INTRODUCTION

1. This document relates to the Gaelic Language (Scotland) Bill introduced in the Scottish Parliament on 13 November 2002. It has been prepared by Michael Russell, the member in charge of the Bill, with the assistance of the Parliament’s Non-Executive Bills Unit, in accordance with Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 69–EN.

POLICY OBJECTIVES OF THE BILL

2. The Bill has two main objectives. The first is to establish a basis of equality between the Gaelic and English languages in Scotland; the second is to place a requirement on certain public bodies to prepare, publish and implement a Gaelic Language Plan. These objectives are linked: in the preparation and implementation of their plans, public bodies will be obliged to give effect to the principle that the Gaelic and English languages should be treated on a basis of equality.

3. The use of the Gaelic language has been shown to be declining and it is anticipated that the 2001 Census figures will show that the number of Gaelic speakers living in Scotland has fallen to a historical low. Projected figures suggest that, at the current rate of decline, the total number of Gaelic speakers may be less than ten thousand by 2021. The Bill aims to help halt this decline by taking the first steps towards making Gaelic a normal part of everyday life in Scotland and at the same time reminding many Scots of its existence.

4. The Bill will achieve this by requiring each public body specified in the Bill to publish and implement a Gaelic language plan (the plan). These plans will show the steps that will be taken to develop the use of Gaelic by the public bodies in exercising their functions. These steps will seek to promote the basis of equality between the Gaelic and English languages in Scotland.

5. Gaelic has no official status in Scotland. However, there are two pieces of legislation currently in force in respect of Gaelic. The first is the Council of Europe Charter for Minority Languages that came into force in July 2001. The UK Government agreed 39 paragraphs of the Charter in relation to Gaelic and 8 of these paragraphs relate specifically to administrative authorities and public service. Unfortunately there is no requirement on local authorities or public bodies to implement the Charter, and for this reason the Charter alone is not considered to be sufficient to halt the decline of Gaelic in Scotland.
6. The second is found in the Standards in Scotland’s Schools etc. Act 2000 (asp 6). Section 5 of this Act requires education authorities to produce an annual statement of improvement objectives. This statement must include ways in which, or the circumstances in which, Gaelic-medium education will be provided, and where it is provided, details of how this provision will be developed.

7. The 2000 Act conferred powers on the Scottish Ministers to define national priorities for education. To effect this the Education (National Priorities) (Scotland) Order 2000 (S.S.I. 2000/443) was made, coming into force on 20 December 2000. The Order provides that one of the national priorities in education is:

“to promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages”.

8. This effectively establishes Gaelic as a national priority for education in Scotland’s schools.

9. Whilst acknowledging the importance of the work being carried out by the education authorities in respect of the 2000 Act, it is also not considered sufficient on its own to prevent the decline in the Gaelic language.

Specific aims of the Bill

Basis of equality

10. The public bodies to which the Bill applies will use their plans as a basis on which to promote equality between the Gaelic and English languages. The plans provide for the use of Gaelic as a medium for communication. The purpose of the plans is to give effect to the principle that in delivering services to members of the public, the English and Gaelic languages should be treated on a basis of equality.

11. Precedent for the phrase “basis of equality” can be found in the Welsh Language Act 1993 (c.38). The Government’s explanation for its use in that Act was that when bodies are producing schemes outlining the measures they will take in respect of the Welsh language, they must ensure that the schemes conform to the principle of equality. In the 1993 Act this was achieved by declaring that the purpose of preparing the schemes is to give effect so far as is appropriate and reasonable to the principle that the English and Welsh languages should be treated on a basis of equality. The Government’s view was that this provided a simple principle which public bodies would reflect in the schemes they produced.

Public bodies and others

12. To make effective use of current mechanisms for existing bodies, the Bill will apply only to certain of those local authorities and public bodies that are liable to be investigated by the Scottish Public Services Ombudsman. These bodies are set out in schedule 2 of the Scottish Public Services Ombudsman Act 2002 (asp 11). An exception is made in the Bill for cross-border authorities and those public bodies listed in paragraph 5 of schedule 2 to the 2002 Act.
Paragraph 5 applies to family health service providers such as general practitioners, dentists and pharmacists. The provisions of the Bill do not apply to them in order to avoid placing a heavy burden on services which are already stretched.

**Requirement on public bodies and others**

13. Public bodies to whom the Bill applies will be required to prepare, publish and implement a Gaelic Language Plan.

14. The Bill will come into force initially only in relation to public bodies that provide a service in the local government areas of Highland; the Western Isles; the part of Argyll and Bute which was formerly known as Argyll and Bute District Council; and the islands of Arran, Cumbrae and Little Cumbrae. The Bill focuses on those areas of Scotland where Gaelic has historical roots and where there is already an active interest and need to preserve the language. It is the intention that in time the Bill will be brought into force for the whole of Scotland and order-making powers are given to the Scottish Ministers to extend the area in respect of which the Bill is in force.

**The plan**

15. Public bodies will be required to consult on the proposed contents of their plans with persons who appear to them to have an interest in it. Once the responses to the consultation have been analysed, a plan will be produced and distributed.

16. Each plan will have a life span of five years. In the fourth year the public body will prepare a draft replacement plan and consult on its contents. A result of this being that at the end of the fifth year a new plan will be published.

17. If substantial amendments to the plan are required during this time, the public body will be able to make them by undertaking consultation, review and renewal. An amended plan will replace the existing plan and the five year period will begin again on the publication of the new plan. Minor administrative amendments to reflect administrative changes, such as changes to contact details or correcting clerical errors, can be made without the need to consult and will not have the effect of requiring a replacement plan and beginning a new five year period.

**Contents of the plans**

18. The form of the plans is not prescribed in the Bill. This is left to the discretion of each public body. It is recognised that different public bodies will have different requirements and this approach provides them with a degree of flexibility.

19. The Bill does however provide minimum contents which each plan must contain.

20. The schedule to the Bill provides the minimum details of what a plan must contain, including:

   • details of how the public body will respond to external and media communications;
• the materials the public body will make available for internal and external use;
• details of translation services that will be made available;
• details of services that are provided exclusively for users of the Gaelic language; and
• details of staff training the public body will provide in respect of Gaelic along with contact details of a senior member of staff who will be responsible for dealing with Gaelic enquiries.

21. The Scottish Ministers are provided with power to add, remove or make amendments to the required minimum contents of the plan, subject to Parliamentary approval.

Complaints and enforcement

22. Complaints can be made to the Ombudsman in several instances. The first is where an individual has a complaint as to the preparation of a plan – for example, the omission of required criteria or certain details, or, that the Plan has been prepared but does not meet the principle of establishing a basis of equality in relation to the provision of services.

23. The second instance is where an individual or organisation thinks an authority should have published a plan but has not, or where the authority has failed to publish a plan within the required time scale. A complaint can also be made to the Ombudsman if there has been a failure on the part of the authority to implement the plan correctly or on time.

24. A complaint can be made to the Ombudsman about a failure to meet the obligations imposed by the Bill. For example, a failure to prepare a plan properly, publish it or implement it within time scales are matters that can be investigated by the Ombudsman. The Ombudsman can only investigate a matter if a member of the public claims to have sustained an injustice or hardship in consequence of the action or inaction of a public body. The report of an investigation by the Ombudsman will be laid before the Scottish Parliament and any failing public body will therefore be “named and shamed”.

25. There are no financial or similar sanctions placed on public bodies who fail to meet the requirements placed upon them. It is considered that a public record of their failure would be an adequate sanction.

IMPLEMENTATION

26. The Bill will come into force the day after the date of Royal Assent in relation to those areas of the Bill that are covered initially. The public bodies affected by the Bill in the first instance will have two years to prepare, publish and implement their Plan. A period of two years is considered sufficient for the public bodies in question to prepare, consult and publish their plans.

CONSULTATION

27. The Member issued a consultation paper to seek the views of interested parties. The responses to this consultation helped to develop the policy in advance of preparing a draft Bill. The main areas consulted on included whether or not it was appropriate to lay a duty on Scottish
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public bodies to prepare, publish and implement a plan; which public bodies should this duty be laid upon; and the contents of the plans.

28. Copies of the consultation paper were sent to a wide range of organisations, including public bodies and local authorities. 68 responses were received.

29. From the responses to the consultation it was clear that there were mixed feelings over which bodies should be required to prepare, publish and implement plans. Some respondents believed that a requirement should be placed on all public bodies in Scotland in order to preserve Gaelic. Others commented that it would be time consuming and wasteful to impose a duty on public bodies in areas where there were no historical or cultural links to Gaelic. The Bill attempts to address these issues by placing a duty at this stage only on public bodies who exercise functions in areas where there are historical or cultural links with Gaelic. The areas specified for initial commencement are those currently covered by Highlands and Islands Enterprise.

30. Most of the respondents agreed that if there was a requirement to produce a plan then consultation was essential. The responses indicated that the type and level of consultation may be different for each body depending on their remit and needs. To reflect this, the Bill requires that each public body consult with those persons it believes to have an interest in the plan, leaving the more detailed aspects of the consultation to the discretion of the public body.

31. There were mixed views on whether or not the contents of the plan should be prescribed in the Bill. Some respondents felt the contents of the plan should be standardised and prescribed in the Bill while some thought a standard format with suggested headings would be sufficient. Others felt that a flexible approach towards the contents of the plan was required and that while certain specified criteria would be useful, the detail of the plan was a matter for individual public bodies. In response to these views, the schedule to the Bill prescribes minimum details of what every plan must contain. These details focus on the provision of information, for example details of how responses to enquiries will be handled, details of translation services available, details of materials that will be made available and the contact details of a senior officer designated as a contact for Gaelic enquiries. Bodies are free to add additional details they consider appropriate for their areas.

32. There were comments about the time that should be given to publish the first plan. Most respondents believed that between eighteen months and three years was appropriate. The member agrees that to reflect any problems concerning the availability of qualified Gaelic staff and to allow time for a thorough consultation period the first plan should be published two years after the Bill comes into force in respect of the public body.

33. There were strong views expressed that it would not be appropriate to follow the example in Wales and create a new public body to oversee the provisions of the Gaelic Language (Scotland) Bill. Reasons given included the additional cost to the taxpayer and additional bureaucracy. The member is in agreement with this and therefore the Bill makes use of the powers of the Scottish Public Services Ombudsman. Indications were also given that it would not be appropriate to apply sanctions and that in certain cases they may actually be counterproductive. The Bill has no financial sanctions, but as any failure by the public body will
be reported by the Ombudsman to the Scottish Parliament there is a sanction of expressed concern.

34. In addition the Scottish Executive are in the process of establishing a Gaelic Development Agency, Bord Gaidhlig na h-Alba (the Board for Gaelic in Scotland). The establishment of this Board is one of the main recommendations of the Report by the Ministerial Advisory Group on Gaelic (see paragraph 43). The remit of the Board will be to promote Gaelic nationally and internationally, to be responsible for the strategic overview of Gaelic and to co-ordinate and fund the activities of the various Gaelic organisations. The Board’s remit does not cover investigation of failures, and to provide such an additional task could divert resources and attention from their principal purpose. This is particularly so when a body (i.e. the Ombudsman) already exists containing the skills required to undertake this task

**ALTERNATIVE APPROACHES**

35. There were three alternative approaches considered by the Member.

*Welsh Language Act 1993*

36. The first approach was to replicate the provisions of the Welsh Language Act 1993. The 1993 Act established the Welsh Language Board to promote and facilitate the use of the Welsh language. The Board also has a remit which includes providing advice to the Secretary of State on matters concerning the Welsh language, giving notice to public bodies that they must produce a scheme (plan) and to issue guidelines as to the form and content of these schemes and to approve the schemes. The Welsh Language Board also have responsibility for investigating complaints from people who have been directly affected by a failure of a public bodies to follow schemes.

37. This Bill does not attempt to replicate the Welsh position by creating a Gaelic Language Board. Instead it seeks to take advantage of recent legislation passed by the Scottish Parliament by enabling complaints about the preparation, publication and implementation of Gaelic Language Plans to be investigated by the Scottish Public Services Ombudsman, as established by the Scottish Public Services Ombudsman Act 2002.

38. The 1993 Act seeks to give effect to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on a basis of equality. This Bill has adopted this principle to provide a basis of equality between the Gaelic and English languages.

*Provisions of the Bill to apply to the whole of Scotland*

39. The second approach that was considered was immediately to apply the provisions of the Bill to the whole of Scotland. In effect that this would mean that every public body that was liable to be investigated by the Scottish Public Services Ombudsman (subject to the exceptions mentioned at paragraph 12) would be required to prepare, publish and implement a Gaelic Language Plan.

40. The Member did not consider that this approach was appropriate, as it would place a duty on public bodies who exercise functions in areas where Gaelic has no historic roots, and where
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public concern and interest was present at a lower level than in the initial areas to which the Bill applies.

41. The Bill places this requirement only on public bodies that exercise functions in areas where there is a history, demand or interest in Gaelic. These areas are outlined in paragraph 14 above. The Scottish Ministers are given a power to extend the requirement to other areas in the future, or indeed to the whole of Scotland.

42. It is also recognised that at present there are a limited number of people fluent in Gaelic who would be able to carry out the work that is required by the Bill. By ensuring this is a phased process it provides time for people to be taught and become fluent in Gaelic.

A Fresh Start for Gaelic: Report by the Ministerial Advisory Group on Gaelic

43. The third approach that was considered by the Member was to adopt in full the recommendations of the above report. One of the key recommendations in this report was to bring forward a Gaelic Language Act that ensured the secure status of Gaelic. Securing the status of Gaelic would mean guaranteeing a place for Gaelic, by statute, in the areas of education, broadcasting, local government and the working practices of the Parliament. While the member believes this is important for the future of the Gaelic language, he considered that the scope of the work involved would be too great to be provided for adequately by a Member’s Bill.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC

44. The Bill does not affect sustainable development.

45. The only ECHR issues which appear to be of any relevance are the “right to respect for private and family life” in so far as that relates to correspondence (article 8) and “freedom of expression” (article 10). Article 8 provides a right to respect for correspondence. The focus of this aspect of the right is to protect against interference. The Bill does not provide for any interference. Article 10 provides for the freedom to impart and received information without interference by a public authority. The Bill requires bodies to publish and implement plans that will set out the way in which they will communicate and provide information in Gaelic. The Bill does not impose a duty on the body to communicate with a person in Gaelic or prevent it from doing so and the Bill does not amount to an interference by a public authority with the person’s right. It is therefore considered that the Bill is compatible with ECHR.

46. The Bill will have no adverse impact on equal opportunities. The Bill seeks to promote the use of the Gaelic language it does not address the issue of discrimination between Gaelic and non-Gaelic speakers. As mentioned above it does not require a body to communicate in Gaelic, it only provides for bodies to indicate in their plan how they will respond to enquiries in Gaelic.

Island communities

47. There is limited effect on island communities. The Bill does not initially apply to Orkney and Shetland. However it does apply to islands such as the Western Isles, Arran, Cumbrae and
Little Cumbrae. Any public bodies exercising functions in these areas will be required to publish and implement a plan.

**Local government**

48. There will limited effects on local government. The Bill will only initially apply to the four local authorities in the “relevant area”, namely Argyll & Bute Council, Comhairle nan Eilean Siar, Highland Council and North Ayrshire Council. These four local authorities will be required to publish and implement a plan within two years of Royal Assent.
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GAELIC LANGUAGE (SCOTLAND) BILL

POLICY MEMORANDUM

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