

INTERNATIONAL COMPARISONS: CELTIC COUSINS—LANGUAGE LEGISLATION FOR WELSH AND SCOTTISH GAELIC

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Like Irish, Welsh and Scottish Gaelic are Celtic languages, although Scottish Gaelic is much closer to Irish than Welsh, and like French and English, these languages are members of the Indo-European language family. Like all of the Celtic languages, they are threatened languages, and are spoken by only a minority of the population in the territory with which they are associated.¹ This is in no small part due to state language policies which historically have oscillated between indifference and hostility, but which have generally made virtually no accommodation for speakers of languages other than the official language of the state. While the UK has no single written constitutional document, and no statute or other legal instrument has designated any particular language as the UK's official language,² English is, as a matter of convention, the sole language of parliament, of legislation, of public administration and of the courts.³ The rise of the modern administrative nation-state has inevitably led to linguistic standardisation in most of the higher register linguistic domains, including public administration, the legal system, government and the economy, and this has tended to favour English at the expense of other languages. The legal and institutional legacy in the UK is generally one of unilingualism.

In Wales, the process of political integration into England began in earnest in the late thirteenth century.⁴ It was under Henry VIII, however, when Wales was still overwhelmingly Welsh-speaking, that more significant steps were taken to integrate Wales into England, and these were to have consequences for the Welsh language. In 1536, the Act of Union formally incorporated the Principality of Wales into England and provided in section 17 that the language of the courts in Wales would be English, that oaths, affidavits and verdicts be given in English, that court records be kept in English, and that no person should hold public office unless he spoke English.⁵ This Act generally aimed at creating a uniform, English language-based legal and administrative system throughout England and Wales. Forced to learn English, the Welsh aristocracy became increasingly anglicized, and slowly ceased to be patrons of Welsh-speaking society.⁶ Increasingly, Welsh became a language restricted to the rural peasantry, artisans and lower clergy.⁷ The dominance of English was further perpetuated by later legislation, such as the Courts of Justice Act 1731, which required the use of English in all courts of justice in England and Wales. While these statutes were primarily directed at the problem caused by the widespread use of legal French and Latin in English and Welsh courts, they also had the effect of excluding Welsh, and other languages, from use.⁸ In the wake of this legislation, the legal system in the UK as a whole switched from a multilingual to a monoglot ethos.⁹

A similar process took place in Scotland. Compared to Wales, Scotland maintained its autonomy from England for a considerably longer period. Scottish independence from England effectively ended only in 1707, with the Treaty of Union, under which the kingdoms of England and Scotland were united into one kingdom under the name of Great Britain, and the Scottish and English parliaments also became one. However, the erosion of Scottish Gaelic, the language of the founders of the Scottish state, had begun much earlier, in the eleventh century, when it was displaced in the

Scottish court by Scots, a Germanic language closely related to English. By the fourteenth century, Gaelic was restricted mainly to the Scottish Highlands and the islands of the west coast, and from the fifteenth century, the Scottish, then British crown sought to fully integrate this region more effectively and saw the anglicization of the Highlands as a means of doing so. Much like Henry VIII's Act of Union of 1536, the Statutes of Iona of James I (and VI of Scotland) of 1609 sought to anglicize the Highland aristocracy; an Act of the Privy Council in 1616 to ratify the Statutes announced as a general goal that "the vulgar Inglishe toung be universallie plantit, and the Irishe language [i.e. Scots Gaelic] . . . be abolisheit and removit".¹⁰

The nineteenth century saw more concerted attempts to standardize language use throughout the UK, notably through the school system, and these efforts continued to act to the detriment of Welsh and Gaelic. The Education Act, 1870 for England and Wales and the Education (Scotland) Act, 1872 for Scotland introduced universal state-supported education, but only through the medium of English; there is general agreement that such legislation contributed significantly to the shift from the Celtic languages to English which is apparent from census returns from 1891 onwards. The ethos which underlay such legislation continued to prevail into the twentieth century, and has been described in these terms:

Inasmuch as a language policy existed in Britain in the first half of the twentieth century, it focussed on the unacceptability of Celtic languages and non-standard dialects of English in education, and the importance of teaching the standard. British schools were monolingual, monocultural institutions, one of whose functions was to enlighten those who departed from received linguistic and cultural norms.¹¹

Not surprisingly, these policies have contributed to the present weakened demographic position of Welsh and Gaelic. At the time of the first British census of 1891, 910,289 respondents, or 54.4% of the Welsh population, reported themselves as Welsh-speaking, and 508,036 were monoglots.¹² From the 1911 census until 2001, however, both absolute numbers and percentages of Welsh speakers fell.¹³ However, there are now signs that this process has been arrested. In the 2001 census, 575,640 people identified themselves as being able to speak Welsh, about 20.52% of the population aged three and over (although there are virtually no monoglots left),¹⁴ which was an increase on the 1991 results.¹⁵ The 2001 census also showed increasing numbers and percentages of young people who speak the language. In short, while the future of Welsh is far from secure,¹⁶ there is good reason for guarded optimism. Improvements in the 2001 census have coincided with significant legislative and policy developments, suggesting that these may be having some positive effects.

With regard to Scottish Gaelic, the results from the 2001 census show that the long decline of the language continues, although the rate of decline appears to be slowing, something which may also be due in part to the introduction of some of the measures to be discussed below. In the 2001 census, 58,652 people reported themselves as being able to speak Gaelic (about 1.2% of the population).¹⁷ A comparison with the census figures from 1891, however, shows the extent of the long-term decline: there

were then 254,415 Gaelic speakers, or about 6.3% of the population, and a significant number of monoglots (there are none today).

When considering the legislative framework for Welsh and Gaelic, although there are significant differences between them, there are also a number of important similarities, and these similarities tend to distinguish them from both Canadian and Irish legislative frameworks. First, as we shall see, most legislation is relatively recent, and has to a considerable extent been ad hoc and reactive. Second, the language regimes are not in any way constitutionally-based, although as we shall see, Scottish and Welsh devolution have in some significant ways fostered the development of the legislative regimes but have also imposed some limitations. Third, there is a noticeable lack of explicit language ‘rights’ in both regimes, and a heavy reliance on administrative mechanisms, something that may in part be due to a relatively weak ‘rights culture’ in the UK, observable in the traditional reluctance in UK law to contemplate clearly enforceable rights which can be used to hold governments to account. Fourth, and related to the third point, legislatively-created language planning bodies have a significant role to play in the development of policy. Fifth, enforcement mechanisms are generally very limited, and the language regimes are notable for the almost complete absence of litigation. Sixth, and finally, the regimes for Welsh and Gaelic are now supplemented by significant international legal obligations. The single most important development has been the ratification in 2001 by the UK of the European Charter for Regional or Minority Languages (the “Languages Charter”).¹⁸ In many ways, the immediate impact of the Languages Charter has been limited, mainly due to the restrictive and unimaginative approach that the UK has taken to its ratification and implementation. Nonetheless, it constitutes a treaty obligation of the UK, and it makes clear that the UK owes special obligations to Welsh and Scottish Gaelic, among other languages, and, in particular, that the UK is obliged to take positive measures to both protect and promote such languages. In addition to giving language organisations mechanism for airing concerns about language policy in respect of Welsh and Gaelic, the treaty body, the Committee of Experts, has also been willing to criticise aspects of the implementation of such policy.

1. Language Legislation in Wales

While, as noted, language legislation in Wales has been ad hoc, there is, in the most important piece of legislation, the Welsh Language Act 1993, an observable and distinctive legislative model, and this is one which has had an impact on Scotland and Ireland. However, this important piece of legislation was not the first in support of the language: The Welsh Courts Act 1942 repealed the provisions of the 1536 Act, described above, and allowed for some use of Welsh in the courts, and the Education Act 1944 enabled the establishment of Welsh-medium schools. The Welsh Language Act 1967 removed remaining barriers to the use of Welsh in the courts, and allowed ministers to prescribe Welsh versions of official documents.¹⁹ The Broadcasting Acts 1980 and 1981 established Sianel Pedwar Cymru (S4C), the Welsh language television channel, which started broadcasting in 1982. The core funding of S4C is statutorily guaranteed.²⁰ The scheduling of Welsh-language programming on the service is also regulated. In particular, amongst the duties of S4C is to ensure that a “substantial proportion” of the programmes broadcast on S4C are in Welsh and that the programmes broadcast between

6.30 p.m. and 10 p.m. “consist mainly of programmes in Welsh”, and to ensure that programmes in Welsh maintain “a high general standard in all respects (and, in particular, in respect of their content and quality)”, and “a wide range in their subject matter.”²¹

I shall, however, focus on four acts of the Westminster parliament which are of particular importance, and which greatly enhanced the status of the Welsh language in crucial areas of Welsh life: the Education Reform Act 1988 (education), the aforementioned Welsh Language Act 1993 (public life generally), and the Government of Wales Acts 1998 and of 2006 (devolved government in Wales).

Welsh-medium education²² dates to the late 1940s and early 1950s, and legislative measures tended to be limited and facilitative, by ‘enabling’ parents through the creation of funding mechanisms which would lubricate the development of Welsh-medium education, rather than ‘empowering’ parents through the creation of rights.²³ The position of Welsh in the schools was, however, significantly enhanced by the Education Reform Act 1988,²⁴ which ensured Welsh a fundamental place in the national curriculum in Wales. In particular, Welsh is one of four core subjects in the curriculum for all students in Wales between the age of 5 and 16, whether they are in Welsh-medium or English-medium schools.²⁵ The government’s goal was to ensure that “*all* children should by the time they complete their compulsory schooling at sixteen and after eleven years’ study of Welsh in school have acquired a substantial degree of fluency in Welsh” (emphasis added).²⁶ However, there is still no statutory *right* to Welsh-medium education. In spite of this, such education is now well-established, and local education authorities are generally responsive to parental demand. The significant expansion of Welsh-medium education shows that such an educational model can be created without necessarily relying on a statutorily-based right. However, the rather particular conditions in Wales which favoured the development of such education must be borne in mind, especially the willingness of a fairly large and politicized language community to maintain sustained pressure on public institutions; and, even now, some in Wales argue that Welsh-medium provision is not free of problems, and that a right to such education is still necessary.

Without question, the single most important piece of legislation in support of Welsh is the Welsh Language Act 1993.²⁷ In the mid-twentieth century, Welsh had almost no public status in Wales. The 1993 Act, building on the Welsh Language Act 1967, changed the situation considerably. There are two points with respect to this legislation which must be borne in mind. First, it is primarily based on the ‘administrative enabling’ or ‘planning-based’ model; it creates almost no ‘language rights’. Second, it is almost completely concerned with the public sector; generally, language legislation in Wales has not sought to regulate language use in the private or voluntary sectors.

The only clearly articulated language ‘right’, as such, created under the Welsh Language Act 1993 is in respect of the courts. Subsection 22(1) provides that

[i]n any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates’ court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly.

To make this right effective, section 24 provides that the Lord Chancellor may make rules as to the provision and employment of interpreters of the Welsh and English languages.²⁸ The detailed implementation of these provisions has been particularized in the Welsh language schemes of The Court Service of England and Wales and of the Magistrates Courts.²⁹ The Court Service has adopted the general principle “that in the conduct of public business and the administration of justice in Wales it will treat the English and Welsh languages on the basis of equality”; as we shall see, this is consistent with the requirements of the Welsh Language Act 1993. These provisions are the most recent in a series of legislative measures that have, starting with the Welsh Courts Act 1942,³⁰ sought to redress the provisions of the Acts of 1536 and 1542, which, as noted, effectively required that all court proceedings take place in English. For some language activists, however, even the 1993 Act has not gone far enough; they argue that there will be no full parity between Welsh and English until Welsh is the language of the court itself, used not only by litigants and witnesses, but by lawyers and judges and other court officials and, where applicable, by juries. The 1993 Act does not create a right to a trial through the medium of Welsh.³¹

The Welsh Language Act 1993 made a number of other changes which were significant in increasing the presence of Welsh in the world of the law; provisions generally allow for the Welsh Assembly to make Welsh versions of public documents and forms, confer on public bodies, offices or places Welsh versions of a name, and so on.³² The most important aspects of the Welsh Language Act 1993, however, are the creation of the Welsh Language Board, or *Bwrdd yr Iaith Gymraeg* (the ‘*Bwrdd*’), and the statutory framework for the preparation of Welsh Language Schemes by public bodies in Wales.³³

The *Bwrdd* is created under Part I of the Act. It has the general function of “promoting and facilitating the use of the Welsh language”³⁴ and three somewhat more specific functions: to advise the National Assembly³⁵ on matters concerning the Welsh language; to advise persons exercising public functions on the ways in which to give effect to the principle that, in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on the basis of equality; and to advise those and other persons providing services to the public on the use of the Welsh language in their dealings with the public.³⁶ The *Bwrdd* is also active in funding a wide range of linguistic activities. Perhaps the most significant function of the *Bwrdd*, however, is that which it plays in relation to Welsh language schemes.

The preparation of Welsh language schemes by public bodies is the primary means by which the use of the Welsh language in the public sector is to be advanced, and the regime with respect to such schemes is set out in Part II of the Act. Crucially, the Act does not create any individual or collective ‘right’ to public services through the medium of Welsh. The key provision is section 5 of the Act, subsection (1) of which states that every public body to which a notice is given by the *Bwrdd* must prepare a Welsh language scheme.³⁷ The scheme is to specify the measures which the public body proposes to take as to the use of the Welsh language in connection with the provision of services by it. In specifying such measures, the public body is to give effect to the principle that in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on the basis of equality.³⁸ The term ‘public body’ is defined in section 6, which also contains a long list of such bodies;

additionally, the National Assembly can designate other bodies that are not listed, and has done so on several occasions.

The extent of the obligation imposed on public bodies with respect to the implementation in their schemes of the principle of linguistic equality is not, however, absolute; they need only implement the principle “so far as is both appropriate in the circumstances and reasonably practicable”.³⁹ Thus, considerations such as numbers of Welsh speakers, actual and potential demand, costs, and so on could result in the less than full implementation of the principle. The application of the principle and the scope of this important qualification are not, however, left to public bodies themselves to determine; the Bwrdd has a very important role in the process. Specifically, the Bwrdd is required to issue guidelines as to the form and content of the schemes⁴⁰ to which the public body must have regard in preparing its scheme.⁴¹ This detailed guidance, which covers matters such as written correspondence, telephone communication, use of Welsh in public meetings, in corporate identity, signage and in publications, forms and explanatory materials, publicity, media relations, public and other notices, and so forth, is, in practice, very important.⁴² Furthermore, the Bwrdd has the power to approve or reject a scheme.⁴³ Generally, the Bwrdd has avoided at all costs rejection of a scheme, preferring to work with public bodies to develop a scheme that is acceptable; in practice, the implied power of the Bwrdd to reject a scheme is a useful tool.

Over 500 Welsh language schemes have been approved by the Bwrdd, covering most public bodies in Wales, including the National Assembly for Wales, central government departments and agencies active in Wales, all 22 county councils, health authorities and police and fire authorities, and a range of bodies in the administration of justice and education sectors. While a complete analysis of the effect of these schemes is beyond the scope of this paper, there is no question that they have greatly expanded the visible presence of the Welsh language in Wales, greatly facilitated the use of Welsh in the provision of public services—although there are still gaps in provision, and there are still issues concerning uptake by Welsh-speakers of available opportunities—and, as importantly, they have increased greatly the need for Welsh-language skills in the public sector, an important stimulus to Welsh-language acquisition.

A crucial issue in any minority language legislation relates to the enforcement of the legislative scheme. Under an individual rights-based model, the user of the service usually has a range of remedies, one of which may be to go to court and to force the recalcitrant public body or, indeed, the government itself to satisfy the right-holder’s claim. As already noted, the Welsh Language Act 1993 does not explicitly create rights for individual speakers. Section 18 of the Act provides that persons who are directly affected by a failure of a public body to carry out an approved Welsh language scheme may make a written complaint to the Bwrdd, and it *may* investigate such a complaint.⁴⁴ However, the Bwrdd is not *required* to carry out such an investigation.⁴⁵ If the Bwrdd has concluded that the public body has failed to carry out the scheme, it may make recommendations to the public body as to what it must do to correct the failure.⁴⁶ If it appears to the Bwrdd that the public body has failed to act on the recommendations, it may then refer the matter to the National Assembly Government, and if it is satisfied that the public body has failed to take the recommended action, it may give whatever directions it pleases to the public body, and these shall be enforceable in the courts through the administrative law remedy of mandamus.⁴⁷ The Bwrdd has instigated formal

investigations of non-compliance, but has very rarely referred cases to the National Assembly Government, preferring to resolve matters amicably with the particular public body wherever possible. In this sense, the enforcement mechanism seems to have worked fairly well. However, the power of the individual complainant in the process is not particularly strong, and appears to have little recourse once things have been referred to the Bwrdd.

The final pieces of relevant legislation are the Government of Wales Acts of 1998 and 2006 (the '1998 Act' and the '2006 Act', respectively) which made considerable provision for the Welsh language in the Welsh Assembly. The 1998 Act created a fairly limited form of devolved government, in which the Welsh Assembly and its government essentially took over the administrative functions formerly performed by a Westminster Department, the Welsh Office, but had extremely limited legislative powers: the assembly could only pass secondary legislation. One of the major changes in the 2006 Act is that the Welsh Assembly will have expanded legislative powers. In particular, Part 3 of the 2006 Act, provides that enhanced legislative competence can be conferred on the Welsh Assembly by a Westminster Order in Council (a 'Legislative Competency Order') in relation to matters which come within fields set out in Schedule 5 to the act (one of which is the Welsh language), and where this competence is conferred in relation to such a matter, the Welsh Assembly can pass primary legislation, referred to in the 2006 Act as an 'Assembly Measure', so long as it is in the terms set out in the Order in Council.⁴⁸ As a result, it is now possible for the Welsh Assembly to pass legislation on the Welsh language, something which until the 2006 Act could only be done by the Westminster Parliament in London. This is a very important development, and I shall conclude this section by considering its implications.

Although neither the 1998 Act nor the 2006 Act explicitly make Welsh an 'official' language, they contain a number of other provisions which effectively confer a form of such status on the language. All Assembly Measures must generally be in Welsh and English,⁴⁹ and the English and Welsh texts of Assembly Measures and all other legislation are to be treated for all purposes as of equal standing.⁵⁰ Furthermore, any document laid or business tabled in the Welsh Assembly must also generally be in Welsh.⁵¹ With regard to the proceedings of the Assembly itself, English or Welsh can be used in all plenary meetings and in all committees, with simultaneous interpretation provided when Welsh is used, presumably in recognition of the fact that virtually all Welsh-speakers also speak English.⁵² Furthermore, the minutes of all plenary meetings of the assembly and of all committees and subcommittees must be in English and Welsh, as must the verbatim records of all plenary sessions,⁵³ although the verbatim records of committees and subcommittees need only be in the language actually spoken (which can be languages in addition to English and Welsh).⁵⁴ More generally, both the 1998 Act and the 2006 Act provide that the Assembly shall, in the conduct of its business, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that English and Welsh should be treated on a basis of equality;⁵⁵ this is reflective of the language of the Welsh Language Act 1993, and the Assembly's Welsh language scheme contains significant commitments to Welsh language services.⁵⁶

Finally, both acts have provisions with respect to policy for Welsh. For example, under the 1998 Act, section 32, paragraph (c) provides that the National Assembly "may do anything it considers appropriate to support the Welsh language".⁵⁷ Importantly, both

the Assembly and the Assembly government have shown a willingness to act pursuant to this provision. In 2002, the assembly government issued a policy statement, *Dyfodol Dwyieithog/Bilingual Future*,⁵⁸ in which it stated that it was “wholly committed to revitalizing the Welsh language and creating a bilingual Wales”,⁵⁹ and that its vision was that:

In a truly bilingual Wales both Welsh and English will flourish and will be treated as equal. A bilingual Wales means a country where people can choose to live their lives through the medium of either or both languages; a country where the presence of two national languages, and other diverse languages and cultures, is a source of pride and strength to us all.⁶⁰

In December, 2002, the assembly government produced a comprehensive document, *Iaith Pawb*:⁶¹ *a National Action Plan for a Bilingual Wales*,⁶² in which the government set out in detail the specific initiatives by which it will strengthen the Welsh language.⁶³ Under the 2006 Act, Welsh Ministers in the Welsh Assembly Government may do anything they consider appropriate to support the Welsh language,⁶⁴ and they must also adopt a Welsh Language Strategy in which they set out how they propose to promote and facilitate the use of Welsh.⁶⁵

To conclude, legislative measures over the last twenty or so years have completely transformed the legal, and indeed the wider social position of the Welsh language. Welsh has an unprecedented presence in the public space in Wales, and within virtually all public institutions in the country. Welsh-speakers are more able to receive public services in the language than at any time in the past. This has been accomplished through a legislative model in which there are almost no explicit language ‘rights’, but which instead places a language planning body, the Bwrdd, at the heart of development. It has been accomplished with a minimalist framework for enforcement. It has, in short, been accomplished under a model which is markedly different from the models with which Canadians are familiar. This model has been influential close to home: as we shall see in the final part of this paper, it has heavily influenced recent approaches in Scotland, and it, together with aspects of the Canadian model, were drawn on heavily in Ireland’s Official Languages Act 2003, something which is most evident in the language scheme mechanism which is at the heart of the Irish legislation. The private and voluntary sectors have, however, been untouched by this legislative model, although bilingual signage is becoming more common, notably in many major private sector enterprises, including banks, and some establishments in these sectors have, in cooperation with the Bwrdd, adopted voluntary schemes with respect to the use of Welsh.

Interestingly, in spite of the success of its model, Wales is now considering adopting aspects of the Canadian model, and as a result of the 2006 Act, the Welsh Assembly now has the powers and opportunity to do so legislatively. In the 2007 coalition agreement between the Labour Party and Plaid Cymru to form the new Welsh Assembly Government,⁶⁶ the partners pledged to seek enhanced legislative competence through the new powers introduced in the 2006 Act on the Welsh language, with a view to a new Assembly Measure to confirm official status for both Welsh and English, linguistic *rights* in the provision of services, and the establishment of the post of Language Commissioner. On 2 February, 2009, a draft Legislative Competency Order,

which as noted is the first step in the process of transferring legislative authority to the Welsh Assembly, was laid by the assembly government before the National Assembly.⁶⁷ It proposes to add two new matters in respect of which the assembly can legislate. The first,⁶⁸ refers to promoting or facilitating the use of the Welsh language and the treatment of the Welsh and English languages on the basis of equality, and it contemplates imposing duties on a wide range of bodies, including public authorities, persons providing services to the public under an agreement with a public authority, persons providing services to the public who receive public money amounting to £200,000 or more in a financial year, persons overseeing the regulation of a profession, industry or other sphere of activity, and persons providing the public with a range of services, including gas, water or electricity services, postal services, telecommunications services, education, and railway services. While this will allow the assembly to regulate, and even create rights in respect of, the public sector in any eventual Assembly Measure, it will clearly also allow it to do so with respect to a range of non-state sector enterprises, and this represents a potentially significant expansion of the legislative model not only towards a more rights-based one, but one which also impinges on the non-state sector. The second matter refers to provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another, and this seems to be directed at ensuring that the assembly can legislate to ensure that limitations cannot be placed on the use of Welsh, especially in private sector enterprises (where this has been an issue). The draft order now waits the necessary Westminster approval, so much is still to be determined, and the ultimate shape of the new legislative framework will only be known when the draft Assembly Measure is prepared. However, it seems clear that it will involve actual language rights, some regulation of the private and voluntary sector, and an enhanced system of enforcement, including through the courts and almost certainly through a language commissioner. It appears, then, to paraphrase a well-known Canadian bookselling enterprise, Wales needs more Canada.

2. Language Legislation for Gaelic in Scotland

I shall conclude by considering more briefly language legislation for Gaelic in Scotland. Generally, in comparison with Wales, legislative efforts on behalf of Gaelic could be described by two words: later, and less. As already noted, legislative have been both piecemeal and limited in nature, with most developments taking place in the last twenty years or so. With regard to television broadcasting, in the late 1980s the government chose not to create a stand-alone Gaelic channel on the model of S4C in Wales, but to enhance Gaelic provision on existing English-medium channels in Scotland by creating a fund, administered by a body called the Gaelic Broadcasting Committee (“Comataidh Craolaidh Gàidhlig”, or “CCG”) to assist in the costs of producing Gaelic programming,⁶⁹ and by requiring Channel 3 licencees to broadcast a certain amount of Gaelic material, some at peak viewing times.⁷⁰ While these structures did lead to a significant expansion in Gaelic-medium television programming being broadcast—albeit from the perspective of very tiny amounts to begin with—their limitations had become obvious by the late 1990s, which was highlighted in two government-commissioned reports, both of which recommended the creation of a stand-alone channel.⁷¹ The response of the government was to reconstitute the CCG in the Communications Act

2003 as the Gaelic Media Service (“Seirbhis nam Meadhanan Gàidhlig”, or the “Service”), and to expand its remit in such a way as to allow it the potential to develop into a Gaelic-medium broadcaster itself.⁷² Instead of doing so, the Service entered into negotiations with the BBC which led to a partnership agreement between them to launch a Gaelic digital service. Assisted by additional funding from the Scottish Executive, the government created under Scotland’s own devolution legislation, the Scotland Act 1998, the digital channel, BBC ALBA, was finally launched as a BBC service in September, 2008, and is now broadcasting over 6 hours of Gaelic programming each day, between about 5 in the afternoon and 11 at night. BBC ALBA does not have any legislative basis, however, and there is consequently no statutory (or other) formula to guarantee its funding. The relevance of the international legal context was mentioned at the start of this paper, and deserves reference here. Under Article 11, subparagraph 1 a ii of the Language Charter, the UK had committed itself to encourage and/or facilitate the creation of at least one television channel in Gaelic; in its first report on the UK’s compliance with its European Charter obligations, the treaty monitoring body found that the UK had not met its obligation under this provision,⁷³ and the Committee of Ministers of the Council of Europe recommended that the UK facilitate the establishment of a television channel or an equivalent television service in Scottish Gaelic.⁷⁴ The prospect of similar findings in subsequent monitoring rounds under the European Charter may have contributed to these recent developments.

While there has been some legislation on Gaelic in the education system, developments in this area have generally not been driven by and have not been dependent upon such legislation. Since 1918, for example, successive Scottish education acts have placed an obligation on education authorities to provide for the teaching of Gaelic in Gaelic-speaking areas.⁷⁵ The implications of this obligation have, however, never been clear—and have never been tested in the courts—and the development of Gaelic-medium education (“GME”), which began in 1985 with the creation of Gaelic-medium classes at two primary schools (one in Glasgow, and one in Inverness) has been based primarily on parental activism and policy decisions of education authorities,⁷⁶ rather than on statutory obligations.⁷⁷ The system of GME is, however, still very limited, particularly in comparison with Wales, with only about 2,500 primary students receiving it in 2 Gaelic language schools and in classes in 58 English language schools; provision at secondary level is extremely undeveloped, with only about 300 students in the whole country taking subjects other than the Gaelic language itself through the medium of Gaelic. Unlike Wales, there is no national curriculum in Scotland, and no statutory requirement to teach Gaelic as a subject; thus, whereas all primary and secondary students in Wales are learning Welsh, only about one percent of such students in Scotland learn any Gaelic at all.

With respect to the political institutions and the legal system, the position is much weaker, with the result that Gaelic is almost totally absent from these domains, although as shall be discussed, an important piece of recent legislation has the potential to change this, at least to some extent. The Scotland Act 1998⁷⁸, for example, which created the devolved institutions, made no reference at all to the use or the promotion of Gaelic. The Standing Orders of the Scottish Parliament do permit the use of Gaelic in parliamentary debates and before committee,⁷⁹ is not possible to legislate in Gaelic—the Scotland Act 1998 is clear that all legislation will only be in English. There are, in any case, very few

Gaelic speaking MSPs, with the result that Gaelic has been used very infrequently, and generally only on the few occasions when the subject matter relates directly to Gaelic, in sharp contrast to the position in the Welsh Assembly.⁸⁰ Similarly, Gaelic has almost no presence in the legal system. The 1981 case of *Taylor v. Haughney*,⁸¹ made clear that Gaelic-speakers could only use their language in court if they can demonstrate an insufficient command of English. Since all Gaelic-speakers are now bilingual, this decision had the effect of totally excluding Gaelic from Scottish courts. Since July, 2001, it has been possible for litigants and other parties to civil proceedings to give oral evidence in Gaelic in sheriff courts in Portree (the Isle of Skye), and Lochmaddy and Stornoway (the Western Isles)—a change that was directly necessitated by the Languages Charter;⁸² however, a person wishing to do so must make written application to the court at least a fortnight in advance of the hearing. Very small numbers of cases go before these courts, and I am aware of no instances when the option has been taken up. It should also be noted that both the Crofters' Commission and the Scottish Land Court are statutorily required to have one member who speaks Gaelic,⁸³ and it has been suggested that this may imply a right to use Gaelic before both of these tribunals.⁸⁴ While Gaelic was once used fairly regularly before these tribunals, it appears that this is no longer the case. As a result of the foregoing, the institutions of justice in Scotland have not had to equip themselves at all for the use of Gaelic.

This brings us to the final piece of legislation to be considered in this paper, the Gaelic Language (Scotland) Act 2005 (the "Gaelic Act").⁸⁵ The passage of this legislation by the Scottish Parliament in 2005 is the most important legislative development yet for Gaelic, and is the first piece of legislation specifically directed at the language and its speakers. It was the product of a campaign commenced in the mid-1990s by Comunn na Gàidhlig (CNAG), the main Gaelic development agency at the time, and they themselves were inspired by the Welsh Language Act 1993, and, indeed,⁸⁶ the Gaelic Act was itself modelled to a considerable extent on the Welsh Act, although it is generally weaker than that act.

There are four main components of the Gaelic Act, three of which will be discussed here.⁸⁷ First, like the Welsh legislation, the Gaelic Act creates a language development body, Bòrd na Gàidhlig (the Gaelic Board; here, the "Bòrd"). The Bòrd has the general functions of promoting the use and understanding of the Gaelic language, Gaelic education,⁸⁸ and Gaelic culture,⁸⁹ and of providing advice to various institutions, including the Scottish Executive and public bodies.⁹⁰ All of these functions are to be exercised by the Bòrd "with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language" in three ways: first, through increasing the number of persons who are able to use and understand Gaelic; second, through encouraging the use and understanding of Gaelic; and, third, facilitating access, in Scotland and elsewhere, to the Gaelic language and Gaelic culture.⁹¹ The legal effect of the phrase "commanding equal respect to the English language" is unclear, but it is certainly a weaker formulation than the Welsh Language Act's ethos of treating Welsh and English on the basis of equality. The legal effect of the reference to "the status of Gaelic as an official language of Scotland" is similarly unclear.⁹²

The second main component of the Gaelic Act is a requirement on the Bòrd to prepare and submit to Scottish Ministers for their approval a National Gaelic language

plan within one year of the coming into force of the legislation.⁹³ This plan must include proposals as to how the Bòrd will exercise its functions under the Act, and a strategy for promoting, and facilitating the promotion of the use and understanding of the Gaelic language and Gaelic education and Gaelic culture.⁹⁴ This aspect of the Gaelic Act differs from the Welsh Language Act, which imposes no similar requirement on the Bwrdd. However, the legal status and practical effects of the national plan are unclear; nothing is spelled out in the legislation itself. The Bòrd's first national plan, *Plana Nàiseanta na Gàidhlig 2007-2012/The National Plan for Gaelic, 2007-2012*,⁹⁵ was approved in 2007 and sets out targets as well as key projects and infrastructure projects in four areas, namely language acquisition, usage, status, and corpus. It offers for the first time a strategic approach to Gaelic language policy.

The third main component of the Gaelic Act, and the single most important one in terms of the further institutionalisation of the Gaelic language in Scotland, is the power given to the Bòrd to require any Scottish public body to prepare a Gaelic language plan,⁹⁶ this component was clearly inspired by the provisions of the Welsh Language Act. Unlike under the Welsh legislation, though, the Bòrd cannot ask a department or agency of the Westminster government or parliament to prepare a language plan. Another important difference is that a public authority can appeal against the requirement to prepare a Gaelic language plan.⁹⁷ This additional appeal right was aimed at addressing the concerns of some public authorities that the Bòrd could use its powers to require a public authority located in a part of the country with few Gaelic speakers and no perceived connection with the language to prepare a plan. This provides perhaps some idea of how contested the question of the place of Gaelic as a supposedly “national language” of Scotland really is.

Another important difference between the Gaelic Act and Part II of the Welsh Language Act is with regard to the basic content of any language plan; unlike the Welsh Act,⁹⁸ the Gaelic Act does not require that the Gaelic language plans reflect the principle that English and Gaelic should be treated on the basis of equality. Instead, the Gaelic Act requires that, in preparing its plan, a Scottish public authority must have regard to the following: the most recent national Gaelic language plan; the extent to which persons in relation to whom the authority's functions are exercisable are Gaelic speakers; the potential for developing the use of Gaelic in connection with the exercise of such functions; any representations made by the public; and any guidance provided by the Scottish Ministers or by the Bòrd.⁹⁹ The reason for the difference in approach here is almost certainly due to the much different demographic context, referred to earlier—Welsh is spoken by roughly 20% of the population of Wales, and Gaelic is, as noted, spoken by only 1.2%, with very few concentrations of Gaelic speakers outside of a few isolated parts of the country—and to the very small Gaelic-speaking labour pool implied by these numbers that is available to deliver the sorts of services that will be required under the Gaelic language plans. It was felt that the provisions of the Gaelic Act relating to the content of the plans had to allow the plans to be tailored to the very different demographic and sociolinguistic context that different Scottish public authorities will face. In order to ensure that public authorities did not use the flexibility inherent in this approach in a way that would minimise the content of plans, the Gaelic Act provides that all plans must be approved by the Bòrd.¹⁰⁰ However, to ensure that the Bòrd does not impose a plan that places too many demands on a public authority, the Gaelic Act

provides that if there is no agreement between the Bòrd and the public authority, the matter must be referred to the Scottish Ministers,¹⁰¹ who have the power to approve the plan as originally submitted to the Bòrd or approve it with such modifications as they think fit.¹⁰² Thus, the Bòrd has considerable power over the approval process, but ultimate authority concerning the nature and content of Gaelic language plans rests with Scottish Ministers. There is therefore a continual balancing in the Gaelic Act between the concerns of those in the Gaelic community that too much discretion in the hands of public bodies will lead to minimalist commitments in language plans, and concerns of at least some public bodies that too much power in the hands of the Bòrd may result in the imposition of maximalist commitments that they would consider to be excessive. To date, only five Gaelic language plans have been approved by the Bòrd, involving some of the most important bodies serving the remaining Gaelic-speaking communities;¹⁰³ although they represent an improvement on any existing policy which such bodies may have had for the use of Gaelic, they are all considerably weaker than the Welsh language schemes of comparable bodies in Wales.

Finally, like the Welsh Language Act, the Gaelic Act contains a mechanism for monitoring the implementation of Gaelic language plans by public authorities, although once again, the provisions of the Gaelic Act are arguably somewhat weaker than those of the Welsh legislation. The Bòrd can require a public authority to submit a report on the extent to which it has implemented the measures set out in its plan,¹⁰⁴ and where the Bòrd considers that the public body is failing to implement its plan, it may submit a report to Scottish Ministers.¹⁰⁵ Once they are in receipt of the Bòrd's report, the Scottish Ministers may direct the public body in question to implement any or all of the measures set out in its plan by a specified date.¹⁰⁶ Thus, the Bòrd has the power to investigate and report on implementation, but enforcement in respect of failures in implementation is ultimately left to the Scottish Ministers. In this respect, at least, the Welsh Act and the Gaelic Act are similar.

That the legislative framework for Gaelic is weaker and less complete than that which exists for Welsh is not surprising, given the considerably smaller numbers of speakers of Gaelic, the much shorter and more limited history of language activism, and the much lower political salience that Gaelic has in Scotland. Nonetheless, in its main piece of legislation for Gaelic, Scotland has followed the model created in the Welsh Language Act 1993. As noted, that legislation has had considerable success in increasing the presence of Welsh in the public domain, in creating much greater opportunities to use the language, and in significantly expanding employment opportunities for speakers of the language. Whether such success can be replicated in the much less supportive environment which exists for Gaelic in Scotland is a test of whether, like the Canadian models, the Welsh model is exportable.

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¹ In addition to Scottish Gaelic, spoken in Scotland, Welsh, spoken in Wales, and Irish, spoken in both the Republic of Ireland and Northern Ireland, a Celtic language, Breton, is still spoken in Brittany, although like the other Celtic languages, numbers of speakers have contracted very greatly. Two other Celtic languages, Manx, which is closely related to Irish and Scottish Gaelic, and Cornish, which is closely related

to Welsh and Breton, ceased completely to be spoken, although efforts are being made in the Isle of Man and Cornwall, respectively, to revive them.

² There are, however, occasional exceptions, such the British Nationality Act 1981, which provides that in order to acquire British citizenship, a person must, *inter alia*, have sufficient knowledge of English, Welsh, or Scottish Gaelic (section 6 and Schedule I).

³ Michael Beloff, Q.C., “Minority Languages and the Law”, (1987) 40 *Current Legal Problems* 139, at p. 142.

⁴ Kenneth O. Morgan (ed.), *The Oxford History of Britain* (Oxford, 1988), 155.

⁵ Gwilym Prys Davies, “The Legal Status of the Welsh Language in the Twentieth Century”, in Geraint H. Jenkins and Mari A. Williams, eds, *Let’s do our best for the ancient tongue’: The Welsh Language in the Twentieth Century*, Cardiff: University of Wales Press, 2000, pp. 217-248, at p. 217.

⁶ Janet Davies, “Welsh”, in Glanville Price (ed.), *Languages in Britain and Ireland* (Oxford, 2000), 78-108, at p. 80. See, generally, Janet Davies, *The Welsh Language*, (Cardiff, 1993).

⁷ Davies, *The Welsh Language*, *ibid*, p. 23. The status of the Welsh language was assisted by one piece of legislation: an Act of Parliament in 1563 required the translation of the Bible and the Book of Common Prayer into Welsh, ensuring that Welsh tended to become the language of religious worship in Wales.

⁸ They specifically provided that neither Latin nor French, nor “any other tongue or language whatsoever” could be used.

⁹ *Supra.*, note 7, p. 38.

¹⁰ Kenneth MacKinnon, *Gaelic: A Past and Future Prospect*, (Edinburgh: Saltire Society, 1991), pp. 46-47. See, generally, European Bureau for Lesser Used Languages (EBLUL) *Scotland: a linguistic double helix*, 2 European Languages (Dublin, 1995), at pp. 29-31.

¹¹ Vivian Edwards, “Language Policy in Multicultural Britain”, in John Edwards (ed.), *Linguistic Minorities, Policies and Pluralism* (Toronto, 1984), 49-80, at 49.

¹² Davies, “Welsh”, *supra*, note 6, at 89.

¹³ Colin Williams, “Welsh in Great Britain”, in Guus Extra and Durk Gorter (eds.), *The other languages of Europe* (Clevedon, 2001), 59-81, at 59-60.

¹⁴ Office of National Statistics, available at: <http://www.statistics.gov.uk/census2001/profiles/rank/walskills.asp>.

¹⁵ In 1991, 510,920 aged 3 and over claimed to be able to speak Welsh, representing 18.7% of the population.

¹⁶ For a good review of the present demographic position of Welsh and of the key demographic issues facing the language, see Williams, *supra*, note 13.

¹⁷ *Scotland’s Census 2001: The Registrar General’s Report to the Scottish Parliament*, 13 February, 2003; available at: [http://www.gro-scotland.gov.uk/grosweb/grosweb/pages/file5/\\$file/rg_report_parliament.pdf](http://www.gro-scotland.gov.uk/grosweb/grosweb/pages/file5/$file/rg_report_parliament.pdf). In 1991, 65,978 reported themselves to be Gaelic speakers, or approximately 1.4% of the Scottish population aged 3 or over. For 1991, see The Scottish Parliament Information Centre, *Gaelic (Gàidhlig)*, Devolution Series 2/00, 2 March, 2000. While the census did not solicit information on linguistic competence, the great majority of those reported as Gaelic speakers were almost certainly native speakers, and fully bilingual.

¹⁸ Space does not permit an analysis of the impact of the European Charter, but for an analysis, see Robert Dunbar, “The Ratification by the United Kingdom of the European Charter for Regional or Minority Languages”, Working Paper No. 10, January 2003, at: <http://www.ciemer.org/mercator/index-gb.htm>.

¹⁹ Although these Welsh versions were to have “like effect” as versions done in English (subsection 3(1), Welsh Language Act 1967), in cases of doubt, the English versions prevailed (paragraph 3(2)(a), Welsh Language Act 1967).

²⁰ The formula set out in s. 61 of the Broadcasting Act 1990 was replaced by Ss. 80(1) of the Broadcasting Act 1996, which provided that the Secretary of State would set a base amount which would then be subject to an annual percentage increase determined by reference to the rate of price inflation. In 2007-08, the amount received under this formula was £98.44 million.

²¹ Broadcasting Act 1990, sections 57(2)(b) and (c).

²² Education in which Welsh, not English, is the medium of instruction in the classroom; this is to be contrasted with the teaching of Welsh as a subject in an English-medium curriculum.

²³ For example, section 21 of the Education Act 1980 enabled the Secretary of State for Wales to grant aid to local education authorities and other bodies to overcome some of the additional costs associated with Welsh language education, and introduced the Education (School Information) Regulations 1981, which required local education authorities to publish policies regarding the use of Welsh. See Edwards, *supra*, note 11, pp. 71-72.

²⁴ 1988, c. 40 (hereinafter the “1988 Act”).

²⁵ Section 2, subsection 3(7) and paragraphs 3(1)(b) and 3(2)(c), 1988 Act.

²⁶ Welsh Office, *Welsh for Ages 5-16: Proposals of the Secretary of State for Wales* (Cardiff, 1989), at 4.

²⁷ 1993, c. 38.

²⁸ Subsection 22(2) authorizes the inclusion in the rules of the courts of provisions relating to the use of documents in the Welsh language, and section 23 authorizes the Lord Chancellor to translate into Welsh any form of any oath or affirmation to be administered and taken or made by any person in any court.

²⁹ See http://www.courtservice.gov.uk/about_us/our_performance/welsh_lang/e_welshlang/foreward.htm.

A separate scheme exists for the Magistrates Courts.

³⁰ 5 & 6 Geo. 6., c. 40 [Eng.]. Section 1 of this act repealed section 17 of the 1536 Act of Union, and went on to provide that the Welsh language may be used in any court in Wales “by any party or witness who considers that he would otherwise be at any disadvantage by reason of his natural language of communication being Welsh”. Thus, unlike section 22 of the 1993 Act, this provision did not create an absolute right to use Welsh in the courts; in practice, the determination of whether it was necessary to use Welsh was made by the presiding judge, and the provision was interpreted restrictively. See Ruth Morris, “Great Mischiefs—An Historical Look at Language Legislation in Great Britain”, in Douglas A. Kibbee, ed., *Language Legislation and Linguistic Rights*, (Amsterdam: John Benjamins, 1998), at p. 45.

³¹ Section 22 of the 1993 Act is almost identical to subsection 1(1) of the Welsh Language Act 1967, and in a series of trials held in the 1970s, the requirements imposed on the courts by this provision were interpreted rather narrowly. See, generally, Zenon Bankowski and Geoff Mungham, “Political Trials in Contemporary Wales: Cases, Causes and Methods”, in Zenon Bankowski and Geoff Mungham (eds.), *Essays in Law and Society*, (London, 1980), 53-70, at 53.

³² See, generally, sections 25-33.

³³ Parts I and II of the Act, respectively.

³⁴ Subsection 3(1).

³⁵ The 1993 Act generally anticipated that the Secretary of State would perform a range of functions and have a range of supervisory and other powers under the Act. Pursuant to the Government of Wales Act 1998, the functions of the Secretary of State for Wales under the 1993 Act were generally transferred to the National Assembly.

³⁶ Subsection 3(2).

³⁷ In its notice to the public body, the Bwrdd is required to set a timetable for the submission of the scheme (paragraph 7(2)(b)), and the public body is required to carry out consultations with the public in respect of the scheme (section 13). The scheme which is ultimately submitted to the Bwrdd for approval must set out both a timetable for giving effect to the measures contained in the scheme and the ways in which the public body will ensure that the scheme is publicized (subsection 12(2)).

³⁸ Subsections 5(1) and 5(2).

³⁹ Subsection 5(2).

⁴⁰ Section 9.

⁴¹ Subsection 5(3).

⁴² Welsh Language Board, *Welsh Language Schemes: Their preparation and approval in accordance with the Welsh Language Act 1993*, Cardiff, 1996.

⁴³ In the case that the Bwrdd does not approve a scheme, or a scheme is not submitted on time, it is referred to the Welsh Assembly, which effectively has the power to impose a scheme: see section 14.

⁴⁴ Subsection 17(1); indeed, the Bwrdd may even carry out an investigation on its own initiative where it believes that the public body has failed to carry out a scheme.

⁴⁵ Subsection 18(2).

⁴⁶ Subsections 19(1) and (3).

⁴⁷ Section 20.

⁴⁸ Furthermore, Part 4 of the 2006 Act provides that the Assembly will have powers to pass legislation on a broad range of matters, set out in Schedule 7 of the 2006 Act, upon assent to the creation of such powers in a referendum. This referendum has not yet been held.

⁴⁹ Subsection 98(5), 2006 Act, and Standing Order 23.17, Standing Orders of the National Assembly for Wales, Cardiff: National Assembly for Wales, March, 2007. With regard to Bills under Part 4 of the 2006 Act, these must also be in bilingual form: subsection 111(5), although the standing order provision has not yet been made.

⁵⁰ Section 156, 2006 Act.

⁵¹ Standing Order 29.4.

⁵² Standing Order 8.2 and 10.4.

⁵³ Standing Order 30.1, 30.2 and 30.3.

⁵⁴ Standing Order 30.4.

⁵⁵ 1998 Act, subsection 47(1); 2006 Act, subsection 35(1). The assembly is also subject to a Welsh language scheme which sets out in much greater detail how the assembly and its government will use Welsh in the provision of services and in its internal operations.

⁵⁶ The extent to which the Assembly has become a bilingual institution is impressive. For an excellent account of the real linguistic situation within both institutions, see Colin H. Williams, "Law, Language and Politics", in W. John Morgan and Stephen Livingston (eds.), *Law and Opinion in Twentieth-Century Britain and Ireland* (Basingstoke, 2003), 109-140, at 115. pp. 115-120.

⁵⁷ While the Assembly may have been able to take such measures even without the authority of this provision (as there is nothing in the law which would otherwise have prevented the Assembly from taking such action), it is of at least symbolic importance.

⁵⁸ Cardiff: Welsh Assembly Government, July, 2002; also available at: <http://www.bwrdd-yr-iaith.org.uk/pdf/adolygiadpolisi/datganiadpolisi-e.pdf>.

⁵⁹ *Ibid.*, 3.

⁶⁰ *Ibid.*, 4.

⁶¹ "Everyone's language".

⁶² Available at: <http://www.wales.gov.uk/subculture/content/action-plan-e.pdf>.

⁶³ In particular, the government has set a number of targets to be met by 2011, including: increasing the numbers of people able to speak Welsh by 5% over the levels which appear in the 2001 census results; arresting the decline in numbers of communities in which Welsh is spoken by at least 70% of the population; increasing the percentage of children receiving Welsh-medium pre-school instruction; increasing the percentage of families in which Welsh is the medium of communication; and ensuring that more services are delivered through the medium of Welsh by public, private and voluntary organizations (para. 2.16). The Assembly government also aims to increase the use and visibility of Welsh in all aspects of daily life (para. 2.17). The Assembly government has committed itself to setting up a Welsh Language Unit within the government to implement the action plan and monitor and review its impact (paras. 2.18-2.20).

⁶⁴ Section 61, paragraph (k).

⁶⁵ Subsection 78(1). Subsection 78(2) makes explicit the requirement that Welsh Ministers must adopt a Welsh Language scheme setting out the measures they propose to take, for the purposes of giving effect (so far as is both appropriate in the circumstances and reasonably practicable) to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on the basis of equality.

⁶⁶ *One Wales: A progressive agenda for the government of Wales*, 27 June, 2007.

⁶⁷ The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009, 9 February 2009, Cm 7544.

⁶⁸ Matter 20.1, in field 20 (Welsh language) in Part I of Schedule 5 to the 2006 Act.

⁶⁹ The Broadcasting Act 1990, 1990, c. 42, subsections 183(3) and (4). The body was originally called the Gaelic Television Committee ("Comataidh Telebhisein Gàidhlig", or the "CTG"). The CTG was required to make grants in such a manner as they considered would secure a wide range of high-quality television programmes in Gaelic are broadcast in Scotland: subsection 183(6). Under the Broadcasting Act 1996, the body's remit was expanded to include funding of Gaelic-medium radio programming, its name was consequently changed to the CCG, and its statutory duty was expanded: subsection 95(6).

⁷⁰ Paragraph 184(1)(a) and (b); Channel 3 licensees in Scotland were also required to ensure that there would be a wide range of programmes in Gaelic.

⁷¹ Neil Fraser, *A Review of Aspects of Gaelic Broadcasting*, a report by Fraser Production and Consultancy for the Scottish Office Education and Industry Department, Cultural Heritage Division, 1998, and the Gaelic Broadcasting Task Force, *Gaelic Broadcasting Task Force Report*, (Edinburgh: The Scottish Executive, 2000), available at: <http://www.scotland.gov.uk/library3/heritage/gbtf-00.asp>.

⁷² The functions of the SnamMG are to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland, and in carrying out these functions, it may finance or engage in the making of programmes in Gaelic: *Communications Act 2003*, 2003, c. 21, section 208.

⁷³ Report of the Committee of Experts on the Application of the Charter in the United Kingdom, 24 March, 2004, ECRML (2004) 1, paragraph 265.

⁷⁴ Council of Europe, Committee of Ministers, Recommendation RecChL(2004)1 on the application of the European Charter for Regional or Minority Languages by the United Kingdom, adopted on 24 March, 2004, at the 877th meeting of the Ministers' Deputies.

⁷⁵ See, for example, section 1 of the Education (Scotland) Act 1980, 1980 c. 44.

⁷⁶ These developments have also been facilitated by a system of so-called "Gaelic-specific grants", now administered by the Scottish Executive, created under the Grants for Gaelic Language Education (Scotland) Regulations 1986, 1986 No. 410 (S. 35), made under section 73 of the Education (Scotland) Act 1980. Under these grants, the Scottish Government contributes £3 for every £1 contributed by an education authority for a period of up to three years for new GME initiatives.

⁷⁷ In the year 2000, the Scottish Executive, as the devolved government was then named, resisted a campaign by Gaelic organisations for the creation of a statutory right to GME, instead opting for a placing a requirement under the Standards in Scotland's Schools etc. Act 2000, 2000 asp. 6., on local education authorities to provide an annual account of the ways in which or the circumstances in which they will provide GME and, where they do provide GME, to provide an account of the ways in which they will seek to develop their provision. These new legislative obligations have not resulted in a significant increase in GME; indeed, numbers in GME have been relatively static for several years.

⁷⁸ 1998 c. 46.

⁷⁹ Statutory Instrument 1999 No. 1095, The Scotland Act 1998 (Transitory and Transitional Provisions)(Standing Orders and Parliamentary Publications) Order 1999, art. 3, Schedule, as amended from time to time, Rule 7.1.1, 7.1.2, and 7.8.1. Permission of the Presiding Officer is, however, first required. There is no reference in the standing orders to the use of Gaelic in many other important types of parliamentary business, such as motions (which must be in English: Rule 8.2.2(a), 8.5.2.(a)), petitions and questions (which must be in English: Rule 13.3.3(c)).

⁸⁰ In the last Parliament (2003-2007), there were only two fluent Gaelic-speaking MSPs out of 129, both native speakers; in the new Parliament elected in May, 2007, there are still only two fluent speakers, one of whom is a native-speaker, and one is an adult learner.

⁸¹ 1982 S.C.C.R. 360.

⁸² By virtue of an Act of Court of 11 June, 2001 made by the Sheriff Principal of Grampian, Highland and Islands. The Act of Court also provided that Gaelic could be used in appeals from these sheriff courts to higher courts. The Languages Charter required the UK to make some commitment with respect to the use of Gaelic in the legal system.

⁸³ Crofters (Scotland) Act 1993, 1993 c. 44, subsection 3(3), and Scottish Land Court Act 1993, 1993 c. 45, subsection 1(5), respectively.

⁸⁴ See A.C. Evans, "The Use of Gaelic in Court Proceedings", *1982 Scots Law Times*, 286-7, at 286.

⁸⁵ For a more detailed discussion of the provisions of the Gaelic Act, and its legislative history and pre-history, see Robert Dunbar, "The Gaelic Language (Scotland) Act 2005" (2005), 9 *Edinburgh Law Review* 466-79.

⁸⁶ 1993, c. 38.

⁸⁷ The fourth is a power given to the Bòrd to produce statutory guidance on Gaelic education to which local education authorities would have to have regard: section 9.

⁸⁸ Gaelic education is defined in subsection 10(1) as education (a) in the use and understanding of, (b) about, or (c) by means of the Gaelic language, and therefore includes the teaching of Gaelic as a subject as well as GME.

⁸⁹ Gaelic culture is defined in subsection 10(1).

⁹⁰ Subsection 1(2).

⁹¹ Subsection 1(3).

⁹² It does not in fact set out to confer “official status” on Gaelic, as the subsection in which it is located concerns the functions of the Bòrd, not the legal status of the language itself.

⁹³ Subsection 2(1); new plans must then be submitted every five years thereafter.

⁹⁴ Subsections 2(1) and (2).

⁹⁵ It can be downloaded from the Bòrd’s website: <http://www.bord-na-gaidhlig.org.uk>.

⁹⁶ Subsection 3(1).

⁹⁷ Subsection 4(8). The appeal is to the Scottish Ministers, and it must be on the basis that the requirement to prepare a plan was unreasonable, having regard to the criteria, set out in subsection 3(3), which the Bòrd must consider when issuing notices.

⁹⁸ Subsections 5(1) and (2).

⁹⁹ As noted above, such guidance is also contemplated under the Welsh Language Act. Like the Bwrdd, the Bòrd has prepared and Scottish Ministers have approved (as they are required to do under section 8) such guidance: *Guidance on the Development of Gaelic Language Plans*. These guidelines provide a description of the core commitments which all public authorities should address when preparing their plans: identity (covering the use of Gaelic in corporate identity and signage); communications (covering the use of Gaelic by reception staff, telephone, mail and e-mail communications, in forms and applications, and at public meetings); publications (covering the use of Gaelic in public relations and in dealing with media, in printed material, on websites, and at exhibitions); and staffing (covering the Gaelic language training of existing staff, the provision of opportunities for staff to learn Gaelic, the recruitment of Gaelic-speaking staff, and the use of Gaelic in advertising).

¹⁰⁰ Subsection 5(1).

¹⁰¹ Subsection 5(5).

¹⁰² Subsection 5(5); the discretion of the Scottish Ministers is, however, not absolute, as they must have regard to matters referred to in paragraphs 3(5)(a) to (c) of the Act—namely, the most recent national Gaelic language plan, the extent to which persons in relation to whom the public body’s functions are exercisable use Gaelic, and the potential for developing the use of Gaelic in connection with the exercise of those functions—together with representations by the Bòrd and the public body.

¹⁰³ They are the local councils serving the main Gaelic-speaking rural areas (Comhairle nan Eilean Siar, Highland Council, and Argyll and Bute Council), the main economic development agency for the area, Highlands and Islands Enterprise, and the Scottish Parliament.

¹⁰⁴ Subsections 6(1) and (2).

¹⁰⁵ Subsection 6(4).

¹⁰⁶ Subsection 6(5). Alternatively, the Bòrd may simply decide to lay a copy of the report before the Scottish Parliament, and it is unclear what happens in these circumstances, or whether the Parliament has any authority to require any action of the public authority. Under the Welsh Act, the Bwrdd may make recommendations to the public body with regard to the implementation of their Welsh language scheme, and if the public body fails to implement these, the Bwrdd can refer the matter to the National Assembly Government, which can give directions to the public body which are enforceable by mandamus action: section 20, the Welsh Act.