

GAELIC LANGUAGE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

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

*These notes relate to the Gaelic Language (Scotland) Act
2005 (asp 7) which received Royal Assent on 1 June 2005*

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.