

BRITISH SIGN LANGUAGE (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Mark Griffin, MSP, to assist the Delegated Powers and Law Reform Committee in its consideration of the British Sign Language (Scotland) Bill as amended at Stage 2.
2. The memorandum refers to provisions in the Bill conferring power to make subordinate legislation which were amended or removed at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

OUTLINE OF BILL PROVISIONS

3. 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 Plan for Scotland (referred to as a ‘National Plan’). Authorities listed in schedule 2 are to prepare their own plans (referred to as ‘Authority Plans’).
4. The Bill was amended at Stage 2 so that the National Plan will set out what the Scottish Ministers consider that ‘relevant public authorities’ (as defined in section 8A) should or could do to promote British Sign Language within their areas of responsibilities. Listed authorities, being a subset of ‘relevant public authorities’, detailed within the revised schedule 2, are each to publish their own Authority Plan in connection with the exercise of their functions. All plans are to be updated and renewed at regular specified intervals. These are not now linked to sessions of the Parliament. The ‘progress reports’ (which replace ‘Performance Reviews’) provide a means of assessing measures taken and outcomes achieved, both in relation to the National Plan and individual Authority Plans.
5. The Bill as introduced contained three powers to make subordinate legislation. One of these has been removed, another has been amended. The remaining power is unchanged. A brief explanation of the context for the power having been removed is provided, and the amended power is commented on more fully.

DELEGATED POWERS

Section 7(1) – Publication date of plan or review – alteration in exceptional circumstances (removed at Stage 2)

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

Provision

6. Section 7, and the order making power which it set out, has been removed, following amendment of the Bill at Stage 2. Section 7 enabled the Scottish Ministers, in exceptional circumstances, to make provision, by means of order, for the date of publication of a plan or review to be altered.

Reason for removing power

7. Restructuring of other parts of the Bill has resulted in revised timescales which are no longer tied to Parliamentary sessions. This restructuring has afforded more time for the preparation of plans and progress reports (the latter, as indicated, replacing Performance Reviews), in consequence of which section 7, and the order making power contained in it, is no longer felt to be required.

Section 8(3) – modification of schedule 2 list of public authorities (as amended at Stage 2)

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

Provision

8. As in the Bill as introduced, section 8(3) enables the Scottish Ministers by order to modify the list of authorities in schedule 2 to the Bill which are required to prepare Authority Plans. It can do so by adding a ‘relevant public authority’ (as defined at section 8A) to those already detailed there, removing such an authority from it, or modifying an (existing) entry in the list.

9. In noting the provision contained within section 8, reference is also made to section 4, which requires each authority listed in schedule 2 to publish its first “Authority Plan” no more than 12 months after the publication of “the first applicable National Plan”. If a body is only added to the list after the first National Plan is published, “the first applicable National Plan” means whichever National Plan was most recently published at the time the authority was listed” (section 4(2A)(b)).

10. New subsection (3A) of section 8 which has been added to the Bill at Stage 2, states that an order which adds a relevant public authority can provide that a different National Plan (from the most recently published one) is to be “the first applicable National Plan” for the purpose of

compliance with the publication timescales for listed authority plans set out at section 4(1) and (2).

Reason for amending the existing section 8 power to modify schedule 2

11. Public authorities could be added to the list (by order under section 8(3)) at any time. If the date of listing was only slightly less than 12 months after publication of a National Plan, then section 4 would require it to publish its first Authority Plan almost immediately. This is likely to be impractical. The power under section 8(3A) could therefore be used to specify a later National Plan as that authority's "first applicable National Plan", thus ensuring that there is a reasonable period available for the newly-listed authority to prepare its first Authority Plan.

Choice of procedure

12. As at present, the order making power under section 8 remains subject to the affirmative procedure. Given that the modification made by subsection (3A) has the effect of developing the existing order making provision, which otherwise remains largely unchanged, there is no reason to reduce the level of scrutiny to which an order under section 8 is subject. The affirmative procedure, being the highest level of scrutiny available, continues therefore to be the appropriate procedure.

This document relates to the British Sign Language (Scotland) Bill (SP Bill 55A Revised) as amended at Stage 2

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