

## Chapter Eight

### The role of language legislation in contemporary language policy in Scotland

Wilson McLeod

*University of Edinburgh*

#### Abstract

This article considers the role of language legislation within language policy, focussing on the *Gaelic Language (Scotland) Act 2005* and the pending Scottish Languages Bill. The Act establishes a dedicated agency, Bòrd na Gàidhlig, which is required to prepare a National Gaelic Language Plan and may notify individual public authorities to prepare Gaelic language plans. As implemented, the Act has proved disappointing to many observers, although these shortcomings are not necessarily attributable to the terms of the legislation itself. The article then considers the Scottish Languages Bill recently introduced into the Scottish Parliament, which mainly deals with Gaelic. It notes several areas where it might be clarified or strengthened, including enforcement mechanisms, the role of language standards and the new system of ‘areas of linguistic interest’ to then discuss possible lower-level policy reforms that might accompany the legislation.

**Keywords:** language legislation, language policy, Gaelic

McLeod, Wilson. 2024. ‘The role of language legislation in contemporary language policy in Scotland’. In Christine Elsweler (ed.). *The languages of Scotland and Ulster in a global context, past and present. Selected papers from the 13th triennial Forum for Research on the Languages of Scotland and Ulster, Munich 2021*. Aberdeen: FRLSU, pp. 280–308. ISBN: 978-0-9566549-7-7

## **1 Introduction**

In recent decades, language legislation has become increasingly prominent as a language policy mechanism in different jurisdictions around the world. Since its opening in 1999, the Scottish Parliament has passed two language acts, the *Gaelic Language (Scotland) Act 2005* (the ‘Gaelic Act’) and the *British Sign Language (Scotland) Act 2015*, and a new Scottish Languages Bill, which will address Scots as well as Gaelic, is currently undergoing parliamentary scrutiny (Scottish Parliament 2023a). The Gaelic Act, which serves as the centrepiece for Gaelic development policy in Scotland, has now been in effect for more than fifteen years, sufficiently long to allow for an assessment of its impact, possible flaws and the potential for reform.

This article begins with a discussion of general issues concerning the role of language legislation within language policy and then provides an overview of the structure and mechanisms of the Gaelic Act, followed by consideration of particular issues that have arisen in its implementation, in the wider context of the challenges of current Gaelic development policy more generally. The article then assesses the Scottish Languages Bill, which also makes limited provision for Scots, noting several areas where it might be clarified or strengthened, including enforcement mechanisms, the role of standards, education rights and the new system of ‘areas of linguistic interest’. Irrespective of its final form, implementation of the legislation will depend to a very considerable extent on administrative discretion and political decisions.

## **2 Levels of language policy and the role of language legislation**

Scholars of language policy often conceptualise language policy in terms of actions at the macro-, meso- and micro-levels (e.g., Kaplan and Baldauf 1997). Any comprehensive language revitalisation programme will probably involve interventions at all three levels, and successful programmes will have effective strategic coordination between the various levels.

Other than provisions in national constitutions, language legislation probably represents the most ‘macro’ of macro-level policy instruments. Legislation usually involves the establishment of high-level structures or norms and is typically framed in broad or general terms, in order to be flexible and useful over time. To be successful as a policy instrument, language legislation must be actively implemented through additional and more specific measures at the meso- and micro-level; on its own, legislation may have little practical effect.<sup>1</sup> At the same time, given the inherently prestigious nature of legislation – an official legal enactment on the part of the legislature – provision or even mere recognition for a language may have a symbolic effect that is important in status planning terms, particularly in relation to minoritised languages that have traditionally held low public status.

The leading language policy scholar Colin Williams has noted a ‘legislative turn’ in language policy in recent decades (Williams 2013: 101). In a range of jurisdictions, different kinds of enactments have sought to establish legal frameworks to promote minority languages and secure the rights of their speakers, although these enactments vary considerably in terms of their stringency and ambition. It is notable that in several of these cases, such as Wales,

---

<sup>1</sup> A distinction may be drawn here between primary and secondary legislation (the latter exemplified by statutory instruments, schedules or regulations of different kinds, which may be highly specific and thus more immediately operative).

Ireland and New Zealand, initial legislative measures have been followed by successor enactments that broaden or strengthen the original legislation in order to make them more effective as policy interventions.<sup>2</sup> It is not remarkable, therefore, that new legislation for Gaelic in Scotland, building on the 2005 Act, should be introduced at this juncture.

If language legislation is understood as an important, indeed arguably essential, element in an effective multi-level language policy regime, then advancing proposals for the modification of language legislation does not necessarily mean downplaying the importance of meso- or micro-level policy matters, or diverting attention from such matters. Even so, some critics have challenged the relative importance of language legislation for Gaelic and the extent to which it will bring improved outcomes in terms of actual language acquisition and use (e.g., Wilson 2021). If such benefits are limited, then proposing, designing and campaigning for language legislation can be considered a misallocation of time and energy.

In analysing the impact of language legislation – and contemplating the amendment or reform thereof – it is important to distinguish between problems that are inherent in the legislation itself as opposed to problems that have arisen as a result of discretionary decisions by politicians or administrators in the course of implementing the legislation. The latter may not be directly susceptible to legislative change, or indeed judicial intervention, except to the extent that they remove discretion from the relative executive agents.

In considering reform of a legislative enactment, then, it is necessary to conduct a realistic analysis of the actual experience of implementation of the

---

<sup>2</sup> The *Welsh Language Act 1993* was followed by the *Welsh Language (Wales) Measure 2011*; the *Official Languages Act 2003* by the *Official Languages (Amendment) Act 2021*; and the *Māori Language Act 1987* by the *Te Ture mō Te Reo Māori 2016 / Māori Language Act 2016*.

legislation in question. Will the planned changes really make a difference? What will be the role of precedent or ‘path dependence’ in establishing assumptions in relation to provision for the protected language? In the context of Ireland, for example, John Walsh (2012) has discussed how the culture of the *cúpla focal*, the deeply embedded practice of making limited, tokenistic use of Irish, created an assumption among public bodies that Irish language schemes adopted under the *Official Languages Act 2003* could be modest in their scope.

A distinct and important element in the implementation of language legislation is the role of court decisions that control the operative effect of the legislation by making definitive interpretations of particular provisions. While this aspect has been important in Canada and elsewhere, it is of almost no relevance in the context of legislation for Gaelic and other Celtic languages; there has been almost no litigation that has led to binding judicial interpretations of particular provisions (McLeod 2020: 51).<sup>3</sup> In part this is because, as discussed below, the Gaelic Act does not establish any real rights for Gaelic speakers. Should legislative reform fix clearer rights and obligations, it is possible that litigation might ensue.

### **3 The *Gaelic Language (Scotland) Act 2005*: key provisions and mechanisms**

The Gaelic Act, which was introduced by the Labour/Liberal Democrat government, was passed unanimously by the Scottish Parliament in April 2005. Given that there is by no means any consensus on the appropriate role of Gaelic

---

<sup>3</sup> One exception is *R (on the application of the Welsh Language Commissioner) v National Savings and Investments*, [2014] EWHC 488 (Admin), which involved interpretation of section 21 of the *Welsh Language Act 1993*.

in Scottish public life (McLeod 2020: 44–46, 279–281), this unanimity gives an indication that the legislation is not especially stringent.

Among its main provisions, the Act establishes Bòrd na Gàidhlig as a statutory body, with a number of specified responsibilities but relatively limited powers in terms of investigation and enforcement. It requires the Bòrd to prepare a National Gaelic Language Plan every five years, which plan ‘must include a strategy for promoting [...] (a) the use and understanding of the Gaelic language, and (b) Gaelic education and Gaelic culture’ (s. 2(2)). There have been three National Plans to date, covering the periods 2007–2012, 2012–2017 and 2018–2023 (Bòrd na Gàidhlig 2012 and 2018), and in 2022 the Bòrd conducted a public consultation on the fourth plan, which will cover the period 2023–2028 (Bòrd na Gàidhlig 2022b).

Most importantly, following the model established by the *Welsh Language Act 1993*, section 5 of the Act authorises the Bòrd to issue notices to any Scottish public authority requiring it to prepare a Gaelic language plan:

(5)

A relevant public authority,<sup>4</sup> in preparing a Gaelic language plan, must have regard to –

- (a) the most recent national Gaelic language plan [...]
- (b) the extent to which the persons in relation to whom the authority’s functions are exercisable use the Gaelic language,
- (c) the potential for developing the use of the Gaelic language in connection with the exercise of those functions,
- (d) any representations made to the authority in relation to the use of the Gaelic language in connection with the exercise of those functions, and

---

<sup>4</sup> The term ‘relevant public authority’ is defined in section 10(2) of the Act. Crucially, it does not encompass UK-level public bodies such as departments of the Westminster government.

(e) any guidance given by the Scottish Ministers or the Bòrd.

Importantly, section 10(4) of the Act specifies that ‘the functions of a relevant public authority include (a) functions relating to its internal processes, and (b) the provision by the authority of any services to the public’. As such, Gaelic plans must address internal matters such as training and communications and are not solely concerned with the organisation’s external face.

A particularly important element in this statutory framework is what may be called the ‘sliding scale’ principle, the idea that the level of provision for Gaelic may vary from authority to authority according to the extent that those served by the organisation use Gaelic, as set out in section 5(b). Most obviously, this means that authorities based in communities with a high density of Gaelic speakers are expected to make more extensive provision than those serving communities with few Gaelic speakers (the Western Isles as against the Borders, for example). This flexible approach reflects a compromise between campaigners’ strongly held view that the Act should apply to all of Scotland and recognition that the historical and current presence of Gaelic varies very considerably across different parts of Scotland (McLeod 2020: 249, 255). Although it has no real operational significance, the fact that the Gaelic Act frames Gaelic as a ‘language of Scotland’ (s. 1(3)), i.e., Scotland as a whole, is symbolically important.

Further to section 5(e) of the Gaelic Act, Bòrd na Gàidhlig published its *Guidance on the Development of Gaelic Plans* in 2007 and this remains in effect (Bòrd na Gàidhlig 2007a). Three public consultations on revised versions of the guidance have been conducted (in 2014, 2019 and 2023) and a replacement version is finally expected in 2024 (McLeod 2020: 292–293; Bòrd na Gàidhlig 2023).

The guidance specifies that all public authorities' Gaelic plans should address four core functions: identity, communications, publications and staffing. A key section of the guidance amplifies the 'sliding scale' principle by 'identif[ying] four broad categories of expected Gaelic language provision' (Bòrd na Gàidhlig 2007a: 20). The guidance therefore anticipates strong bilingual policies in areas where the majority of the population can speak Gaelic and much less comprehensive plans in areas with few Gaelic speakers. The strongest set of expectations relates to Gaelic-majority areas (which effectively means only the Western Isles):<sup>5</sup>

For public authorities that operate in areas where persons who understand, speak, read or write Gaelic form a majority of the population, the expectation is that the public authority will work towards, within a reasonable timescale and having regard to its particular circumstances, creating the conditions in which Gaelic can be used across all of its services to the public, and in which any employee who wants to use Gaelic in the execution of their duties can do so. (Bòrd na Gàidhlig 2007a: 20)

In contrast, less would be expected in other areas with lower densities of Gaelic speakers. At the other end of the scale, an authority serving an area

where there are low percentages of Gaelic speakers and where significant Gaelic provision may not be possible, should still endeavour to work towards, within a reasonable timescale and having regard to its particular circumstances, identifying service areas in which some Gaelic provision can be made available, and to identify policy measures which can be taken to assist in the creation of Gaelic language

---

<sup>5</sup> Note that at the 2011 census only 52 per cent of Western Isles residents could speak Gaelic and that the figure may well drop below 50 per cent at the 2022 census (National Records of Scotland 2014: Table QS211SC).



environments, such as schools, community centres and other locally-based institutions and events. (Bòrd na Gàidhlig 2007a: 21)

The Gaelic Act hardly addressed education matters at all, and certainly did not create any enforceable rights in that field (see ss. 1(2), 2(2) and 9). A subsequent enactment, the *Education (Scotland) Act 2016*, introduced a complex mechanism by which education authorities are required to respond to parental requests to assess the need for Gaelic-medium primary education (GMPE). The statutory process involves two stages, a preliminary and a full assessment, and authorities must take a wide range of factors into account, including evidence of demand and the views presented in a public consultation. Crucially, under section 12(7) of the 2016 Act, the authority is required to offer GMPE based on the outcome of the full assessment ‘unless it would be unreasonable to do so’. Bòrd na Gàidhlig characterises the mechanism as ‘creat[ing] an effective entitlement to GMPE’ (Bòrd na Gàidhlig 2017: 20), but this system is much less than a straightforward enforceable right to Gaelic education. To date, the mechanism introduced under the 2016 Act has caused three local authorities to begin offering GMPE (East Renfrewshire, North Ayrshire and Renfrewshire),<sup>6</sup> but only in response to considerable organisational efforts on the part of parents.

#### **4 Problems in the implementation of the Act**

For a range of reasons, as it has been implemented over the last fifteen years, the Act has not brought about the range of positive impacts that its proponents had envisioned. This has caused a significant degree of disappointment or frustration in the Gaelic community (McLeod 2020: 328–329). Some of these suboptimal outcomes can be attributed to specific decisions or strategic choices, although

---

<sup>6</sup> See East Renfrewshire Council 2022; Bòrd na Gàidhlig 2020; Renfrewshire Council 2022.

relatively few can be directly attributed to the terms of the Act itself. Some issues involved the actual implementation of the Act; others concerned the operation of Bòrd na Gàidhlig or other policy actors more generally.

The most important extra-legislative decision concerning the implementation of the Gaelic Act was the Scottish Government's decision to set initial funding of Bòrd na Gàidhlig at a relatively modest level and then to cut it in real terms since then (McLeod 2020: 258, 282–283).<sup>7</sup> Obviously the legislation itself did not address the question of organisational budgets, but had the baseline budget been higher than it was and then increased in line with inflation, it is difficult to imagine that the Bòrd would not have been able to accomplish more and that the overall impact of the legislation would not have been more significant.

More generally, the Bòrd has been constrained by the Scottish Government's general approach in relation to Gaelic: the language is a low priority on the policy agenda and the Scottish National Party (SNP) governments since 2007 have shown no inclination to adopt significantly more ambitious policies for the language (McLeod 2020: 275–278).

The successive National Gaelic Language Plans adopted by Bòrd na Gàidhlig have attracted criticism from some quarters. The first plan was seen as overly ambitious in terms of its target outcomes, while the more recent plans, including the current draft plan for 2023–2027, do not include headline targets for increasing the number of Gaelic speakers over the medium and long term (McLeod 2020: 285–288). In contrast, the current national Welsh language strategy *Cymraeg 2050* (Welsh Government 2017) sets the ambitious target of

---

<sup>7</sup> The Bòrd's grant-in-aid from the government was £4.4m in 2006–2007 and £5.6m in 2021–2022 (Bòrd na Gàidhlig 2007b: 75; Bòrd na Gàidhlig 2022a: 70). £4.4m in 2006 represents £6.8m in terms of 2021 purchasing power (using the calculator at <https://measuringworth.com/>).

reaching one million Welsh speakers in 2050, nearly doubling the current level. It is also notable here that the national Welsh language strategies are published by (and directly associated) with the government itself; the Gaelic Act's approach of assigning the responsibility for the National Gaelic Language Plan to a relatively low-profile agency tends to diminish its 'national' status and its political weight.

The pace of Gaelic language plan development has been much slower than for the counterpart system of Welsh language schemes under the *Welsh Language Act 1993*. Some 67 Gaelic language plans have been approved in the 16 years since the Gaelic Act came into effect in 2006, far less than the 558 Welsh language schemes that were in place after 20 years (Williams 2014: 246). When the Gaelic Act was going through the Scottish Parliament, the Scottish Executive (renamed 'The Scottish Government' in 2007) suggested that the Bòrd would approve approximately ten plans per year (Scottish Parliament 2004: para. 82). This would have generated 160 plans in 16 years, well over twice the actual figure.

In addition, the Gaelic language plans adopted to date can generally be considered rather weak, particularly in relation to the limited offer of public services through the medium of Gaelic. This is particularly the case in relation to some of the key public bodies in the areas of Scotland with the highest density of Gaelic speakers (notably Comhairle nan Eilean Siar and the Western Isles Health Board) (Dunbar 2018: 164–167).

An important principle of the statutory guidance is that public authorities should 'seek to incrementally increase the level of Gaelic provision they make available' through their Gaelic language plans (Bòrd na Gàidhlig 2007a: 41). Under section 7(2) of the Gaelic Act, public authorities are required to review and resubmit their plans for approval by the Bòrd within five years, and in this connection the guidance provides that 'the Bòrd will normally expect to see

evidence that public authorities have included more ambitious commitments following the review of an existing Gaelic Language Plan' (Bòrd na Gàidhlig 2007a: 41). Unfortunately, it is not evident that this aspect of the guidance has been followed in relation to the second and third-generation plans that have been approved.

One significant challenge for the Bòrd has been unstable leadership: the organisation went through five chief executives and six chairs in the first thirteen years of its existence as a statutory body (McLeod 2020: 281–282). At the same time, as a result of budgetary constraints the Bòrd has arguably been under-powered in terms of staff, with a complement of approximately 18 full-time equivalent, while the Welsh Language Board had 84 members of staff at its peak (Williams and Walsh 2019: 123 fn. 5). Constraints on staff resource necessarily affects the range of the Bòrd's activities, including the development and monitoring of Gaelic language plans.

In 2019, a report by the consulting firm Deloitte found significant failings in the Bòrd's management and governance, including 'a clear lack of openness and transparency of decision-making' and 'a culture of secrecy in the organisation' (Deloitte 2019: 15, 30). Following implementation of a range of changes to structures and procedures, however, a subsequent report found that the Bòrd 'has responded well to previous concerns regarding its leadership and governance' and has become 'an improved organisation' (Auditor General for Scotland 2021: 2–3).

The Bòrd takes a lead role on meso- and some micro-level planning in relation to Gaelic, especially the management of development budgets, including the distribution of funding to a range of Gaelic organisations and projects (the latter through a range of grant schemes). This is a difficult and inherently controversial process; but importantly, this allocation of responsibility, particularly the responsibility for setting the budgets and priorities of other Gaelic

organisations, is not required by the statute, but represents a policy choice on the part of the Scottish Government.

None of this history is directly relevant to the matter of designing reformed language legislation, but all this water under the bridge is important in terms of the Bòrd's standing in Scottish public life and its relationship to the Gaelic community. It also gives indicators of the kinds of challenges that might arise in the future in relation to the implementation of amended legislation; certainly it suggests a degree of caution in terms of the extent to which legislative reform can be realistically expected to bring meaningful positive outcomes.

## **5 The Scottish Languages Bill**

The manifesto of the ruling SNP for the Scottish Parliament elections in 2021 included a commitment to 'bring forward a new Scottish Languages Bill which takes further steps to support Gaelic, acts on the Scots language and recognises that Scotland is a multilingual society' (Scottish National Party 2021: 66). Following a public consultation in autumn 2022, the Scottish Languages Bill was introduced into the Scottish Parliament in November 2023. It is anticipated that the parliamentary process will bring various amendments to the bill, but it remains to be seen how extensive or significant these will be.

The bill is largely technical in nature, making a number of revisions to existing structures and mechanisms but imposing few concrete obligations and not creating any enforceable rights. Its full importance will emerge over time as the various new strategies, standards and guidance documents that it authorises are promulgated and implemented. The more aspirational these mechanisms, the more significant the impact of the legislation. Although the bill mainly addresses Gaelic, the second part deals with Scots, as discussed in section 7 below.

The main effect of the bill is to reassign several important policy functions from Bòrd na Gàidhlig to the Scottish Government, thereby increasing their stature and impact. The Government will now be responsible for the national Gaelic language strategy (which will replace the National Gaelic Language Plan, prepared by the Bòrd), for the guidance on public bodies' Gaelic language plans and for issuing new 'standards and requirements' relating to the promotion, facilitation and support of Gaelic by public bodies. Enforcement mechanisms are slightly strengthened (ss. 7(2), 8(2) and 9(6)) but remain fairly weak, as discussed below.

The most innovative feature of the bill is a new power for local authorities to designate 'areas of linguistic significance'. These may apply to areas in which at least 20 per cent of the population have Gaelic language skills (i.e., the ability to speak, read, write or understand Gaelic, as recorded in the national census), or to other areas which are 'historically connected with the use of Gaelic', 'in which teaching and learning by means of the Gaelic language is provided', or 'in which significant activity relating to the Gaelic language or Gaelic culture takes place' (s. 4(2)). This is clearly an expansive and flexible definition. Surprisingly, as discussed below, it is not clear what the consequences of making such a designation would be – whether it will bring additional funding and support, or impose obligations, guarantees or restrictions of different kinds.

The bill also makes a number of amendments to various acts relating to education, including the 2016 Act. Perhaps most importantly, the system of requiring education authorities to offer Gaelic-medium primary education upon a satisfactory showing of demand will be extended to Gaelic-medium early learning and childcare. The Scottish Government will now take responsibility for promulgating guidance on Gaelic education, and the duties of education authorities in this field will be clarified and made more concrete.

## **6 Gaps and weaknesses in the Scottish Languages Bill**

There are some important omissions from the Scottish Languages Bill, and places where additional tightening and clarification would be helpful. This section discusses some of the most important issues in question, including enforcement powers and the potential role of a Gaelic language commissioner, the nature of the new language standards, a possible right to Gaelic-medium education (GME) and the lack of clarity concerning the new ‘areas of linguistic interest’.

### **6.1 Issues with enforcement powers**

The Bill as introduced makes only minor adjustments to the enforcement mechanisms in the 2005 Act, and does not resolve the central difficulty by which Bòrd na Gàidhlig is given an uncomfortable mixture of roles, expected both to work with public authorities in shaping their Gaelic language plans and then to monitor and enforce them.

Under the 2005 Act, the Bòrd’s only enforcement power (if it can really be classified as such) is the ability to report perceived failures to implement language plans to the Scottish Government to take enforcement action (s. 6(4)). The Government may then ‘direct the authority in question to implement any or all of the measures in its Gaelic language plan’ (s. 6(5)). In this sense statutory Gaelic language plans are legally enforceable. However, to date the Bòrd has not reported any authority under section 6(4) and there have been no directions under section 6(5).

The Bill adjusts this system slightly by giving the power to report compliance failures to the Scottish Parliament and giving the Government the power to issue four different kinds of binding directions to public bodies: in relation to failures to comply with their duties to promote, facilitate and support Gaelic, with the regulations concerning Gaelic language plans, and (for education

authorities) with their general duties concerning Gaelic education or with the relevant regulations (ss. 7(2), 9(6), 12(5) and 14(2)). However, the Policy Memorandum prepared in connection with the Bill notes that although ‘the direction making power is an important lever in the overall structure’, ‘it would [...] be intended to be used infrequently and as a last resort’ (Scottish Parliament 2023b: 6).

A particular disappointment in the Bill as introduced is the failure to establish a language commissioner in Scotland to oversee compliance and enforcement. The Policy Memorandum noted that this possibility was considered but ‘was not recommended’ to the Government; no explanation for this decision was given.

Within the wider context of the ‘legislative turn’, language commissioners – executive officers with powers to enforce compliance with language laws – have become an increasingly prominent mechanism in minority language provision in recent years (Amon and James 2019). Closest to home are the examples of the Republic of Ireland and Wales, established in 2003 and 2011 respectively, and it is notable that an Irish Language Commissioner will also be established for Northern Ireland under the *Identity and Language (Northern Ireland) Act 2022*. Indeed, without a language commissioner, Scotland could even be considered something of an outlier. This is particularly the case given that there are already seven commissioners in Scotland with responsibilities for different fields, including children and young people, human rights and public services, and a further seven may soon be established (Scottish Parliament 2023c).

To fulfil the responsibility of enforcement effectively, a new Gaelic commissioner would need to have meaningful investigatory powers and the right to institute legal proceedings against authorities that have breached their obligations. The language commissioners in both Ireland and Wales do have



reasonably extensive formal powers under the relevant legislation (*Official Languages Act 2003*: s. 22; *Welsh Language (Wales) Measure 2011*: ss. 7, 11, 44, 45, 62, 71), but significant difficulties have nevertheless arisen as they have endeavoured to carry out their statutory functions. The Irish commissioner has been both under-resourced and stymied by recalcitrant public bodies (Williams and Walsh 2019), while the Welsh Government, perceiving various deficiencies, proposed a significant restructuring of the commissioner's role in 2018, but withdrew its plans in the face of public and institutional opposition (BBC 2019). These fraught experiences suggest that devising an effective, politically acceptable model for Gaelic would be far from straightforward.

Professor Colin Williams has argued that the establishment of a language commissioner 'needs to be linked to a prior specification of a suite of language rights', or there will be 'a lack of clarity both for speakers and for the providers of services' (Jones 2022: 115, citing Williams 2013: 288–291). The current policy regime for Gaelic falls well short of this; indeed, the 2005 Act effectively creates no language rights at all. The new Scottish Languages Bill has not altered the position; although it creates mechanisms that might impose more demanding obligations on public bodies, enforcement is still left to government discretion instead of being assigned to an independent officer who would represent Gaelic speakers.

There would also be a difficulty in relation to the range of a commissioner's remit. In Wales, Ireland and Canada the national language commissioners are charged with responsibility for only one or two languages; in Wales, the office is specifically framed as that of 'Welsh Language Commissioner'. In Scotland, while it would certainly be possible to establish a commissioner whose remit did not extend beyond Gaelic, there might be pressure to establish an agency with a much wider role, including responsibility for British Sign Language and Scots as well as community languages such as Polish and

Urdu. This would mean that any commissioner would have to deal with a number of different policy regimes; indeed, of these other languages only BSL is currently covered by formal legal regulation (the *British Sign Language (Scotland) Act 2015*), although the new Scottish Languages Bill introduces some general regulation relating to Scots, as discussed in section 7. In such circumstances, there is a risk that the commissioner might end up as some kind of general ‘languages champion’; while this would serve a useful public function, it is much less than the kind of concrete policy role played by commissioners elsewhere. It is significant that under the recently adopted *Identity and Language (Northern Ireland) Act 2022*, two commissioners will be established in Northern Ireland, an Irish Language Commissioner and a Commissioner for the Ulster Scots and the Ulster British tradition. This is clearly an important precedent for Scotland.

## **6.2 The role of language standards**

In both Wales and Ireland, public bodies were previously required to develop individual language plans, but this mechanism has been replaced by a system of sectoral language standards, that is, general regulations that apply to all bodies of a similar nature. (*Welsh Language (Wales) Measure 2011; Official Languages (Amendment) Act 2021*). The Welsh legislation has led to the promulgation of nine sets of regulations to date, which relate to particular kinds of bodies or activities (Welsh Language Commissioner n.d.).<sup>8</sup> These standards ‘provide a much greater level of consistency and clarity in relation to the obligations of

---

<sup>8</sup> The regulations adopted to date relate to county councils, national parks and Welsh Ministers [i.e., the Welsh Government]; general public organisations in Wales and the UK; tribunals in Wales, Social Care Wales and the Education Workforce Council; and police and fire services (Welsh Language Commissioner n.d.).

regulated bodies [...] than was the case with Welsh language schemes’ (Dunbar 2019: 113) and remove the burden of negotiating and agreeing schemes with individual public bodies.

The Scottish Languages Bill authorises the Scottish Government to ‘specify standards and requirements relating to promoting, facilitating and supporting the use of the Gaelic language which are to apply to relevant public authorities in exercising their functions’ and also, in relation to education authorities, to specify standards and requirements relating to the provision of Gaelic education (Scottish Parliament 2023a: ss. 6(2) and 12(2)). However, the existing system of Gaelic language plans is to be retained and new guidance, now prepared by the Government rather than Bòrd na Gàidhlig, is to be produced. The Bill gives little detail as to what the standards will endeavour to do and how they will intersect with the language plan process.

It seems unlikely, however, that the Gaelic standards will look much like those adopted for Welsh, which are highly specific and regulate the activities of public bodies in considerable detail. In relation to service delivery, for example, the Welsh regulations set out 41 different standards that require public bodies to operate bilingually in connection with correspondence, telephone calls, meetings, public events, publicity and advertising, websites, online services and social media and corporate identity (*The Welsh Language Standards (No. 1) Regulations 2015*, Schedule 1). No public body in Scotland currently provides this level of bilingual service, and for many it would be almost impossible to do so. Current Gaelic language plans often involve almost no service provision at all, and thus do not provide a solid foundation that might be built upon.

### **6.3 Rights to Gaelic-medium education?**

A long-standing controversy in relation to Gaelic is whether there should be an enforceable legal right to GME, along the lines of the right to mother tongue

education for English and French speakers under the *Canadian Charter of Rights and Freedoms* (s. 23(3)). Although one of the main drivers of the campaign for Gaelic language legislation from the mid-1990s was the desire to secure access to GME (McLeod 2020: 245–246, 258), the Gaelic Act hardly addressed education matters at all, and the procedure put in place by the Education Act of 2016 is much less than a straightforward enforceable right. Disappointingly, a number of local authorities have been permitted to publish statutory Gaelic language plans that make no provision for any form of Gaelic teaching in any of their schools.

The Languages Bill again failed to include an enforceable right to GME. The oft-rehearsed objection to establishing such a right is that it would be too difficult to implement, given the persistent shortage of Gaelic teachers; the long-established counter-argument is that establishing a right would prompt the authorities to prioritise Gaelic education in a way that they have never done up to now (McLeod 2020: 258).

Instead, the Bill creates several legal mechanisms that the Government could use to embed Gaelic education more firmly in the Scottish education system and set higher expectations for education authorities, but it is by no means guaranteed that these powers will be used, and a good measure of administrative discretion will doubtless remain. Amendments during the parliamentary process may strengthen the key provisions.

#### **6.4 ‘Areas of linguistic interest’**

The new concept of ‘areas of linguistic interest’ included in the bill gives rise to a number of questions. Most importantly, it is not clear what the significance of designating such areas would be – what benefits might follow, what obligations might be involved. It is also unclear why the task of identifying such areas should

be assigned to local authorities, who have not been involved in the Gaelic language planning process up to now.

In Ireland, the *Gaeltacht Act 2012* establishes a system of Gaeltacht Language Planning Areas, ‘Gaeltacht Service Towns’ and designated ‘Irish Language Networks’ outside the Gaeltacht (ss. 7–11). A designated local organisation in each of these areas must prepare and implement a language plan. In practice, a local language planning officer has been appointed to support these local groups and development funding provided to assist the implementation of their language plans.

The key concerns driving the demand for stronger provision for what the recently appointed Short Life Working Group on Economic and Social Opportunities for Gaelic called ‘key Gaelic communities’ are the desire for greater community participation in and control of Gaelic development and, especially, better resourcing to support this activity (Short Life Working Group 2023). While the legislation can be tightened so as to clarify regulatory structures and procedures, matters of funding and resourcing will inevitably depend on the vagaries of policy decisions over time.

## **7 Provision for Scots in the Scottish Languages Bill**

The Scottish Languages Bill is arguably a more significant landmark for Scots than for Gaelic, if only because provision for Scots up to now has been so minimal (McLeod 2020: 47–49). Both Gaelic and Scots will now have official status in Scotland (ss. 1 and 26), but despite its rhetorical resonance this bare statement has no concrete operational significance. The bill also requires the Scottish Government to prepare a Scots language strategy that sets out its ‘objectives in relation to promoting, facilitating and supporting the use of the Scots language’ (s. 27(1) and (2)). As with the Gaelic language strategy, the

Government must have regard to the Scots language strategy in making policies (including proposals for legislation) and exercising their functions, and public authorities must have regard to the strategy in exercising their functions (s. 29). The Government is also authorised to give guidance to relevant public authorities relating to (a) promoting, facilitating and supporting the use of the Scots language and (b) developing and encouraging Scots culture (s. 30). Both the Government and education authorities are required to promote, facilitate and support Scots language education in schools (s. 31). Finally, the Government is authorised to give guidance to education authorities relating to Scots language education in schools and to issue regulations that specify the standards and requirements to which education authorities must conform in discharging the functions relating to Scots language education in schools (ss. 32 and 33).

These provisions in the bill track those for Gaelic to a considerable extent, but the overall policy framework is much less robust. Most obviously, no agency comparable to Bòrd na Gàidhlig is to be established, no system of ‘areas of linguistic significance’ is proposed, there is no requirement for public bodies to prepare Scots language plans or for education authorities to provide Scots-medium education (which has never been offered anywhere in Scotland), and no enforcement powers are specified.

## **8 Discussion**

Even more than was the case with the 2005 Act, the impact of the new Scottish Languages Act will depend to a great extent on whether and how the various specified powers are used and, especially, on the actual content of any strategies, regulations and guidance that may be issued. Given the experience of the implementation of the 2005 Act, it would be optimistic to expect that these mechanisms, all of them heavily dependent on the discretion of the Scottish

Government or individual public bodies, will bring about significant change in the landscape of provision.

There has been widespread concern for several years in Gaelic circles that Gaelic policy has placed too much emphasis on formal structures and ‘top-down’ initiatives as opposed to grass-roots, community-level development work (e.g., Maclean 2019). Although it is possible that the new ‘areas of linguistic interest’ system may help address these concerns to some extent, the overall effect of the bill is to add additional layers of formal regulation and to increase administrative complexity.

As discussed above, planning for legislative reform should ideally be accompanied by a review of strategic planning for meso- and micro-level interventions. The Short Life Working Group on Economic and Social Opportunities for Gaelic, referred to above, conducted a wide-ranging analysis of provision for Gaelic that might inform policy, and it is likely that parliamentary scrutiny of the Scottish Languages Bill will also consider a wide range of issues that go beyond the four corners of the bill. On the other hand, it is noteworthy that although the 2021 SNP manifesto promised not only a new languages bill but also ‘a new national strategic approach’ to GME (Scottish National Party 2021: 66), work on the development of this ‘new national strategic approach’ has yet to commence.

The SNP manifesto also indicated that the Scottish Languages Bill would not only address Gaelic and Scots but also ‘recognise [...] that Scotland is a multilingual society’ (Scottish National Party 2021: 66). As introduced, the bill addresses only Gaelic and Scots. Provision for other community languages in Scotland is currently extremely limited (McLeod 2019). There are many areas in which provision for these languages could be strengthened, most obviously in relation to various forms of education, but it is not clear that language legislation should be a priority at this juncture.

## **9 Conclusion**

With the ‘legislative turn’ in language policy, language legislation has become a prominent element within overall policy regimes, to the extent that failure to enact legislation can be seen as a significant omission. It is thus no surprise that different kinds of enactments and proposals have emerged not only in Scotland but other parts of the UK, and internationally, in recent years. The example of the Gaelic Act suggests, however, that there will be many vagaries in the course of implementation and that the role of legislation in determining actual outcomes may be unpredictable. This is particularly the case to the extent that legislation is permissive rather than mandatory in nature, or leaves much to administrative discretion, as appears will be the case with the new Scottish Languages Bill. Here political, social and cultural factors will come into play and may well be determinative. In this sense language legislation is ultimately no different from other aspects of public policy.

## **References**

- Amon, Hermann, and Eleri James (eds.) 2019. *Constitutional pioneers: Language commissioners and the protection of official, minority and indigenous languages*. Toronto: Thomson Reuters.
- Auditor General for Scotland. 2021. *The 2020/21 audit of Bòrd na Gàidhlig* [https://www.audit-scotland.gov.uk/uploads/docs/report/2021/s22\\_211209\\_bord\\_na\\_gaidhlig\\_en.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2021/s22_211209_bord_na_gaidhlig_en.pdf) [accessed: 16 June 2022].
- BBC. 2019. *Bid to scrap Welsh language commissioner post dropped*. <<https://www.bbc.co.uk/news/uk-wales-politics-47090878>> [accessed: 24 February 2022].
- Bòrd na Gàidhlig. 2007a. *Guidance on the Development of Gaelic Language Plans*. Inverness: Bòrd na Gàidhlig.



- Bòrd na Gàidhlig. 2007b. *Annual Report 2006–2007*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2012. *The National Gaelic Plan 2012–2017*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2017. *Statutory Guidance on Gaelic Education*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2018. *National Gaelic Language Plan 2018–2023*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2020. *Gaelic medium education on offer in North Ayrshire for the first time*. <https://www.gaidhlig.scot/en/gaelic-medium-education-on-offer-in-north-ayrshire-for-the-first-time/> [accessed: 23 June 2022].
- Bòrd na Gàidhlig. 2022a. *Annual Report & Accounts 2021–2022*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2022b. *Draft National Gaelic Language Plan 2023–28*. Inverness: Bòrd na Gàidhlig.
- Bòrd na Gàidhlig. 2023. *Public Consultation: Draft Guidance on the Development of Gaelic Language Plans*. Inverness: Bòrd na Gàidhlig.
- British Sign Language (Scotland) Act 2015*. 2015 asp 11. <https://www.legislation.gov.uk/asp/2015/11/contents/enacted> [accessed: 24 June 2022].
- Canadian Charter of Rights and Freedoms*, s. 15, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11. <https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html> [accessed: 10 January 2020].
- Deloitte. 2019. *Bòrd na Gàidhlig: Report to the audit and risk management committee – leadership and governance*.

- [www.audit-scotland.gov.uk/uploads/docs/report/2019/aar\\_1819\\_bord\\_gaidhlig\\_wider\\_scope.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2019/aar_1819_bord_gaidhlig_wider_scope.pdf) [accessed: 10 January 2020].
- De Meulder, Maartje, Joseph J. Murray, and Rachel L. McKee (eds.). 2019. *The legal recognition of sign languages: Advocacy and outcomes around the world*. Bristol: Multilingual Matters.
- Dunbar, Robert. 2018. 'Organisational language planning: Gaelic language plans in the public sector'. In MacLeod and Smith-Christmas (2018): 156–172.
- Dunbar, Robert. 2019. 'An Coimisinéir Teanga and Comisiynydd y Gymraeg: The challenges of a changing legislative environment'. In Amon and James (2019): 101–124.
- East Renfrewshire Council. 2022. *Gaelic medium primary education*. <https://eren3-prd.gosshosted.com/article/4391/Gaelic-Medium-Primary-Education> [accessed: 23 June 2022].
- Education (Scotland) Act 2016*. 2016 asp 8. <https://www.legislation.gov.uk/asp/2016/8/contents/enacted> [accessed: 24 June 2022].
- Gaelic Language (Scotland) Act 2005*. 2005 asp 7. <https://www.legislation.gov.uk/asp/2005/7> [accessed: 24 June 2022].
- Gaeltacht Act 2012*. No. 34 of 2012. <https://www.irishstatutebook.ie/eli/2012/act/34/enacted/en/print> (accessed: 18 December 2012).
- Hassan, Gerry, and Simon Barrow (eds.). 2019. *Scotland the brave? Twenty years of change and the future of the nation*. Edinburgh: Luath Press.
- Highland Council. 2022. *School rolls 2021 to 2022*. [https://www.highland.gov.uk/downloads/file/24128/school\\_rolls\\_2021\\_to\\_2022](https://www.highland.gov.uk/downloads/file/24128/school_rolls_2021_to_2022) [accessed: 17 June 2022].
- Hogan-Brun, Gabrielle, and Bernadette O'Rourke (eds.). 2019. *The Palgrave handbook of minority languages and communities*. London: Palgrave Macmillan.

- Identity and Language (Northern Ireland) Act 2022*. 2022 c. 45.  
<https://www.legislation.gov.uk/ukpga/2022/45/contents/enacted>  
[accessed: 18 December 2023].
- Jones, Meirion Prys. 2022. ‘Language planning in action: Joining up the dots in Wales’. In McLeod et al. (2022): 99–120.
- Kaplan, Robert B., and Richard B. Baldauf. 1997. *Language Planning: From practice to theory*. Clevedon: Multilingual Matters.
- Maclean, Malcolm. 2019. ‘The place of Gaelic in today’s Scotland’. In Hassan and Barrow (2019): 252–259.
- McLeod, Marsaili, and Cassie Smith-Christmas (eds.). 2018. *Gaelic in contemporary Scotland: The revitalisation of an endangered language*. Edinburgh: Edinburgh University Press.
- Māori Language Act 1987*. Public Act 1987 No 176.  
<https://www.legislation.govt.nz/act/public/1987/0176/latest/whole.html>  
[accessed: 24 June 2022].
- McLeod, Wilson. 2019. ‘The nature of minority languages: insights from Scotland’. *Multilingua* 38: 141–154.
- McLeod, Wilson. 2020. *Gaelic in Scotland: Policies, movements, ideologies*. Edinburgh: Edinburgh University Press.
- McLeod, Wilson, Rob Dunbar, Kathryn Jones, and John Walsh (eds). 2022. *Language, policy and territory: A Festschrift for Colin H. Williams*. Cham: Palgrave Macmillan.
- National Records of Scotland. 2014. *2011 results*. [www.scotlandscensus.gov.uk](http://www.scotlandscensus.gov.uk)  
[accessed: 17 June 2022].
- Official Languages Act 2003*. Number 32 of 2003.  
<https://www.irishstatutebook.ie/eli/2003/act/32/enacted/en/html>  
[accessed: 24 June 2022].

- Official Languages (Amendment) Act 2021*. Act 49 of 2021. <https://data.oireachtas.ie/ie/oireachtas/act/2021/49/eng/enacted/a4921.pdf> [accessed: 24 June 2022].
- Renfrewshire Council. 2022. *Gaelic education*. <https://www.renfrewshire.gov.uk/article/3762/Gaelic-education> [accessed: 23 June 2022].
- Scottish National Party. 2021. *Scotland's future*. Edinburgh: Scottish National Party.
- Scottish Parliament. 2004. *Gaelic Language (Scotland) Bill: Policy memorandum*. Edinburgh: Scottish Parliament.
- Scottish Parliament. 2023a. *Scottish Languages Bill [As Introduced]*. Edinburgh: Scottish Parliament. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-languages-bill/introduced/bill-as-introduced.pdf> [accessed: 6 December 2023].
- Scottish Parliament. 2023b. *Scottish Languages Bill: Policy Memorandum*. Edinburgh: Scottish Parliament. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-languages-bill/introduced/policy-memorandum-accessible.pdf> [accessed: 6 December 2023].
- Scottish Parliament. 2023c. *Scotland's commissioner landscape: A strategic approach*. Edinburgh: Scottish Parliament. <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scotlands-commissioner-landscape-a-strategic-approach> [accessed: 18 December 2023].
- Short Life Working Group on Economic and Social Opportunities for Gaelic (2023). *Report to the cabinet secretary for finance and the economy*. Edinburgh: Scottish Government.

- Te Ture mō Te Reo Māori 2016 / Māori Language Act 2016. Public Act 2016 No 17.* <https://www.legislation.govt.nz/act/public/2016/0017/latest/whole.html#DLM6174566> [accessed: 24 June 2022].
- Walsh, John. 2012. 'Language policy and language governance: A case-study of Irish language legislation'. *Language Policy* 11: 323–341.
- Welsh Government. 2017. *Cymraeg 2050: A million Welsh speakers*. Cardiff: Welsh Government.
- Welsh Language Act 1993*. 1993 c. 38. <https://www.legislation.gov.uk/ukpga/1993/38/contents> [accessed: 24 June 2022].
- Welsh Language Commissioner. N.d. 'The imposition process'. <https://www.welshlanguagecommissioner.wales/public-organisations/welsh-language-standards/the-imposition-process> [accessed: 24 June 2022].
- The Welsh Language Standards (No. 1) Regulations 2015*, 2015 No. 996 (W. 68). <https://www.legislation.gov.uk/wsi/2015/996/> [accessed: 18 December 2023].
- Welsh Language (Wales) Measure 2011*. 2011 nawm 1. <https://www.legislation.gov.uk/mwa/2011/1/contents/enacted> [accessed: 24 June 2022].
- Williams, Colin H. 2013. 'Perfidious hope: The legislative turn in official minority language regimes'. *Regional and Federal Studies* 23(1): 101–122.
- Williams, Colin H. 2014. 'The lightning veil: Language revitalisation in Wales'. *Review of Research in Education* 38: 242–272.
- Williams Colin H., and John Walsh. 2019. 'Minority languages, governance and regulation'. In Hogan-Brun and O'Rourke (2019): 101–129.
- Wilson, Brian. 2021. 'Brian Wilson: Gaelic's decline continues for reasons that are obvious – and they are not all about language'. *The Herald*, 16 June.