Ministers consider appropriate.
48. Subsections (7) and (8) make provision for the Bòrd to vary or revoke its guidance. Before varying its guidance the Bòrd is required to follow the same procedures which

apply to the preparation of the original guidance (subsections (2) to (6)). The Bòrd must obtain the consent of the Scottish Ministers before revoking its guidance.

49. Subsection (9) provides that the Bòrd may not charge relevant public authorities for advice and assistance in relation to requirements placed on the authority by this Act.
50. Subsection (10) requires the Bòrd, when preparing its guidance or giving advice and assistance in relation to the development of Gaelic language plans, 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***

### ***Section 9 – Guidance on Gaelic education***

51. This section makes provision for the Bòrd to issue guidance in relation to Gaelic education. ‘Gaelic education’ is defined in section 10 as meaning education in the use and understanding of, education about and education by means of the Gaelic language.
52. Subsection (2) makes provision for the process for formulating guidance on Gaelic education to follow that which applies to guidance on the preparation of Gaelic language plans under section 8(2) to (8).
53. Subsection (3) inserts a new subsection (4A) into section 5 of the [Standards in Scotland’s Schools etc. Act 2000 \(asp 6\)](#). Section 5 requires education authorities in Scotland to produce an annual statement of improvement objectives which must include an account of the ways and circumstances in which they will provide (and, if provided, develop) Gaelic medium education. The new subsection (4A) requires an education authority when complying with the reporting requirements of that section to have regard to any Gaelic language plan published by it under section 5 of the Gaelic Language (Scotland) Act 2005 and any guidance issued by the Bòrd under section 9 of that Act.

## ***General***

### ***Section 10 – Interpretation***

54. This section provides definitions of key terms used in the Act.

### ***Section 11 – Regulations and orders***

55. This section provides that regulations under section 3(7) and orders under paragraph 2(2) of schedule 1 are to be made by statutory instrument which is subject to the negative resolution procedure in the Scottish Parliament.

### ***Section 12 – Consequential amendments***

56. This section introduces schedule 2 which makes modifications of various enactments so as to include in them references to the Bòrd.

### ***Section 13 – Short title and commencement***

57. Provision is made for the Scottish Ministers by order to appoint days when sections of the Act (other than sections 11 and 13) are to come into force. Sections 11 and 13 come into force on Royal Assent.
58. Subsection (3) enables a commencement order to include transitional, transitory or saving provision.

## ***Schedule 1 – Bòrd na Gàidhlig***

### ***Paragraph 1 – Status***

59. Provision is made under this paragraph making clear that the Bòrd is not a Crown body.

### ***Paragraph 2 – Membership***

60. Sub-paragraph (1) provides that the members of the Bòrd are to be appointed by the Scottish Ministers. The Bòrd is to have between 5 and 11 ordinary members and a further ex officio member (the Cathraiche) who is to chair meetings of the Bòrd.
61. Sub-paragraph (2) gives the Scottish Ministers the power by order to increase or decrease the maximum or minimum number of members. A statutory instrument containing such an order is subject to the negative resolution procedure in the Scottish Parliament.
62. Sub-paragraph (4) requires the Bòrd to elect from within its number a person to act as Cathraiche if the office of Cathraiche becomes vacant.
63. Sub-paragraph (5) provides that members of the Bòrd hold office on such terms and conditions as the Scottish Ministers may decide and may resign from the Bòrd by written notice to Ministers.
64. Sub-paragraph (6) makes provision for the circumstances in which the Scottish Ministers may remove a member of the Bòrd from office.

### ***Paragraph 3 – Disqualification***

65. Paragraph 3 sets out the various persons who are disqualified from appointment to, or from holding office as a member of, the Bòrd.

### ***Paragraph 4 – Remuneration and allowances***

66. Paragraph 4 provides for Bòrd members to receive such remuneration and allowances as may be determined by the Scottish Ministers.

### ***Paragraph 5 – Ceannard and other staff***

67. Paragraph 5 makes provision for the Bòrd to appoint staff, including a Chief Executive (“Ceannard”).

### ***Paragraph 6 – Committees***

68. Paragraph 6 enables the Bòrd to establish such committees as it requires to carry out its functions, and to co-opt non-members of the Bòrd on to those committees. Co-opted members cannot, however, vote at committee meetings.

### ***Paragraph 7 – Proceedings and meetings***

69. Sub-paragraph (1) enables the Bòrd to determine its own and its committees’ procedure for meetings.
70. Sub-paragraph (2) provides that the validity of any proceedings of the Bòrd cannot be challenged on the grounds that there was a defect in any of the appointments to the Bòrd or by a vacancy in the Bòrd’s membership.
71. Sub-paragraph (3) provides for the Scottish Ministers, or their representatives, to attend the Bòrd and committee meetings but they are unable to vote at those meetings.

***Paragraphs 8 and 9 – Accounts and annual report***

72. These paragraphs set out in general terms requirements concerning the accounts and reports which must be prepared by the Bòrd.

***Paragraph 10 – Delegation of functions by the Scottish Ministers***

73. This paragraph enables the Scottish Ministers to delegate any of their functions to the Bòrd (other than the function of making, confirming or approving subordinate legislation) relating to the Gaelic language, culture and education.

***Paragraph 11 – General powers***

74. This paragraph sets out the activities the Bòrd may engage in in furtherance of its functions.
75. Sub-paragraph (2) specifies that the Bòrd may not make charges for the provision of advice and assistance to relevant public authorities in connection with the application of the Act to them.

***Paragraph 12 – Grants***

76. Sub-paragraphs (1) and (2) provide for the Scottish Ministers to make grants to the Bòrd. The purpose and amount of a grant, and any conditions attaching to it, may be decided by the Scottish Ministers.
77. Sub-paragraph (3) specifies that the Bòrd does not have the power to borrow money or to give guarantees.