This document relates to the Gaelic Language (Scotland) Bill (SP Bill 25) as introduced in the Scottish Parliament on 27 September 2004

GAELIC LANGUAGE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Gaelic Language (Scotland) Bill introduced in the Scottish Parliament on 27 September 2004. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 25–EN.

POLICY OBJECTIVES OF THE BILL

2. This Bill introduces a number of measures to underpin the Executive’s policy objective of securing the status of the Gaelic language in Scotland. The Executive is committed to arresting the decline in the use of the Gaelic language, to revitalizing it, and to enabling it to thrive into the future. It is expected that the measures in this Bill, in conjunction with existing Executive, local authority and public body action in the areas of Gaelic arts, education and development will contribute to creating conditions where the language will be passed on within families, promoted by schools, widely used in communities and valued by learners.

3. The main provisions of the Bill are:
   • the establishment of the Gaelic development body, Bòrd na Gàidhlig, on a statutory basis to oversee the development of the language;
   • a requirement that the Bòrd exercise its functions with the aim of securing the status of the Gaelic language as an official language of Scotland;
   • the introduction of a national Gaelic language plan to promote the use of the Gaelic language;
   • the preparation of Gaelic language plans by public authorities, where appropriate, to encourage and facilitate the use of the language in public life; and
   • the introduction of a Gaelic education advisory role for Bòrd na Gàidhlig.

4. The measures set out in this Bill are in recognition of the situation facing Gaelic. The language is in a fragile condition and without official action its survival is in doubt. The 1981 Census recorded around 82,000 people in Scotland able to speak, read or write Gaelic. By 1991, this figure had fallen by just over 13,000 to 69,510. The Census from 2001 indicated that there were 58,652 people able to speak Gaelic, 65,674 able to speak, read or write Gaelic and 92,396 able to speak, read, write or understand Gaelic. A comparison with the census figures from 1891
shows the extent of the decline over the last 100 years, with over 254,415 Gaelic speakers recorded in 1891.

5. The majority of Gaelic speakers reside in the Comhairle Nan Eilean Siar, Highland and Argyll & Bute council areas. There are large pockets, relative to the overall number of Gaelic speakers, in Edinburgh and Glasgow. Small numbers of Gaelic speakers are spread throughout all other local authority areas.

6. Language legislation is not uncommon. From Wales to New Zealand it is an established and proven method of protecting and supporting minority languages. The Bill addresses the longstanding demand of the Gaelic community for specific Gaelic language legislation. In 1997, Comunn na Gàidhlig submitted a report to the Scottish Office recommending various measures to secure the status of Gaelic, including similar recognition for Gaelic to that given to Welsh by the Welsh Language Act 1993. Between 1999 and 2002 the Executive commissioned two reports on Gaelic, the Macpherson Report (http://www.scotland.gov.uk/library3/heritage/gtfr-00.asp) and then the Meek Report, which recommended the bringing forward of a Gaelic Language Act to give effect to the proposal to secure the status of Gaelic.

7. The Bill also contributes to the implementation of European Charter for Regional or Minority Languages undertakings which apply to the Gaelic language. The Charter was drawn up in 1992 by the Council of Europe to help protect and promote Europe’s lesser used languages. The UK Government signed the Charter in 2000 and has ratified it in respect of the UK’s indigenous languages, including Gaelic. The Executive agrees with the Council of Europe that action is needed on behalf of regional and minority languages in order to protect and promote such languages as a threatened aspect of Europe’s heritage.

8. The Bill also builds on work undertaken by Parliament during last session. The Education, Culture and Sport Committee report on a Member’s Gaelic Language (Scotland) Bill at Stage 1 supported its general principles, while noting that as an non-Executive Bill it had limitations and that specific provisions should be re-examined.

CONSULTATION

9. The Executive published a Draft Gaelic Language Bill for consultation on 10 October 2003 at the 100th Royal National Mod, seeking comments from those bodies which would be affected by the Bill and from any other interested parties. In addition to a wide distribution, copies of the consultation document were made available on request and the document was published on the Scottish Executive website. The consultation period ran for 12 weeks, closing in January 2004. Late submissions were accepted and in total the exceptional number of 3,400 responses were received (this figure includes participants at a number of public meetings arranged by Bòrd na Gàidhlig and a postcard campaign arranged by Clì Gàidhlig).

10. All responses not marked as confidential have been made publicly available online at http://www.scotland.gov.uk/gaelicbill and in hard copy in the Scottish Executive library. In addition, an independent analysis of submissions was commissioned and brought to the attention of stakeholders and interested parties. This analysis is also available on the Executive website.
11. The vast majority of respondents agreed with the Executive’s decision to bring forward Gaelic language legislation. Within that general support there were conflicting views on whether specific provisions of the Bill should be strengthened. The view of the Gaelic community (which constituted the overwhelming majority of consultation responses) was that the Bill should be strengthened to provide for equality of status between the Gaelic and English languages; greater powers to Bòrd na Gàidhlig to direct the development of language plans; an enforceable national Gaelic language plan; and a right of access to Gaelic medium education.

12. Some public authorities, by contrast, stressed the need for the Bill to be flexible enough to take into account the varied use of the Gaelic language across Scotland and suggested that it would be inappropriate in some areas of the country for there to be a Gaelic language planning burden at all. Some respondents also raised matters, such as Gaelic broadcasting, which are reserved and therefore not competent to be addressed in this Bill.

13. The views expressed during consultation have been considered carefully by the Scottish Ministers and revisions have been made to the draft Bill where it has been considered appropriate to do so. In particular, the method of selecting which public bodies should produce a Gaelic Language Plan has been revised and provision has been introduced to strengthen the delivery of Gaelic education. Specific changes are detailed throughout this memorandum.

14. The Bill’s provisions apply to the whole of Scotland in recognition of the fact that the Gaelic language is a language of all of Scotland and that Gaelic speakers are spread throughout the country. One of the main criticisms of the Member’s Bill of last session was that it geographically limited the scope of the Bill to certain areas of the country. At the same time, however, the Bill has been drafted to ensure that its application is flexible enough to take account of the specific circumstances of different areas of Scotland and the different spheres of operation within which public bodies work. It is the Executive’s view that an appropriate balance requires to be struck between responding to the needs of the Gaelic community and ensuring that a Gaelic language burden is not introduced where there is no demand for it.

15. Although much needs to be done to reverse the decline in the use of the Gaelic language, it is the Executive’s view that legislation for Gaelic in Scotland has to start with the situation that currently exists. For this reason, it is not considered feasible or appropriate to include measures in the Bill which could result in any public authority anywhere in Scotland being placed under a legal duty to offer services in Gaelic on demand. Bilingual provision can be found in other jurisdictions where a different minority language situation prevails and has been the inspiration behind many consultation responses. It is the Executive’s view that it would be irresponsible to include measures in a Bill which were not capable of delivery.

**BÒRD NA GÀIDHĽIG**

*Policy objectives*

16. Section 1 (and schedule 1) provides for the establishment of a body to be known as Bòrd na Gàidhlig and sets out the powers and functions of that authority. The section is broadly the same as that in the consultation draft of the Bill.
17. Two recent advisory reports to Ministers (the MacPherson and Meek reports mentioned previously) recommended the creation of a strategic unit to oversee the development of the Gaelic language. Those reports demonstrated how a perceived national planning void had led to a situation where Gaelic development activity was arguably no longer efficient, focused or prioritised, and which gave rise to perceptions of duplication.

18. It is intended that Bòrd na Gàidhlig will bring focus and cohesion to Gaelic development activity and will become the recognised expert authority on Gaelic language issues. In particular, it will be expected to:
   - promote, and facilitate the promotion of, the Gaelic language;
   - develop a national Gaelic language plan;
   - advise Ministers and public authorities on matters relating to the Gaelic language;
   - provide advice to public authorities on the development of Gaelic language plans and to others on Gaelic language matters generally; and
   - develop guidance on Gaelic education and the development of Gaelic-medium education under the Standards in Scotland’s Schools etc 2000 Act.

19. These functions are to be exercised with a view to securing the status of the Gaelic language as an official language of Scotland. Secure status was the key aspiration of the Comunn na Gàidhlig draft brief for a Gaelic Language Act. ‘Official’ is descriptive of the status of the language rather than a principle which confers rights to usage.

20. Bòrd na Gàidhlig already exists on a non-statutory basis and is responsible for distributing Scottish Executive Gaelic development funds. Section 1 of the Bill will formalise the Bòrd’s structures and provide the security of a statutory remit.

21. Before the establishment of Bòrd na Gàidhlig the Executive was largely responsible for distributing funding to Gaelic groups and setting policy. It was felt by some that this situation did not give due weight to the concerns or priorities of Gaelic groups and lacked adequate strategic direction.

22. Appointments to Bòrd na Gàidhlig will be governed by guidance on public appointments issued by the Office of the Commissioner for Public Appointments in Scotland.

Consultation
23. The proposal to establish Bòrd na Gàidhlig in statute with the powers and functions set out in the Bill was generally welcomed.

24. Some issues of concern were raised:
   - appointments to Bòrd na Gàidhlig need to be transparent;
   - Bòrd na Gàidhlig should be given greater powers of control over the actions of other public authorities;
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- the Executive needs to resource properly Bòrd na Gàidhlig to enable it to carry out its functions; and
- the Executive should remain ultimately responsible for the future security of the Gaelic language.

25. Bòrd na Gàidhlig welcomed the proposal to establish the Bòrd in statute, but requested that its powers, obligations and resources be strengthened and clarified. At the request of the Bòrd, the functions of the Bòrd have been amended to make clear that they apply to written and spoken Gaelic. The Bòrd’s request that it be able to advise private and voluntary bodies as well as public bodies if they seek that advice has also been taken into account. Bòrd na Gàidhlig funding is dealt with in detail in the Financial Memorandum.

Alternative approaches

26. The alternative approach to establishing Bòrd na Gàidhlig in statute is for it to continue in its present non-statutory role. Scottish Executive policy is that where a public body is to have executive, administrative, commercial or regulatory functions, legislation should normally be enacted to establish it. Bòrd na Gàidhlig will be active in all of these areas and requires legislative underpinning to carry out the functions set out in this Bill. Creating Bòrd na Gàidhlig in statute also provides the Gaelic community with the added security of a Gaelic development agency which is an integral part of the government of Scotland and with the clearly defined role of advising the Scottish Ministers on Gaelic issues.

NATIONAL GAELIC LANGUAGE PLAN

Policy objectives

27. Section 2, which is broadly the same as that in the consultation draft of the Bill, requires Bòrd na Gàidhlig to prepare a national Gaelic language plan.

28. The purpose of the national plan is to provide an agreed and considered approach to Gaelic development which will create the conditions in which the number of Gaelic speakers in Scotland will grow. Gaelic activity takes place across a wide range of sectors, from the arts through to education, and with the development of language plans by public bodies, increasingly so in public life, and Bòrd na Gàidhlig will be expected to prepare a blueprint for development which links these aspects of Gaelic activity together.

29. The national plan will provide an agreed strategic direction, not only for the Scottish Executive and Bòrd na Gàidhlig, but for all Scottish public authorities that have an interest in Gaelic language development. The plan will seek to focus resources from different sources and provide targets for key areas of activity.

Consultation

30. There was general support for the proposal that there should be a National Gaelic Language Plan. Particular issues raised in consultation were:
that there should be time limits within which the Scottish Ministers must agree the national plan submitted by Bòrd na Gàidhlig;

• that the national Gaelic Language plan should be enforceable; and

• that the Scottish Executive should commit funding to support the implementation of the national plan.

31. Bòrd na Gàidhlig requested that a statutory timescale for the approval of the national plan by the Scottish Ministers be introduced. The Bill has been revised to require Ministers to approve the plan submitted to them within 6 months or request a revised plan, and where a revised plan is requested to approve that within 6 months of receipt.

32. Bòrd na Gàidhlig also requested that the Bill should be amended to include provisions creating enforceable duties on the Scottish Ministers and the relevant bodies covered by the legislation to implement the national Gaelic language plan. These measures have not been adopted in the revised Bill for the reasons set out below.

Alternative approaches

33. The main alternative to the approach set out in the draft Bill is to make the national Gaelic language plan enforceable. That is, to place a binding obligation on public authorities to give effect to any goals or aspirations which the Bòrd chooses to include in the national plan. The Executive’s view of the purpose of the national plan is that it is not to create enforceable burdens on all sections of Scottish public life, but instead to develop a holistic approach to Gaelic language development which will guide public authorities in their approach to the language. A consensual approach is the Executive’s preferred means for the Bòrd to carry out its functions. The Executive considers that such an approach is in the long-term interests of the Gaelic language.

GAELIC LANGUAGE PLANS

Policy objectives: general

34. One of the key aspects in normalising the use of the Gaelic language is in creating conditions for its use in public life. The creation of language plans by public authorities draws on the experience of the Welsh Language Act and would require public bodies, in consultation with Bòrd na Gàidhlig, to consider what services they could provide in the Gaelic language. One of Bòrd na Gàidhlig’s key targets will be to increase the number of Gaelic speakers in Scotland and an essential accompaniment to that will be the development of Gaelic language plans by certain public authorities, encouraging and stimulating opportunities for the use of Gaelic and raising the confidence of speakers and learners.

35. The Executive recognises that what might be appropriate for language plans in areas of the country with high numbers of Gaelic speakers might not be appropriate in others. The language planning provisions of the Bill are therefore drafted to provide for a wide degree of flexibility in determining which authorities should produce plans and what the content of their plans should be.
Selection of public bodies

Policy objectives

36. Section 3 provides that Bòrd na Gàidhlig may issue a notice requiring a public body to submit a draft plan within a specified period of time. A public body in receipt of a notice may appeal to Ministers against having to comply with the notice at all or against the timescale for submission. This provision is different from that set out in the consultation draft of the Bill, which required all public bodies in Scotland to consider the need for a Gaelic language plan.

37. The Executive recognises that there may be limited demand for Gaelic language service provision in some parts of the country. This section therefore ensures that the language planning mechanism will be activated only when Bòrd na Gàidhlig considers there is merit, having taken account of any representations made to it and to the number of speakers within a public authority’s sphere of operation, in requesting that a language plan be prepared. In addition to providing for considerable flexibility of application, the provision also enables Bòrd na Gàidhlig to target its resources on priority areas of Gaelic language development.

38. In consultation there were requests for particular measures, such as a right to use Gaelic in the courts and a right to Gaelic medium education, to feature on the face of the Bill. The Executive considers that such measures should feature in the language plans of the appropriate public authorities rather than be included as distinct sections of the Bill. This will ensure that the provision can be fully defined and applied to areas of the country where there is demand for the provision.

Consultation

39. A variety of, and sometimes conflicting, views were expressed on the method by which it should be determined which public bodies should produce Gaelic language plans, such as:

- that it should be a statutory requirement on all public authorities in Scotland to produce a Gaelic language plan;
- that Bòrd na Gàidhlig should have the central role in determining which public bodies should produce Gaelic language plans; or
- that the Bill should be flexible enough to take into account the limited use of the Gaelic language in certain areas of the country.

40. Bòrd na Gàidhlig considered that the provisions of the draft Bill should be strengthened as they might conceivably result in no public bodies deciding to produce Gaelic plans. The Bòrd was also concerned, at the opposite extreme, that if all public authorities had to consider the need for a plan the Bòrd could potentially be deluged with requests for advice on language planning which it would not be resourced to deal with. The Bòrd’s preferred approach was to be given authority to request a plan from individual public bodies at the time of its choosing. The Bill has been revised in line with these comments, with a safeguard built in for public authorities in the form of a right of appeal to Ministers in the event that they consider that they have been unreasonably asked to produce a plan.
Alternative approaches

41. The main alternative to the approach set out in the Bill is for all public authorities in Scotland to be required to produce a Gaelic language plan. The view was expressed in consultation that as the Gaelic Language (Scotland) Bill will apply Scotland-wide, and because there are Gaelic speakers in most areas of Scotland, all public authorities should be required to prepare Gaelic language plans. The Executive agrees that the language planning requirement should be national, but it is not persuaded that requiring all public bodies to produce a plan is an efficient or appropriate approach given the widely varying use of the language across Scotland. The Executive also has concerns, as expressed by Bòrd na Gàidhlig among others, that requiring all bodies to produce a plan could place a considerable strain on the Bòrd’s resources.

Content of language plans

Policy objectives

42. Section 3 also provides that where a public body is issued with a notice to submit a Gaelic language plan to Bòrd na Gàidhlig it shall consider any guidelines issued by Bòrd na Gàidhlig or the Scottish Ministers when preparing this plan, and shall take account of the number of Gaelic speakers in its area and any representations made to it.

43. Section 5 gives Bòrd na Gàidhlig authority to approve the content of individual plans. Where agreement cannot be reached between Bòrd na Gàidhlig and public authorities about what is appropriate for an individual plan, the matter will be referred to the Scottish Ministers for adjudication. The main difference with the consultation draft of the Bill is the authority given to Bòrd na Gàidhlig to approve the content of language plans. Section 7 provides for the review of Gaelic language plans on a 5 yearly basis. The approval process for a reviewed plan is the same as that for the first plan prepared by a public authority.

44. Gaelic language plans will describe what services public authorities will provide in the Gaelic language and how they will promote the language in their area of operation. The form and content of language plans are not prescribed in detail in the Bill. Individual bodies will therefore have considerable discretion to produce a plan, in consultation with Bòrd na Gàidhlig, appropriate for their situation. The types of issue which public bodies are likely to have to consider when developing their plans are addressed in detail in the financial memorandum.

Consultation

45. Some respondents to consultation suggested:

- that there should be a schedule of minimum content in line with the Member’s Bill of last Session;
- that Bòrd na Gàidhlig should be able to determine the content of individual language plans; and
- that the plans should be developed to give effect to the principle that there is equality of status or equal validity between the Gaelic and English languages.
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46. Bòrd na Gàidhlig took the view that it should be given a role in determining the final content of language plans to ensure that they were consistent with guidelines issued by the Bòrd. The Bòrd’s view has been taken into account in the revised Bill, with a safeguard built in for public authorities in the form of a right of appeal to Ministers in the event that they disagree with the Bòrd.

47. The Bòrd also considered that the Executive should give consideration to following the example in the Welsh Language Act and provide for the principle of equal validity between the Gaelic and English languages to be given effect in the preparation of language plans. The Executive has been unable to develop this principle as the Bòrd would have wished, for the reasons set out below.

Alternative approaches

48. There are two main alternative approaches to that set out in the Bill.

49. It would be possible to provide in a schedule to the Bill the minimum content which all language plans should contain. The Executive’s approach to language planning in the Bill is to create an instrument which is flexible enough to take account of the differing use of Gaelic across Scotland. In that spirit it is to be expected that the language plans produced by, for example, Comhairle nan Eilean Siar and an area with a relatively low number of Gaelic speakers, might vary significantly. The Executive’s view, therefore, is that the best approach to the issue is to require individual public authorities to work with Bòrd na Gàidhlig to determine what is the appropriate content of their language plan in their particular circumstances. It is considered that producing a schedule of minimum content which would be appropriate for all public authorities which could potentially be asked to produce a language plan would be so basic as to render it of little value.

50. It would be possible to provide for language plans to be developed to give effect to the principle that there is a basis of equality or equal validity between the English and Gaelic languages. The approach adopted in the Welsh Language Act was to require that, so far as appropriate and reasonably practicable in the circumstances, Welsh language schemes should give effect to the principle of equality of status between the Welsh and English languages. Equality of status has been given a narrow definition in that context and public bodies in Wales can be required to prepare plans which provide for bilingual service delivery. Adopting the same principle in this Bill would impact significantly on the flexibility which public authorities could adopt in their development of language plans. The Executive considers that whilst it might be appropriate for the Comhairle nan Eilean Siar plan, for example, to give effect to the principle of equality of status or equal validity, it would be inappropriate to require a body in area with relatively few Gaelic speakers to be required to develop a plan on the same basis. The Executive considers that the most suitable place to give expression to such principles would be in the national plan and the guidance on language planning which Bòrd na Gàidhlig will prepare. This would provide the Bòrd with the opportunity to clearly explain what is intended and expected by the inclusion of such principles, and how they would relate to areas of the country with differing numbers of Gaelic speakers.
Monitoring of implementation

Policy objectives

51. Section 6 is a new section which empowers Bòrd na Gàidhlig to request a report on implementation of a Gaelic language plan from a public authority, and for action to be taken where a public body has failed to implement its plan.

52. In order to ensure that the spirit of the Bill is being adhered to, and that the services set out in language plans are being provided, Bòrd na Gàidhlig will be able to request a monitoring report on the implementation of an authority’s language plan. This provision also enables Bòrd na Gàidhlig to collect evidence of service delivery and demand, which will help inform its development of the national Gaelic language plan and the advice it gives to the Scottish Ministers and public authorities on Gaelic language issues.

53. Having received a report on implementation from a public body Bòrd na Gàidhlig may then report its views to Ministers if it considers that a Gaelic language plan is not being fully implemented. The Scottish Ministers must then draw to the attention of Parliament Bòrd na Gàidhlig’s report or issue a direction which requires the public authority to implement all or parts of its plan.

Consultation

54. Comments about implementation from consultation included:
   • that Bòrd na Gàidhlig needed additional powers of enforcement over public authorities;
   • that Bòrd na Gàidhlig lacked the resources to enforce its powers; and
   • enforcement on public bodies could create an anti-Gaelic backlash.

55. Bòrd na Gàidhlig considered that a weakness of the consultation draft of the Bill was the lack of enforcement measures.

Alternative approaches

56. It would be possible to proceed without a formal implementation regime in the Bill. Public authorities would simply be required to follow their statutory obligation to implement the measures set out in their language plans. The Executive considers that there is merit in introducing an implementation regime to enable Bòrd na Gàidhlig to establish what the practical effects of a public authority’s language plan have been. Not only will this enable Bòrd na Gàidhlig to determine whether a public authority is acting in good faith and implementing its plan, it will also provide a source of information which will inform the procedure for revising plans after they have been in place for 5 years and for illustrating sources of good practice.
GAELIC EDUCATION

Policy objectives

57. Gaelic medium education is widely held to be the key to the future of the Gaelic language. The Scottish Executive subscribes to this point of view.

58. The Executive supports the provision, and development of provision, of Gaelic medium education through a scheme of specific grants. Education authorities are able to bid to the Executive on a 75%-25% basis for grant to develop Gaelic medium education. Specific grant amounts to £3.434 million in 2005-06.

59. The provision of Gaelic medium education, which is a responsibility of individual education authorities, is primarily regulated by two pieces of legislation. The Education (Scotland) Act 1980 specifies that ‘school education’ includes ‘the teaching of Gaelic in Gaelic-speaking areas’. The Executive took the opportunity to legislate for Gaelic in its first education Bill following devolution. The Standards in Scotland’s Schools etc. Act 2000 places a duty on authorities to publish an annual statement of improvement objectives. Among other things, the 2000 Act requires that an education authority’s annual statement of education improvement objectives shall include reference to Gaelic education in the following terms – ‘The annual statement of education improvement objectives shall include an account of (i) the ways in which; or (ii) the circumstances in which, they will provide Gaelic-medium education, and where they do provide Gaelic-medium education, of the ways in which they will seek to develop their provision of such education.’

60. The Minister for Education and Young People is minded to issue guidance under the 2000 Act in relation to Gaelic-medium education, to:
   • ensure the continued growth and improvement in provision of Gaelic medium education in Scotland;
   • bring consistency to and set a minimum standard for local authority reporting on Gaelic medium education provision and plans for development;
   • provide reassurance to parents that there is a national approach in place to support the continued provision and development of Gaelic education in Scotland; and
   • establish locally determined entitlement to Gaelic medium education.

61. Section 9 of the Bill introduces a formal role for Bòrd na Gàidhlig to issue guidance on Gaelic education generally and Gaelic medium education in particular and the Executive intends that, with the establishment of this role, Bòrd na Gàidhlig will take ownership of any guidance which Ministers may issue before this Act comes into effect.

Consultation

62. Education was one of the main topics raised in consultation responses. In particular, there were calls for:
   • Gaelic medium education to be available to all who want it as a right; or
• Gaelic medium education to be available to all who want it, where reasonable demand is demonstrated.

**Alternative approaches**

63. The main alternative to the approach adopted, and the main focus of consultation responses, would be to legislate in statute for a right of access to Gaelic medium education.

64. A significant majority of consultation responses called for the Executive to introduce Gaelic education provision to the Bill and in particular to provide for a right of access to Gaelic medium education. There was, however, limited consideration of the form which that right might take. There was, for example, no consensus as to whether such a right should apply at pre-school, primary school, secondary school or further and higher education, or to all levels of education. There was also no clear articulation as to whether a right of access should be at individual school level, cluster level or at local authority level. There is also the issue of whether such a right could be satisfied by delivery by electronic means.

65. The Executive considers that setting out a right to Gaelic medium education which will deliver what the Gaelic community desires is not straightforward. For example, if education authorities were under a statutory obligation simply to provide Gaelic medium education, that could be satisfied by transporting children to one school in that education authority area for delivery, or by providing the delivery solely by electronic means. It is unlikely that this is the outcome which the Gaelic community seeks. The Executive’s preferred approach to the issue is to work through provision which already exists in the 2000 Act to ensure that there is continued growth in Gaelic medium education provision and that, where there is demand for provision, local authorities should be required to react positively to this. It is for this reason that the Minister for Education and Young People is minded to issue guidance under the 2000 Act to ensure a more consistent approach to the delivery and development of Gaelic medium education across Scotland.

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

**Equal opportunities**

66. The Executive considers that the Bill does not have an adverse impact on the basis of gender, race, disability, marital status, religion or sexual orientation.

67. The Commission for Racial Equality in its submission on the draft Bill raised concerns that, unless the Executive adopted an inclusive approach to all of Scotland’s languages, there was potential for the development of a two-tier system which would not meet the needs of all Scotland’s people, and have a detrimental effect on race equality in Scotland. The Executive is committed to developing a holistic language strategy which will address the needs of all of Scotland’s languages, including Scots, community languages and British Sign Language. Work on that languages strategy is being taken forward separately from this Bill. The Executive considers that without the specific action set out in this Bill the survival of the Gaelic language will be in serious doubt and is therefore following the example set in other countries in taking steps to secure the status of one of its languages.
68. The Scottish Executive and Scottish public authorities have a particular responsibility to Gaelic. Equal opportunities are central to this Bill and the Executive is seeking to introduce a Bill to ensure a measure of equality for Gaelic speakers. Many have argued that the fragile condition of Gaelic in Scotland has resulted from an extended period of institutional neglect and exclusion from public life. This Bill will seek to redress this.

69. The Bill seeks to create opportunities for the use of Gaelic in public life and not to restrict or deny the provision of services by public bodies to any social groups who might receive or hope to receive service delivery in another language. The Executive view is that a Bill requiring public bodies to develop and implement Gaelic language schemes would not prevent or impede such bodies from developing schemes or other policies that relate to other languages, if they so chose.

**Human rights**

70. The Bill does not give rise to any issues under the European Convention on Human Rights.

**Island communities**

71. This Bill carries the potential of having an important impact on the outer and inner Hebridean islands. In many of these islands there are significant percentages of Gaelic speakers and much of the pressure for greater recognition and support for Gaelic has originated from these islands. This Bill will, therefore, have an important impact both in terms of the confidence that would result from the recognition given to the distinctive language and culture of the islands and also in employment opportunities, either directly or indirectly related to the Bill. The Bill also carries the potential for creating employment opportunities for Gaelic speaking staff and also for expanding the need for support services such as translation and Gaelic courses, both of which are well established in the Hebridean islands.

72. The Northern Islands do not share with the Hebridean islands a Gaelic tradition and consequently there is very little evidence of Gaelic spoken in the Northern Islands. During the consultation period on the Bill, responses were received which made this point and these have been taken into account in the drafting of the present Bill.

**Local government**

73. The Bill will impact on local authorities when they are requested to produce a Gaelic language plan, or where they provide Gaelic-medium education. The language planning provision will raise new expectations for some local authorities and the potential impact of this is set out in detail in the Financial Memorandum. The financial implications will vary across local authorities dependent on the Gaelic language provision which they make available.

**Sustainable development**

74. The Bill will have no impact on sustainable development.
GAELIC LANGUAGE (SCOTLAND) BILL

POLICY MEMORANDUM


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