

EXPLANATORY MEMORANDUM TO
THE GAELIC LANGUAGE (SCOTLAND) ACT 2005 (CONSEQUENTIAL
MODIFICATIONS) ORDER 2006

2006 No. 241

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order makes modifications as a consequence of the Gaelic Language (Scotland) Act 2005 (“the 2005 Act”). The 2005 Act creates a new statutory body, *Bòrd na Gàidhlig* (“the new *Bòrd*”) which is intended to replace *Bòrd Gàidhlig na h-Alba* (the Gaelic Development Agency) (“the existing *Bòrd*”). This order amends section 183A of the Broadcasting Act 1990 (“the 1990 Act”) to insert reference to the new *Bòrd* and remove references to the existing *Bòrd*.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998. The instrument is, by virtue of section 115 of, and Schedule 7 to, that Act, subject to Type C procedure, and is subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the Scotland Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament.

3.2 The existing *Bòrd* has powers under section 183A of the 1990 Act. The existing *Bòrd* will be wound-up following commencement of the 2005 Act and it is intended that the new *Bòrd* will operate the powers. Section 183A also contains other references to the existing *Bòrd* which will become redundant when it is wound-up. It is necessary as a consequence of the 2005 Act to insert reference to the new *Bòrd*, in section 183A of the 1990 Act, and to remove the references to the existing *Bòrd*. The Order is amending reserved law on a UK basis.

4. Legislative Background

4.1 The 2005 Act was introduced to the Scottish Parliament 27th September 2004, and received Royal Assent on June 1st 2005. It is expected that the provisions of the 2005 Act will come into force in February 2006 (with this Order timed to take effect after commencement of the 2005 Act).

4.2 The 2005 Act establishes the new *Bòrd* on a statutory basis. Its aims are to promote the use and understanding of the Gaelic language, and to advise the Scottish Ministers and other bodies and persons on matters relating to the Gaelic language, culture and education. The 2005 Act requires the new *Bòrd* to develop a national Gaelic language plan, and makes

provision for the new *Bòrd* to require Scottish public authorities, the Scottish Parliamentary Corporate Body and cross-border public authorities, in relation to their functions exercisable in or as regards Scotland, to prepare and implement plans which will set out how they will use the Gaelic language in the exercise of their functions.

4.3 The existing *Bòrd* has power under section 183A of the 1990 Act to nominate a member to be appointed to the Gaelic Media Service. The existing *Bòrd* will be wound-up following commencement of the 2005 Act, and it is intended the power under the 1990 Act should be operated by the new *Bòrd*. To this end, article 2(2) and (3) amend section 183A of the 1990 Act to effect the transfer of the power to the new *Bòrd*. Article 2(4) also removes other references in that section to the existing *Bòrd* which will become redundant on the winding-up of the existing *Bòrd*.

5. Extent

The order has UK extent.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of Gaelic Language Act 2005 (Consequential Modifications) Order 2006 are compatible with the Convention rights.”

7. Policy background

Bòrd Gàidhlig na h-Alba

7.1 The Ministerial Advisory Group on Gaelic (MAGOG) reported to the Scottish Ministers in 2002 on the steps required to provide secure status for the Gaelic language. One of the key recommendations of the MAGOG report was its identification of the need for a more strategic approach to be taken to Gaelic development activities, and for the Scottish Ministers to establish a body to carry out this function. *Bòrd Gàidhlig na h-Alba* was subsequently established by the Scottish Ministers at the beginning of 2003 as a company limited by guarantee to promote the use of the Gaelic language in Scotland.

Gaelic Language (Scotland) Act 2005

7.2 The Gaelic Language (Scotland) Act 2005 gives effect to the Scottish Executive's commitment in a *Partnership Agreement for a Better Scotland* (PABS) to legislate to secure the status of the Gaelic language in Scotland and establishes the new *Bòrd* to exercise a number of specific functions and to replace the existing *Bòrd*. The existing *Bòrd* will be wound up following commencement of the 2005 Act and its role, functions, staff and assets and liabilities transferred to the new statutory *Bòrd*.

7.3 This legislation, as well as providing a statutory basis to the Scottish Ministers' vehicle for Gaelic development, enables the new *Bòrd* to exercise statutory powers which it could not as a company. In particular, the 2005 Act requires the new *Bòrd* to submit to the Scottish Ministers for approval, at least every 5 years, a national Gaelic language plan. The national Gaelic language plan must include strategies for promoting the use and understanding of the

Gaelic language, and for developing Gaelic education and Gaelic culture. The 2005 Act also enables the new *Bòrd* to request Scottish public authorities, the Scottish Parliamentary Corporate Body and cross-border public authorities to produce local Gaelic language plans for the use of the Gaelic language in line with guidance which the new *Bòrd* will produce. In addition, the 2005 Act confers duties on the new *Bòrd* of advising the Scottish Ministers, public bodies and other persons on matters relating to the Gaelic language, culture and education.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector.

9. Contact

Alasdair Smith at the Scotland Office, e-mail: Alasdair.Smith@Scotland.gsi.gov.uk, can answer any queries regarding the instrument.