



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

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*Via email*

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Dear Cabinet Secretary

### **Scottish Languages Bill**

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday, 5 March, and agreed to write to you to ask the following questions in relation to delegated powers contained in the Bill.

#### **Use of guidance in the Bill**

In relation to the following sections, which give the Scottish Government powers to issue guidance:

- Section 4(2) - Areas of linguistic significance
- Section 7(2): Power for Scottish Ministers to give guidance to relevant public authorities
- Section 9(6): Gaelic language plans
- Section 13: Guidance to public authorities relating to Gaelic education
- Section 30: Power for Scottish Ministers to give guidance - Scots language
- Section 32(1): Guidance on Scots language education

The Committee asks the Scottish Government:

1. To clarify the nature of the guidance proposed under these sections, and in particular, whether the guidance is intended to assist or direct local authorities. In other words, is the guidance administrative or legislative in nature?
  - If it is administrative, why is it considered necessary to place a duty on local authorities to have regard to it?
  - If it is legislative, why it is not subject to any parliamentary procedure?

2. In relation to Section 4(2): **whether, as drafted, the requirement to have regard to the guidance might be capable of changing a matter for local authorities' discretion into something mandatory?** For example, a situation in which a local authority is considering whether to designate an area of linguistic significance (a matter of discretion) and is minded not to, but strict adherence to guidance directs the local authority to designate.
3. In relation to Section 7(2): the combined effect of proposed new sections 2D and 2E is to subject relevant public authorities to a dual "must have regard to" requirement. In effect, they must have regard to guidance which directs them as to how they can fulfil the duty that they "must have regard to" the desirability of promoting Gaelic, and so forth when exercising their functions. **Does the Scottish Government consider that this drafting approach makes it clear to public authorities what is required of them under section 2D?**
4. In relation to Section 9(6): **the Committee asks why this guidance is not subject to a publication requirement?**

### **Use of directions in the Bill**

Four provisions of the Bill would confer power on the Scottish Ministers to give "directions" to public and local authorities (sections 7(2), 9(6), 12(5) and 14(2)). The Committee asks the following questions about these powers.

In relation to Section 7(2): Power for Scottish Ministers to give directions to relevant public authorities:

1. **Can the Scottish Government please provide some practical examples to illustrate how it envisages using this power.**
2. **What consideration has the Scottish Government given to the proportionality of taking a direction-making power, given that a relevant public authority will already have to comply with its duties under section 2D to "have regard to the desirability of (a) promoting, facilitating and supporting the use of the Gaelic language, and (b) developing Gaelic culture", and have regard to any guidance relating to that duty?**
3. **Can the Scottish Government please clarify whether it will be open to a relevant public authority, under section 2D, to decide that it is not desirable, in the context of exercising one or more of its functions, to promote, facilitate and support the use of Gaelic or to develop and encourage Gaelic culture? In that event, would this power allow Scottish Ministers to compel a course of action to the contrary?**
4. The duty in section 2D on a relevant public authority is to "have regard to the desirability of (a) promoting, facilitating and supporting the use of the Gaelic language and (b) developing and encouraging Gaelic culture". **If section 2D does**

**not compel a particular course of action, can the Scottish Government please explain how, in practical terms, it can use a direction-making power?**

In relation to Section 9(6) – Gaelic language plans:

1. **Why does the Scottish Government consider that a direction-making power is proportionate in the circumstances, given that a relevant public authority will require to have regard to any guidance issued under section 7A of the 2005 Act and apply any standards and requirements specified in regulations made by Scottish Ministers under section 2C of the 2005 Act?**
2. **Can the Scottish Government please provide some practical examples of the circumstances in which it envisages this power will be used and examples of the type of directions which it has in mind?**
3. It would appear that the direction-making power is intended be used to supplement, clarify or amplify the law which is to be contained in the regulations. **Does the Scottish Government anticipate that it will not be clear on the face of the regulations what standards or requirements must be met by relevant authorities? If not, why is this power necessary?**

In relation to Section 12(5): Power for Scottish Ministers to give directions in relation to standards for Gaelic Education:

1. **Why does the Scottish Government consider it necessary to take a direction-making power, given that education authorities will already require to comply with the various layers of guidance and regulations detailed below (a – d):**
  - a) where it is required to prepare a Gaelic language plan, have regard to any guidance given by Scottish Ministers issued under section 7A of the 2005 Act;
  - b) comply with regulations which Scottish Ministers may make setting standards and requirements about Gaelic education made under section 6B of the 2016 Act;
  - c) comply with a direction given by Scottish Ministers relating to the application of the standards and requirements specified in those regulations made under section 6B; and
  - d) have regard to any guidance relating to Gaelic education issued under section 6C of the 2016 Act.
2. **Whether it anticipates that there may be uncertainty on the part of public authorities as to how they should meet the standards provided for in regulations.**

In relation to Section 14(2): Directions to education authorities relating to Gaelic education:

1. **Why the Scottish Government considers it necessary to take a direction-making power, given that education authorities will already have to comply with the layers of guidance and regulations detailed below (a – c):**

- a) comply with regulations which Scottish Ministers may make setting standards and requirements about Gaelic education made under section 6B of the 2016 Act;
- b) have regard to any guidance relating to Gaelic education issued under section 6C of the 2016 Act.
- c) comply with a direction given by Scottish Ministers relating to Gaelic education given under section 6D.

**2. Why the Scottish Government envisages that an education authority would require a direction to authorise a particular course of action.**

I would be grateful if you could please email your response to [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot) by **Monday, 18 March 2024**. The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.

Yours sincerely

Stuart McMillan MSP  
Convener of the Delegated Powers and Law Reform Committee