

# **BRITISH SIGN LANGUAGE (SCOTLAND) BILL**

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## **DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Mark Griffin MSP. Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of provisions in the British Sign Language (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

### **Outline of Bill provisions**

2. The Bill promotes the use and understanding of the sign language known as British Sign Language. The Scottish Ministers are to publish a British Sign Language National Plan for Scotland (referred to as a "National Plan"). In addition, public authorities listed in the Bill are each to publish their own British Sign Language Plan (referred to as an "Authority Plan") in connection with the exercise of their functions. All plans are to be updated and renewed within specified periods during each session of the Parliament. Regular "Performance Reviews" provide a means of assessing measures taken and outcomes achieved, both in relation to the National Plan and individual Authority Plans.

### **Rationale for subordinate legislation**

3. The Bill contains three powers to make subordinate legislation, each of which is delegated to the Scottish Ministers. The Bill is of a "stand-alone" nature - it does not amend existing legislation, and the powers contained in the Bill are new, with no existing powers being amended or repealed. The powers are explained in detail in the following paragraphs, but in considering if and how provision should be set out in subordinate legislation rather than on the face of the Bill the member has had regard to –

- the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- the relatively better position of the Scottish Ministers when compared with an individual member in making decisions on the best use of public resources to meet objectives;

- the possible requirement to make further provision over time, as the new legislation establishes itself, to ensure that where a need is identified to address practical matters of detail, or to make other refinements so as to assist the effective operation of the Bill, or where other unexpected circumstances arise which require a legislative solution, then these can be readily taken forward by means of subordinate legislation.

## **Delegated powers**

### **Section 3(3)(d) – Information contained within an Authority Plan**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** negative procedure

#### *Provision*

4. Section 3 sets out the responsibilities of listed authorities (such authorities being detailed in section 8 and schedule 2) in relation to the preparation of Authority Plans. Under section 3(3)(a) to (c), an Authority Plan is to set out any measures to be taken by the authority in regard to the use of British Sign Language, timescales for doing so, and (where appropriate) how, when, and to what extent measures to be taken in terms of the most recently published plan were taken. Section 3(3)(d) enables the Scottish Ministers to specify, by means of order, any other information to be included in an Authority Plan.

#### *Reason for taking power*

5. The British Sign Language (Scotland) Bill, with the introduction under it of a requirement to produce a range of plans, represents wholly new legislative territory, in which Authority Plans (along with the National Plan) lie at the core. It is quite possible that, as the new Act establishes itself, other information which it may be useful to be able to set out within an Authority Plan will be identified. In those circumstances it will be important to have a ready legislative means of addressing this, to assist the successful operation of the plan-based structure which has been provided for. Accordingly, section 3(3)(d) enables the Scottish Ministers to make further provision as to the information to be contained within an Authority Plan, beyond what is set out at paragraphs (a) to (c) of section 3(3).

#### *Choice of procedure*

6. This power, if exercised, can be used to set out other information. That is, information concerned with an Authority Plan, and what it is to contain. The power has a specific, limited purpose and is considered to be uncontroversial. Accordingly, application of the negative procedure to it, as provided for at section 3(9), is regarded as offering an appropriate level of scrutiny so far as any exercise of the power is concerned.

**Section 7(1) – Publication date of plan or review – alteration in exceptional circumstances**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** affirmative procedure

*Provision*

7. Section 6 and schedule 1 make special provision for circumstances in which Parliament is dissolved early. Given the structure of the Bill and its focus on the publication of plans and reviews at intervals which relate to the Parliamentary session timetable, there is a need to provide for exceptions to the normal cycle of plan production where early dissolution occurs. This is dealt with at section 6 and schedule 1.

8. That situation aside, it is conceivable that other “exceptional circumstances” might arise which could result in it being important for the Scottish Ministers to be able to alter the timescale to which a plan or review is published under the Bill. It is considered necessary that there should be an appropriate legislative means to ensure that unforeseen, exceptional circumstances can be addressed, and that there is a suitable mechanism in place for doing so. For that reason, the power set out at section 7 has been provided.

*Reason for taking power*

9. The circumstances in which this power can be exercised must, in the view of the Scottish Ministers, be “exceptional”. Given their exceptional nature, it is inevitably difficult to provide examples of circumstances when the power might be used. The Explanatory Notes cite the possibility of unforeseen difficulties arising which make it problematic for listed authorities to meet the timescales specified in the Bill. But in any event it is not considered possible to identify an exhaustive list of what might amount to “exceptional circumstances”, such as to enable this matter to be dealt with on the face of the Bill, rather than by means of an order making power.

*Choice of procedure*

10. While taking the view that it is important to include this power, it is at the same time recognised that the power is a significant one. It is intended that it should be used only in circumstances which are, truly, exceptional. For that reason provision is made, at section 7(2), for use of this power to be subject to the affirmative procedure. It is acknowledged that application of the affirmative procedure could delay the process of dealing with those “exceptional circumstances”, albeit they might call for early attention. On balance, however, it is considered to be of greater importance that any use of this power (which it is anticipated is likely to be rare) is exercised in such a manner that there is an opportunity for full Parliamentary scrutiny of it, as afforded by the affirmative procedure. That is of particular importance given that publication timescales for plans and reviews represent an integral part of the Bill’s structure, such that any variation to them should not be permitted to be undertaken lightly.

### **Section 8(3) – modification of schedule 2 public authorities list**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** affirmative procedure

#### *Provision*

11. Each authority referred to in the list contained within schedule 2 to the Bill is required to prepare an Authority Plan, and is subject to the other responsibilities imposed under the Bill. The list of authorities is a lengthy one and comprises a range of bodies which are of a “public” nature, with service orientated functions, and covering areas such as education, health, justice and government. Private and voluntary sector organisations are not affected. Provision for modifying the list is contained at section 8(3).

#### *Reason for taking power*

12. It is inevitable that, for example, the name of a body set out in schedule 2, or the description given to it, might change over time. Similarly, the Scottish Ministers may wish to be able to add other authorities to the list, or indeed to remove existing entries. It is considered reasonable that they should be able to do so by means of subordinate legislation, and section 8(3) provides the necessary power to do so.

#### *Choice of procedure*

13. The ability to alter the list of bodies which are to have responsibilities under the Bill is a significant one. That is, given the Bill’s structure and its focus on plans to be prepared by specified bodies. Careful consideration has been given to the list set out within schedule 2. It is felt to be an appropriate one, which reflects the policy aims of the legislation. If changes are to be made to it then it is considered essential that that Parliament should have the opportunity to consider these fully. For that reason, therefore, exercise of this power is made subject to the affirmative procedure, as set out at section 8(4), that being considered to afford the necessary level of scrutiny.



*This document relates to the British Sign Language (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 29 October 2014*

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