

BRITISH SIGN LANGUAGE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the British Sign Language (Scotland) Bill introduced in the Scottish Parliament on 29 October 2014. It has been prepared by the Non-Government Bills Unit on behalf of Mark Griffin MSP, the member who introduced the Bill, in accordance with Rule 9.3.3A of the Parliament's Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 55–EN.

POLICY OBJECTIVES OF THE BILL

2. The British Sign Language (Scotland) Bill (“the Bill”) aims to promote the use of British Sign Language (BSL), principally by requiring BSL plans to be prepared and published by the Scottish Ministers and listed public authorities. Plans will be reviewed, reported on via the Performance Review Report and updated at regular intervals. The intention is that, by placing this obligation on the Scottish Government and listed authorities, the profile of the language will be heightened and its use in the delivery of services increased.

BACKGROUND

3. BSL is the first language of many Deaf people¹ in Scotland. It is a visual-gestural language which uses space and movement grammatically. The hands, face and head are used to communicate and it has a different grammatical structure to English.

4. Across Scotland, BSL is viewed as the indigenous manual language of its users in the same way that English is the indigenous spoken language. Deaf people who use BSL are part of a recognised cultural and linguistic minority. Unlike people who speak other minority languages, many Deaf sign language users cannot learn to speak English as they cannot hear the language.

5. The then Scottish Executive's February 2007 consultation document, *A Strategy For Scotland's Languages*², describes BSL as:

¹ The word *deaf* is often capitalised as *Deaf* to refer to people who have a strong deaf cultural identity (often as a result of being born deaf). By contrast, references to ‘small d’ deaf people is used to refer to people who have an acquired hearing loss, who view being deaf only in medical terms and who do not view themselves as part of the cultural Deaf community.

“a real, full and living language and is an important element of our rich cultural heritage. It has its own vocabulary, structure and grammar, which is different from English, and like spoken languages in Scotland, has its own regional variations and dialects”.

6. The Scottish Government’s British Sign Language and Linguistic Access Working Group found that—

“one important difference between minority language speakers and sign language users is that Deaf people who use BSL are less likely to be bilingual and this has huge implications for policies and for services. It is not simply that Deaf people prefer BSL to English, as many Scots Gaelic, Welsh or Irish speakers may prefer their own languages to English: it is that Deaf people are not in a position to acquire English in the usual way”

and

“Deaf BSL users consider themselves a distinct language group and not disabled. They have a unique culture, history and life experience as a language minority and feel that actions to improve their inclusion in society should be based on exactly the same language approach to other groups”.³

7. There are an estimated 5,000 to 6,000⁴ Deaf BSL users in Scotland. Action on Hearing Loss estimates that 850,000 people in Scotland experience some level of hearing loss⁵ and up to 5,000 people in Scotland experience a dual sensory impairment.⁶ Over 1,000 children and young people in Scotland under the age of 19 have severe or profound hearing loss and it is estimated that 120 children each year are born with a hearing loss.⁷ The impact of a child being born with a hearing loss can be great on parents, guardians, siblings and other family members, many of whom are hearing. It can be difficult for parents and other family members to become educated in BSL, with many having to pay for courses simply to communicate with their child. Furthermore, on a wider scale, it can be difficult for BSL users to communicate with the general population, as BSL/English sign language interpreters are in short supply. Scottish Association of Sign Language Interpreters (SASLI) figures show that Scotland’s entire Deaf population has to rely on 80 dedicated sign language interpreters.⁸

Scottish Government action

8. In 2000, the then Scottish Executive set up the British Sign Language and Linguistic Access Working Group. The working group was made up of representatives from Deaf organisations and Executive officials. The purpose of the group was to develop a cohesive

² The Scottish Executive. *A Strategy For Scotland’s Languages*, February 2007. Available at: [document,http://www.scotland.gov.uk/Publications/2007/01/24130746/0](http://www.scotland.gov.uk/Publications/2007/01/24130746/0)

³ The Scottish Government’s British Sign Language and Linguistic Working Group, *The Long And Winding Road A Roadmap To British Sign Language & Linguistic Access In Scotland*. 2009 Available at: <http://www.scotland.gov.uk/Resource/Doc/278136/0083565.pdf>

⁴ Hear Me Out Report, <http://www.actiononhearingloss.org.uk/about-us/scotland/policy-and-research/research.aspx>

⁵ Hearing Matters Scotland Report, <http://www.actiononhearingloss.org.uk/about-us/scotland/policy-and-research/research.aspx>

⁶ Deafblind Scotland Statistics

⁷ National Deaf Children’s Society, 2012

⁸ SASLI Figures, 2012

strategy for improving linguistic access for Deaf people in Scotland, as well as raising awareness of Deaf issues among policy makers, professionals, service providers, Deaf people and the general population.

9. A report by the Working Group was published by the Scottish Government in February 2009 – *Scoping Study: Linguistic Access to Education for Deaf Pupils and Students in Scotland*.⁹ This scoping study looked at all aspects of how Deaf pupils and students get on within the education system in Scotland. One of the aspects looked at was “the risk of isolation in mainstream situations”. The report stated—

“In many cases a Deaf child may be the only Deaf child in a class – or in a school. There were examples of schools making good efforts to include individual Deaf pupils – particularly at primary stage (for example assemblies on topics related to Deafness; pupils and staff undertaking BSL qualifications).”¹⁰

10. In August 2009, the Working Group published a report, *The Long and Winding Road – A Roadmap to British Sign Language & Linguistic Access in Scotland*.¹¹ The document acknowledged that—

“the roadmap cannot hope to address all aspects of access for Deaf people living in Scotland ... it does outline many of the major issues and points to some of the ways towards improvement, particularly in public policy”.

11. However, the report also stated that—

“The working group has a robust vision of what needs to be in place to improve linguistic access for Deaf and Deafblind people and it maintains a determined focus of deploying resources towards long term aims. It envisages a world where Deaf people would be automatically afforded the same life chances as their fellow citizens. In such a world:

- families with Deaf babies would be supported to meet the linguistic needs of their child at the appropriate age;
- Deaf pupils would have the same school attainments as their peers;
- BSL would be offered as an educational tool for Deaf pupils who prefer it;
- pupils could study BSL and Deaf culture as a curriculum subject, from primary school through to university;
- all public services would be Deaf and Deafblind aware;
- Deaf and Deafblind people would be provided with timely information;
- information would always be provided in a range of accessible formats;
- the implications of Deafness would be understood and valued by society.”

⁹ <http://www.scotland.gov.uk/Publications/2009/02/11155449/0>

¹⁰ <http://www.scotland.gov.uk/Publications/2009/02/11155449/11>

¹¹ <http://www.scotland.gov.uk/Publications/2009/07/01102537/0>

12. In March 2011, the Scottish Government made a formal statement recognising the need to support the use of BSL. The then Public Health Minister, Shona Robison MSP, said:

“British Sign Language is a vibrant language which makes a vital difference to the daily lives of many Deaf people in Scotland. It is important that we do all we can to support the use of the language ...”.

13. This Bill seeks to build on this vision and the Scottish Government’s intentions as set out in its Roadmap. The Bill will not, in itself, close any existing service gaps, but will represent an important stepping stone in the process for the development of BSL provision.

DETAIL OF THE BILL

Specific duties on the Scottish Ministers

14. The Scottish Ministers will, collectively, have a number of duties under the Bill. They will be responsible for promoting the use of BSL, principally through the preparation and publication of a National Plan, which is to be published near the beginning of each session of the Parliament. They must consult on that plan prior to its finalisation. Consultation will encompass those bodies and persons who use BSL or represent those who do and any other person or group directly affected by the National Plan – whether they are Deaf, deafblind or hearing. The Scottish Ministers will also be responsible for preparing and publishing a British Sign Language Performance Review (“Performance Review”) and laying it before the Parliament near the end of each session.

15. The Scottish Ministers will also be required to designate a Minister with lead responsibility for BSL. (It is envisaged that this duty will be added to the portfolio of an existing Minister rather than necessitate the creation of an additional post.) The Bill does not specify a timeframe for the appointment.

Duties on listed authorities

Definition of listed authorities

16. The provisions of the Bill will impact on a range of Scottish public authorities, which are listed in schedule 2 to the Bill. These bodies have been carefully selected and represent the public-facing, service-oriented bodies in the key sectors of education, local government, health, justice and policing. Private and voluntary sector organisations are not affected. Factors which were taken into account in the selection of bodies listed in the schedule were the extent to which the bodies have a customer-facing role and the size of the organisation (it was felt that smaller bodies, at this point, should not have this extra duty placed on them but may be added at a later date if Ministers chose). Stakeholders’ views were also gathered on which bodies should be included in the schedule.

17. The Bill provides that Ministers may modify the schedule by adding or removing public bodies or modifying an existing entry (to reflect a change of title for example). Such modifications of the schedule would be subject to the affirmative procedure, which means that an instrument detailing the change would have to be approved by the Parliament.

18. Listed authorities will have a responsibility to prepare and publish an Authority Plan, and in preparing that plan must try to achieve consistency with the National Plan. Such plans will set out any measures which the listed authority proposes to take in relation to the use of BSL in respect of that authority's functions and place timescales on their achievement. Listed authorities will be obliged to consult on a draft plan prior to its finalisation, a consultation which is expected to encompass those who use BSL and those who represent such users, regardless of hearing status.

19. Subsequent Authority Plans will also provide a progress report on the measures contained in previous plans. Through the review element of these plans, listed authorities will update the Scottish Government on progress, in order for this to be reported within the Government's Performance Review.

20. In formulating their plans, listed authorities are to try to achieve consistency with the most recently published National Plan, and are to have regard to:

- the extent to which the authority's functions are exercisable using BSL
- the potential for developing the use of BSL in connection with those functions
- any representations made to the authority in relation to the use of BSL in that connection
- any comments on the existing plan within the most recent Performance Review
- any guidance issued by the Scottish Ministers.

21. Under the Bill, listed authorities will be able to revise plans at any time in order to take account of any changes in their responsibilities.

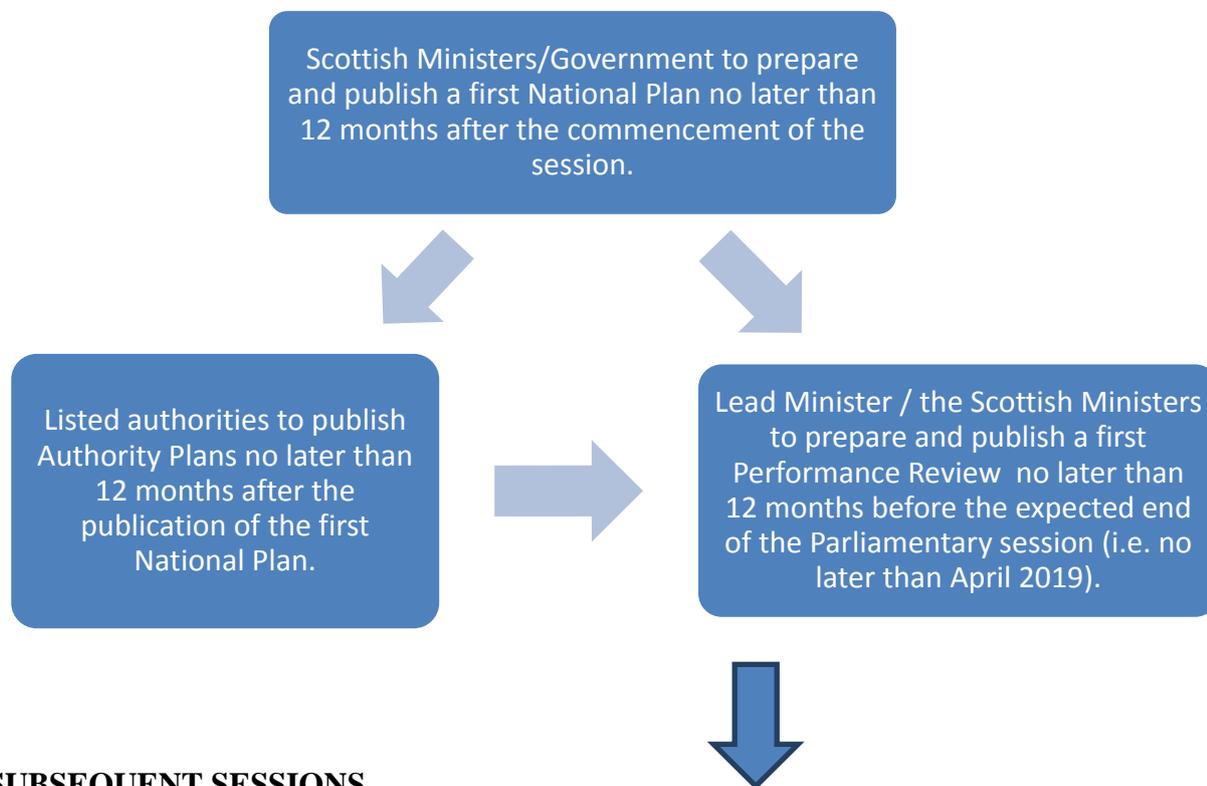
The plans and timescales

22. The Bill stipulates a regular, predictable cycle for the production of the National Plan, the Authority Plans and the Performance Review. The cycle is based on parliamentary sessions, reflecting the fact that the Scottish Ministers have a central role in the process (including in monitoring the action taken by listed authorities) and are accountable to the Parliament for their responsibilities under the Bill. The process is described in the paragraphs that follow.

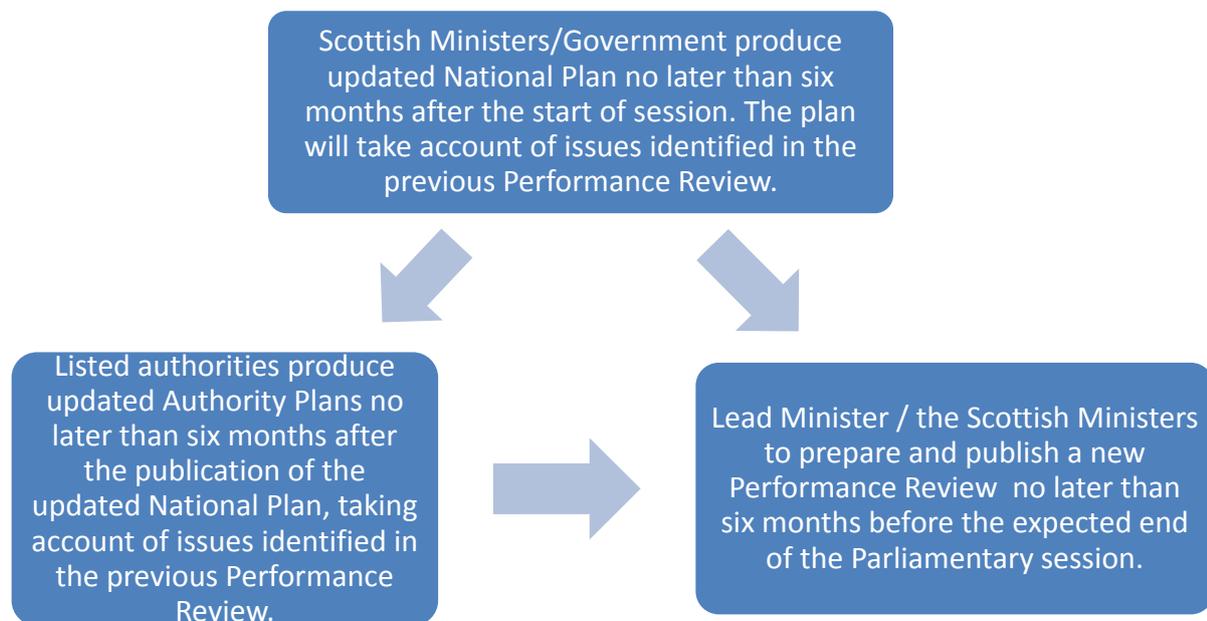
23. The Bill places a duty on the Scottish Ministers to produce and publish a National Plan which will set out a framework for action on BSL. The plans will be updated at regular defined intervals. Following the publication of these National Plans, listed authorities will be required to produce their own plans, setting out action in relation to BSL, in doing so seeking to achieve consistency with the National Plan, and having regard to any relevant guidance issued by the Scottish Ministers. These plans will be reviewed and reported on in the form of a Performance Review, produced by the Scottish Government and laid before the Parliament to enable MSPs and observers to scrutinise progress with the production of plans. The Performance Review will also inform the next cycle of plans and reports.

24. The following flow chart illustrates the cycle of the production of BSL Plans required by the Bill:

FIRST SESSION FOLLOWING PASSAGE OF THE BILL (i.e. SESSION 5 (2016-2020))



SUBSEQUENT SESSIONS



25. The cycle allows for a more generous period (12 months after the commencement of the session) in which the National Plan may be produced for the first time. Subsequent National Plans will be produced within shorter timescales (no later than six months from the start of the

session), since the plans will essentially be updates of existing plans, informed by the Performance Review which will be produced by the Scottish Ministers towards the end of the preceding session.

26. Likewise, the timetable for the production of listed authorities' Authority Plans will differ in the first session, when plans are to be produced no later than 12 months after the publication of the first National Plan, and subsequent sessions, when plans are to be published no later than six months after the new National Plan for that session is published.

27. An allowance is made in the Bill for unforeseen exceptional circumstances such as an extraordinary general election¹² being held. In any circumstance involving the early dissolution of the Parliament, the requirements on the Scottish Government to produce a National Plan and on listed authorities to produce new Authority Plans to the 'normal' timescales set out in the Bill are revised (if they have not already been fulfilled).

28. The Performance Review will be informed by reports made to the Scottish Ministers by listed authorities within the review section of their Authority Plans. It will provide updates on progress against the National Plan and Authority Plans and include examples of best practice and any examples of poor performance. In the first session, the Scottish Ministers are to publish the Performance Review no later than 12 months before the expected end of the parliamentary session. In subsequent sessions, the Performance Review is to be published no later than six months before the end of the session. The earlier reporting deadline for the first Performance Review reflects a greater priority on taking stock of progress at an earlier point in the session, thus allowing the Scottish Ministers more time to adjust their approach in their next National Plan. In subsequent sessions, the deadline is later, as the priority shifts to ensuring that the Performance Review covers a larger proportion of the session.

29. There will be no statutory sanctions for non-compliance with the legislation; the Performance Review will provide a basis for the Parliament to hold the Scottish Ministers to account, and for Ministers to hold listed authorities to account. The risk of being "named and shamed" for poor performance should act as a significant incentive for listed authorities.

CONSULTATION

30. Then Labour MSP Cathie Craigie first consulted on a proposal to legislate in the area of BSL in 2010. The focus of this early consultation, however, was on securing the status of BSL as an official language. The consultation also explored the concept of equal access to services and the prevention of discrimination "on the grounds of disability or language", which might have impinged on the equal opportunities reservation in the Scotland Act 1998.

31. Mark Griffin conducted a consultation¹³ on his draft proposal for this Bill between 27 July and 7 November 2012. Its focus was on promoting and encouraging wider use of BSL rather

¹² Under the terms of the Scotland Act 1998, an extraordinary general election occurs before the end of a parliamentary session if the Parliament resolves that it should be dissolved or fails to nominate a First Minister within a set period.

¹³ The consultation and a summary of its responses can be accessed at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/53284.aspx>

than ensuring equal access to service provision for Deaf people. The consultation received 222 responses in total, one of which consisted of a petition with 937 signatures.

32. There was a substantial overall majority of support from respondents for the aims of the proposed Bill to promote the use of BSL and raise awareness of the language. There was also majority agreement that legislation was required and was the appropriate mechanism to meet those aims.¹⁴ While some argued that Deaf people were protected under the Equality Act 2010 and that further legislation was therefore unnecessary, others asserted that the Equality Act only covers Deaf people if they declare themselves to be disabled.¹⁵

33. After reflecting on the results of the consultation, Mark Griffin considered whether or not to place a responsibility on all public bodies and decided, in the interests of achievability and affordability, to select those bodies of a significant size which have a role in delivering public-facing services in the key sectors of education, local government, health, justice and policing.

Promotion of the language

34. A strong theme emerging from many responses was that BSL should be recognised as an indigenous language and many were of the view that its users should be classed as a linguistic minority. Many referred to the cultural aspects of the language, believing that it should be afforded a similar status to Gaelic.

Equality of access to services

35. Respondents to Mark Griffin's consultation stressed that the ability to access services and information in one's own language should not be contingent on having a disability. Some of those responding to the consultation hoped that the improved communication arrangements that should arise as a result of the plans produced under the legislation would improve access to services and information (in the areas of, for example, housing, health, social care, justice and legal matters) by BSL users and remove barriers to independent living.

ALTERNATIVE APPROACHES

36. A range of alternative approaches were considered by the member and explored through his consultation. Some respondents proposed that a voluntary code would suffice, or that existing legislation could be adapted, while others thought that a non-statutory national strategy would suffice. The member feels that none of these approaches would provide the definitive position offered by this Bill, which would place BSL on a similar footing to one of Scotland's other indigenous languages, Gaelic, and would ensure the engagement of all relevant individuals and bodies in a way that a voluntary strategy or code alone could not do.

37. The member does not agree with some respondents that the protection of the Equality Act 2010 is sufficient. The Act's focus is on deafness as a disability and disability is a protected characteristic under the Act but the member's approach is based not on ability or disability but

¹⁴ *British Sign Language (Scotland) Bill – Mark Griffin MSP - Summary of consultation responses*. Available at: http://www.scottish.parliament.uk/S4_MembersBills/BSL_consultation_summary.pdf

¹⁵ British Deaf Association, STUC

on the protection and promotion of BSL, and its cultural aspects, as an indigenous language and the idea that BSL users should be viewed as a linguistic minority, not as “disabled people”.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

38. The Bill does not have an adverse impact on the basis of gender or gender reassignment, marital status, religion and belief, pregnancy and maternity or sexual orientation.

39. Disability is a protected characteristic under the Equality Act 2010. Deafness would generally qualify as a disability under the Act, regardless of whether Deaf people consider themselves as having a disability. It is anticipated that a consequence of the Bill will be a greater equality of access to services provided by public bodies regardless of disability and, as such, it will have a positive impact on most individuals within this group. At the same time, it must be recognised that individuals with a hearing loss who do not use BSL might be at a disadvantage compared with the rest of the hearing-impaired population as a result of the Bill.

40. With regard to age, a greater proportion of older people suffer from hearing loss. Although only a portion of those affected will adopt BSL, the Bill will have a positive impact for those who do, in their engagement with public bodies. It is anticipated that an effect of the Bill will be to broaden opportunities to learn BSL, which could deliver positive benefits for the older age group.

41. Service users with a range of ethnic or racial backgrounds may encounter some difficulties accessing services in their first language. The provisions in this Bill do not prevent public bodies from developing policies relating to other minority languages.

Human rights

42. The Bill does not give rise to any issues under the European Convention on Human Rights. It is designed to enhance the rights of all those who use BSL.

43. The Scottish Human Rights Commission (“the Commission”) promotes and protects the human rights guaranteed by the European Convention on Human Rights, which form part of the law of Scotland through the Human Rights Act 1998 and the Scotland Act 1998. The Commission also promotes and protects other human rights which have been guaranteed by international conventions ratified by the UK. The Commission states that the foundation of modern human rights is the Universal Declaration of Human Rights (UDHR). The core values of the UDHR are human dignity, fairness, equality and non-discrimination.

44. The Bill enhances the human rights principle of equality and non-discrimination (the principle that all individuals are equal as human beings and by virtue of the inherent dignity of each human person). It seeks to do so by enabling users of BSL to enjoy the same level of service as those who use other languages.

45. Participation and inclusion (the principle that all people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being) should also be enhanced by the Bill since it will lead to a consideration of how BSL users can be involved in decision-making about services that affect them through the provision of information in their own language and the opportunity to engage with government and its agencies using their own language.

Island communities

46. The Bill is designed to benefit all BSL users in Scotland and does not have any specific implications for those living in island communities. Nevertheless, it is hoped that those living in island communities will benefit from the Bill through its potential to identify any gaps in provision that might arise from the availability of BSL skills among those delivering public services in areas with low population density.

Local government

47. Under the Bill, local authorities (being ‘listed authorities’ under the Bill) will set out action in relation to BSL in Authority Plans and must try to achieve consistency with the National Plan and any guidance issued by the Scottish Ministers. In producing plans subsequent to the first session, local authorities will be required to review and report progress with their previous plans. The Scottish Government will use this review report to form part of its Performance Review.

48. The financial impact of local authorities’ new responsibilities under the Bill is set out in the Financial Memorandum.

Sustainable development

49. The UK Shared Framework for Sustainable Development was adopted by the Scottish Government in 2005.¹⁶ Commitment to the Framework was reaffirmed in the recent draft Scottish Planning Policy.¹⁷ The Framework includes the principle: “Ensuring a Strong, Healthy and Just Society – meeting the diverse needs of all people in existing and future communities, promoting well-being, social cohesion and creating equal opportunity for all”. This Bill puts this principle into practice by ensuring that those delivering public services give consideration to the needs of BSL users, with the aim of ensuring that such individuals have an equal opportunity to access their services.

50. The Christie Commission Report¹⁸ closely reflects the sustainable development aims of intra- and inter-generational equity and public participation.^{19, 20} This Bill seeks to help meet the needs of members of the Deaf community not only to access services more easily, thereby reducing inequalities, but also to prevent the exclusion of Deaf people at a time when the public

¹⁶ <http://www.scotland.gov.uk/News/Releases/2005/03/07102535>

¹⁷ <http://www.scotland.gov.uk/Publications/2013/04/1027/3> Paragraph 24.

¹⁸ <http://www.scotland.gov.uk/Resource/Doc/352649/0118638.pdf>

¹⁹ World Commission on Environment and Development 1987: *Our Common Future*

²⁰ <http://www.iied.org/fair-ideas-defending-public-participation-future-generations-sustainable-development>

sector is seeking to implement the Commission's recommendation that people and communities be allowed to participate in the design and delivery of these services. Through this inclusion, it is hoped that some negative outcomes can be prevented, as is the aspiration of the Scottish Government's response to the Commission.²¹

51. It is envisaged that the Bill will help to increase the awareness and acceptance of BSL and Deaf culture, thereby increasing social capital and improving the well-being and social cohesion not only of Deaf people but of wider society also. Deaf language and culture would be promoted should the Bill give rise to broader use of BSL within public bodies and lead to the provision of courses for families and interested parties. Greater awareness and use of BSL in schools would help to promote social cohesion and equality of opportunity by ensuring that all children, regardless of whether they have any hearing loss, are exposed to the language.

52. In economic terms, better access to and engagement with public services and public service providers could improve the life chances of Deaf people and, therefore, increase their capability for economic participation.

²¹ <http://www.scotland.gov.uk/Publications/2011/09/21104740/4>

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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