These documents relate to the Gaelic Language (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 13 November 2002

GAELIC LANGUAGE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. The following documents are published to accompany the Gaelic Language (Scotland) Bill introduced in the Scottish Parliament on 13 November 2002:

   • Explanatory Notes;
   • a Financial Memorandum; and
   • the Presiding Officer’s Statement on legislative competence.

The Financial Memorandum and Presiding Officer’s statement are required under Rule 9.3 of the Parliament’s Standing Orders. A Policy Memorandum is printed separately as SP Bill 69–PM.
These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Michael Russell MSP, the member in charge of the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill requires that certain public bodies publish, maintain and implement plans to give effect to the principle that in the exercise of the functions of those bodies the Gaelic and English languages should be treated on a basis of equality.

5. These plans will show the steps that the public bodies will take regarding the use of Gaelic in connection with their functions. The Bill specifies the minimum content of the plans and how the plans should be managed and reviewed. Initially the duty to prepare a plan will only apply to bodies exercising functions in certain areas of Scotland.

6. Any failure to publish or implement a plan may be investigated by the Scottish Public Services Ombudsman. On completion of any investigation, the Ombudsman will report to the Scottish Ministers and lay a copy of the report before the Parliament in relation to any failure by a public body to carry out their duties under the Bill. The Ombudsman’s powers of investigation are given by the Scottish Public Services Ombudsman Act 2002 (asp11) (“the 2002 Act”).

COMENTARY ON SECTIONS

Section 1: Gaelic language plans

7. Subsection (1) provides that every public body to which the Bill applies (see section 3) must publish a Gaelic language plan (“a plan”). A period of two years after the Bill comes into force is allowed for this, to give the bodies to whom the Bill applies adequate time to prepare and publish their plans.

8. Subsection (2) at paragraph (a) states that the plan must specify what measures the public body will take to use Gaelic in the exercise of its functions to give effect to the principle that the Gaelic and English languages will be treated on a basis of equality (see paragraph 10 below).
9. Paragraph (b) introduces the schedule to the Bill which contains mandatory elements which the plan must include. This does not prevent the plan from containing additional material if the body wishes or thinks it appropriate.

10. Subsection (3) sets out the purpose of the plan each public body has to produce. The purpose of the plan is, as far as is reasonably practicable and appropriate, to give effect to the principle that in the exercise of the functions by a public body the Gaelic and English languages will be treated on a basis of equality.

11. Subsection (3) includes an appropriateness and reasonableness test to give public bodies some guidance as to how much they are expected to do to conform with the Bill. Thus if the body can demonstrate that a certain measure (see paragraph 8 above) is not appropriate or is not reasonable (perhaps on grounds that the cost of implementing the measure would be too high in view of potential usage) they would not be required to take that measure. The Ombudsman will have regard to this test when investigating a complaint.

12. Subsection (4) makes it a requirement that prior to publishing a plan the public body must consult on the proposed contents of the plan with those persons who appear to have an interest in it. It is envisaged that a draft plan will be published by the public body and the contents consulted upon. The Bill does not prescribe who the public body is to consult with; this matter is for the public body as they will be able to identify the key stakeholders in their area. The Bill does not specify the format of the draft plan or consultation procedure in order to provide a level of flexibility for the public bodies in recognition of their different remits and requirements.

13. Subsection (5) specifies that a plan will last five years although this period will be shorter if a replacement plan is ready at an earlier stage under section 2(3).

14. Subsection (6) requires the public body to implement the measures set out in their plan.

15. Subsection (7) gives the Scottish Ministers the power to amend the schedule to the Bill. This allows the Scottish Ministers to add further minimum measures that must be contained in the plan or to remove any measures that perhaps are not working or have become inappropriate.

Section 2: Review and amendment of plans

16. Subsection (1)(a) provides that the public body must during the fifth year of the plan, if they have not done so earlier, undertake a review of the plan that they published. The public body may, if it wishes, review the plan at any earlier time.

17. Paragraph (b) directs the public body to publish a replacement plan before the date that the original plan expires. This gives the body at least a year to consult and prepare their replacement plan before their original plan expires five years after its publication.

18. Subsection (2) sets out the process to be followed when undertaking a review under subsection (1). Paragraph (a) states that the review must include the preparation of a draft replacement plan which includes all the proposed amendments to the original plan. Paragraph (b)
requires the public body to consult on the draft replacement plan in the same way as it consulted on the initial plan (see paragraph 12 above).

19. Subsection (3) makes clear that on the publication of a replacement plan the original plan will cease to have effect and the replacement plan becomes the plan for that body.

20. Subsection (4) gives the public body the opportunity to correct an error or update factual information in the plan, without having to go through the review process provided for in subsections (1) and (2). It may be that factual information such as contact details or lists of Gaelic material have changed. Under subsection (4) the public body will be able to change those details without consultation and the need to publish a new plan. The information to be amended under subsection (4) must not be material to the substance of the plan. Any fundamental change to the contents of the Gaelic language plan itself will necessitate a review under subsections (1) and (2).

Section 3: Public bodies

21. Subsection (1) sets out the public bodies that the Bill is applicable to. Paragraph (a) states that the Bill will apply to those bodies who are currently listed in schedule 2 to the 2002 Act with the exception of cross-border public authorities and family health service providers (as referred to in paragraph 5 of schedule 2 to the 2002 Act).

22. Paragraph (b) qualifies the public bodies covered by the provisions of the Bill. It will only be the public bodies mentioned in paragraph (a) and which exercise functions in the area where section 3 of the Bill is in force that the provisions of the Bill will apply to. The location of the body will not be material. Not all the public bodies in schedule 2 to the 2002 Act will immediately have a duty to prepare plans (see paragraphs 33 and 34).

23. Even if a body exercises only one function in the area, the duties under section 1 will apply. The body involved will be required to prepare a plan covering all of its functions although for those functions not connected with the relevant area, it could if it desired, specify that no measures were being taken.

24. Subsection (2) deals with the situation where the list of authorities in the 2002 Act is amended to add a public body. By virtue of section 3(1) the provisions of the Bill will apply to that new public body (provided it exercises functions in the area in respect of which the Bill is in force). Paragraph (a) allows the new public body two years, from the date that they became a public body for the purposes of schedule 2, to prepare and implement a plan.

25. Paragraph (b) gives power to the Scottish Ministers to exempt a public body added to the 2002 Act from being a public body to whom the Bill applies. In order to do this the Scottish Ministers would require to make an order by statutory instrument which will be subject to affirmative procedure i.e. the order cannot be made until the Parliament has approved a draft of the order by resolution.
Section 4: The Ombudsman

26. Section 5(1) of the 2002 Act sets out what matters fall within the Scottish Public Services Ombudsman’s investigatory powers. These include actions taken in the exercise of administrative functions, service failures and any action taken by or on behalf of certain bodies. The obligations under the Bill seem clearly to fall within the latter wide category of any action but there is some doubt as to whether the obligations could be regarded as falling within administrative functions or services. The Ombudsman is entitled to investigate any action of a health service body, an independent provider or a registered social landlord and therefore no provision is needed in relation to these types of body.

27. Section 4(a) of the Bill provides that the preparation and publishing of the Gaelic language plan is an action to be regarded as being taken in the exercise of an administrative function of the public body, for the purposes of section 5(1)(a) of the 2002 Act, which the Ombudsman is entitled to investigate. Section 4(a) specifically excludes reference to health service bodies, independent providers and registered social landlords as the Ombudsman is already entitled to investigate any action taken by such bodies.

28. Where a public body includes in its plan the provision of a service in Gaelic and fails to deliver that service in Gaelic, section 4(b) allows the Ombudsman to regard this as a service failure by the public body for the purposes of section 5(1)(c) of the 2002 Act. Section 5(2) of the 2002 Act defines “service failure” as a failure in service by a public body or a failure to provide a service which it was their function to provide. Section 5(1)(c) of the 2002 Act allows the Ombudsman to investigate service failures of public bodies other than family health service providers and registered social landlords. Family health service providers are, in any case, excluded from the requirements of this Bill by section 3(1). Section 4(b) specifically excludes reference to registered social landlords as the Ombudsman is already entitled to investigate any action taken by such bodies.

29. Nothing in section 4 prevents the preparation and publication of a Gaelic language plan from being considered as an action taken by or on behalf of a public body which the Ombudsman is entitled to investigate by virtue of section 5(1)(b) (action of a health service body) or 5(1)(e) (action of a registered social landlord) of the 2002 Act.

Section 5: Orders

30. This section states that any orders made under section 1(7) (to amend the schedule to the Bill), section 3(2)(b) (to exclude a new body in schedule 2 of the 2002 Act from the provisions of the Bill) and section 7(2)(b) (commencement of provisions for certain areas) are to be made by statutory instrument. An order under section 1(7) to modify the schedule will be subject to negative procedure. An order under section 3(2)(b) will be subject to affirmative procedure.

Section 6: Interpretation

31. Subsection (1) provides for the area, referred to as the “relevant area”, where the Bill will initially apply. A power to extend the provisions of the Bill is included in section 7(2)(b).
32. Subsection (2) makes clear that the functions of a public body include those which are internal to the organisation as well as those which it provides to members of the public.

**Section 7: Short title and commencement**

33. Subsection (2) provides that section 3 of the Act comes into force on the day after the date of Royal Assent for the relevant area. On commencement the Act will only apply to certain areas of Scotland and section 6(1) defines the relevant area as the local government areas of Highland, Western Isles, the part of Argyll and Bute which is the area of the former Argyll and Bute District Council and the islands of Arran, Great Cumbrae and Little Cumbrae.

34. Paragraph (b) of subsection (2) allows the Scottish Ministers by order made by statutory instrument to commence the Bill for other parts of Scotland.

**Schedule**

35. This sets out under nine headings the details that every plan must contain. The schedule does not set standards to be met in delivering the matters covered nor does it specify timescales by which delivery must be made. In each case this is a matter for the individual public body bearing in mind the appropriateness and reasonableness requirements in section 1(3).

36. The public bodies must however in detailing their intentions always have regard to the principle that the Gaelic and English languages should be treated on a basis of equality.

FINANCIAL MEMORANDUM

**INTRODUCTION**

37. The main costs associated with the Bill will fall on the public bodies who have a duty to prepare and implement a plan under the Bill.

38. Costs could arise for public bodies in three main areas:

- the preparation, publishing and consulting on a draft plan;
- the preparation and publishing of the actual plan; and
- implementation of the measures detailed in the plan.

39. These costs however are not easily quantifiable and will vary from body to body depending on the extent of the body’s links with the relevant area and the current provision it makes for Gaelic in its services.
40. This memorandum sets out the likely cost to a single public body in producing a plan, consulting on it and publishing the final version. This will be the maximum cost per public body of the Bill and takes no account of any current Gaelic provision that is available to it.

41. The cost of implementation of the plan will vary for each public body depending on the area where it conducts its business, the uptake and its existing provision for the Gaelic language. It can also be anticipated that the uptake of many services in Gaelic will be as an alternative to uptake in English and the costs will balance out. The overall costs of implementation may be negligible and subsumed into existing costs.

42. The Scottish Public Services Ombudsman will in accordance with the 2002 Act be able to investigate complaints arising as a result of any failure to comply with the requirements of the Bill. It is not anticipated that this will result in additional costs to the Ombudsman.

Consultation

43. The public bodies are required to consult on the plan they intend to implement. This will involve drafting and publishing a consultation document containing a draft plan. It is estimated that it would take one member of staff two full weeks to prepare the consultation. If this task was performed by an officer earning around £17,000 per year, two full weeks work would therefore cost £740.

44. Staff required to draft the consultation on the plan need not speak Gaelic. The body could pay to translate the document into Gaelic. The cost of translation is taken to be £100 per 1,000 words. The average consultation document of 4,000 words would cost £400 to translate. The purchase of translation services would only apply to those bodies who have no members of staff who are fluent in speaking and writing in Gaelic.

45. A standard consultation document is about 20 pages, when double-sided, and the average cost of printing 200 copies of this size of document on plain A4 is £75. A print run of 100 in Gaelic and 100 in English is envisaged.

46. To distribute the plan would cost £38 by second class post.

47. There will be work involved in analysing the responses to the consultation, again it is anticipated that this would take two full weeks, thus the same cost as in paragraph 43.

48. The maximum cost to a public body for the preparation and publication of a consultation document and the analysis of the responses from the above figures is approximately £2,000.

The plan

49. The final plan itself will be published in both Gaelic and English depending on the body, it may vary from a leaflet to a glossy brochure. Any translation costs will be as outlined above, £400.
50. Having consulted on the draft plan and analysed responses, the additional work required to finalise the plan is unlikely to be significant. Ultimately it will be for the public body concerned to decide how the plan will be published and the resources devoted to it. For the purposes of this memorandum we have assumed one week’s work, totalling £370.

51. Publishing the plan will cost more than publishing the consultation with more copies expected to be required. This memorandum assumes that 400 copies will be published, 200 in Gaelic and 200 in English at a cost of £200.

52. The approximate maximum cost to a public body of preparing, printing, publishing and distributing 400 copies of the finished plan is £1,000.

Implementation

53. The schedule to the Bill outlines the minimum measures to be contained in the plan. Many public bodies in the relevant area are likely to have such measures already in place, and for them the costs of the Bill will be relatively minor. It will be for the public body to decide whether they wish to implement any additional measures.

54. The plan must provide how the public body will respond to communications in Gaelic including media enquiries. It may be that staff are already available to answer queries in Gaelic.

55. The plan provides details of materials that will be made available in Gaelic; again, the costs for public bodies will be translation and publishing. Publishing costs would arise in any event as the documentation is provided for in English. Any additional costs would be for translation only. It is not possible to quantify this cost. The plan is required to include details of services which will be provided exclusively for the users of Gaelic. This measure could incur costs to all public bodies which currently do not have Gaelic provision, but such costs cannot be quantified.

56. The public body will require to designate one member of staff as a Gaelic contact. It is possible a member of senior staff already speaks Gaelic and can be designated the contact. An alternative for the public body is to train certain members of staff to speak Gaelic. It will be up to the public body concerned to decide how they wish to provide for this in the plan.

COSTS ON THE SCOTTISH ADMINISTRATION AND SCOTTISH PARLIAMENTARY CORPORATE BODY

57. As bodies whose functions relate to the whole of Scotland, the Scottish Executive and the Scottish Parliamentary Corporate Body will both be expected to produce plans. However, as both organisations already have Gaelic speaking staff and use Gaelic in their daily business the costs associated by the Bill may be met from existing resources. The only costs that are expected are the cost of printing, publishing and distributing the consultation document and the plan. The cost of the consultation document was outlined at paragraph 48 as being a maximum of £2,000 per body. That allows for 200 copies to be printed. As is usual practise, it can be expected that each consultation would have a distribution list of about 100 and would be available on the web for downloading. The cost for the plan was outlined at paragraph 52 and
would be £1,000 per body. Therefore the maximum cost of this Bill for the Scottish Executive and the Scottish Parliament would be £3,000 each.

**COSTS ON LOCAL AUTHORITIES**

58. The Bill will initially affect only certain parts of Scotland. Only four local authorities will be required to produce plans in the first instance. These authorities are Highland Council, Comhairle nan Eilean Siar, North Ayrshire Council and Argyll and Bute Council.

59. The costs to these local authorities will therefore be the same as the costs to the Scottish Executive and the Scottish Parliament. The Bill will cost each local authority a maximum of £3,000 initially. This includes provisions for Licensing Boards and Children’s Panel Advisory Committees that come under the umbrella of the local authority.

60. Thereafter the cost per each local authority will depend on what their plan entails and how much Gaelic provision is already in place. They may not need to expend more than the initial cost. Additionally it may be that the local authorities with existing Gaelic provision will find the initial cost of the Bill to be much less than the £3,000 maximum.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

61. The costs on other public bodies will fall on those which exercise functions in the area where the Bill is first brought into force, namely those local authority areas mentioned in paragraph 58. This will include bodies whose functions relate to the whole of Scotland.

62. When the Bill is initially commenced the public bodies likely to be affected will include:

- four health boards;
- seven NHS trusts;
- two fire brigades;
- two police forces; and
- eight local enterprise companies.

This is not an exhaustive list; rather these are the bodies referred to in schedule 2 to the 2002 Act that are readily identifiable as exercising functions within the area where the Bill will first commence and who are likely to be affected.

63. On the basis of paragraph 62 above, a minimum of 23 public bodies will be required to prepare consultation documents and plans at a maximum cost of £3,000 each.

64. The costs of implementing the plans will depend on the nature of the plans decided by each public body and the level of the service provision in the Gaelic language, and these cannot be quantified.
65. On 13 November 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Gaelic Language (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”