Dear Sir/Madam

BRITISH SIGN LANGUAGE (SCOTLAND) BILL
SCOTTISH PRISON SERVICE (SPS) RESPONSE TO EDUCATION AND CULTURE COMMITTEE

I write in relation to your recent E-Mail inviting the views of the Scottish Prison Service on the British Sign Language (Scotland) Bill.

Please find attached my response below in question and answer format to allow you to cross-reference with ease.

1. In the Policy Memorandum, Mark Griffin MSP says he considered a number of alternative approaches to achieve his intention of promoting BSL, for example, by establishing a voluntary code or adapting existing legislation, such as the Equality Act 2010. He concluded that introducing the BSL Bill was the best approach. Do you think we need to change the law to promote the use of BSL and, if so, why?

A change in the law, rather than a voluntary code, is likely to be the most effective way to achieve the objectives of the Bill. As deafness qualifies as a disability under the Equality Act 2010, protection already exists for BSL users as employers/service providers have an obligation to anticipate the needs of employees and service users and to make reasonable adjustments for them. However, the Equality Act does not require the promotion of BSL. A duty to promote deaf culture and the use of BSL could be added to the Scottish Specific Public Sector Equality Duties (PSED) which listed authorities could be required to incorporate into their Equality Outcomes. However, that would add to listed authorities' reporting requirements under the PSED. It could also precipitate the demand for other disabilities also to be specifically identified and promoted under the Equality Act, and it could re-inforce the view that BSL users are disabled, rather than encouraging the public to value BSL as an indigenous language as many deaf people would prefer.

The proposed timescales for publishing a plan under this Bill do not clash with the PSED reporting requirements, thereby making them achievable. For these reasons, a change in the law, as intended by this Bill, seems the best way to try to achieve its objectives.
2. Mark Griffin MSP hopes that the obligations under the Bill will, in practice, "lead public authorities to increase the use they make of BSL and the extent to which they are in a position to respond to demand for services in BSL" (Financial Memorandum, paragraph 4). How realistic do you think this aim is and to what extent do you believe the Bill can achieve this objective?

It is not entirely clear to what extent the Bill will achieve the intended objective. The Bill does not prescribe any minimum level of activity beyond the production of an Authority Plan. Historically, there has not been a great demand for BSL by our service users (staff, people in our care or visitors). Whilst skillling our staff in BSL has been done in the past, in reality, the skill is so infrequently used that it is often lost. A more pressing need for our Service is to support those who do not use English to communicate.

Therefore, for SPS, the proposed change in the law may not produce the intended impact because the measures we would implement would have to be commensurate with the predicted demand. That said, we do acknowledge that introducing legislation may lead to increased demand for services to be accessible to BSL users, and we would need to respond accordingly. Additionally, the requirement to produce a plan would lead us to consider ways to incorporate the use of BSL into our service delivery and would therefore increase the awareness and understanding of our staff in relation to BSL and deaf culture, thereby achieving part of the objectives of the Bill.

3. The Bill is solely about the use of BSL. Could there be unintended consequences for other languages or forms of communication used by the deaf community?

Yes. Committing resources to one area (the promotion of BSL) would inevitably impact on our scope for supporting other languages or forms of communication used by the deaf community.

4. The Bill will require the Scottish Government to prepare and publish a BSL National Plan (Section 1) and a BSL Performance Review (Section 5) in each parliamentary session (that is, normally every 4 years). The Scottish Government will also be required to designate a Minister with lead responsibility for BSL (Section 2). What should this Minister do?

This Minister should promote the use of BSL and hold the Scottish Government, and, in turn, public authorities, to account for meeting the requirements of the Bill.

5. The BSL Performance Review provides the basis for the Parliament to hold the Scottish Ministers to account, and for Ministers to hold listed authorities to account. If listed authorities say they will do something relating to the promotion of BSL, will the Performance Review process ensure they are held to account?

The Policy Memorandum states that the Performance Review will be informed by reports made to the Scottish Ministers by listed authorities and will provide updates on progress against the National Plan and Authority Plan and include examples of best practice and poor performance. It is not clear who will be assessing the progress by listed authorities and their good/poor performance - will the Equality and Human Rights Commission in Scotland perform this role? If this role is not defined, then the Performance Review process may fail to hold listed authorities to account.
6. The Bill requires listed authorities to prepare and publish BSL Authority Plans in each parliamentary session. The Bill sets out what a BSL Authority Plan should include (Sections 3(3) and 3(4)). Do you have any comments on the proposed content of the Plans?

As a listed authority, it is difficult to interpret our actual obligations and actions from Section 3(3)(a); however, Section 3(4)(b)(i) and (ii) more clearly set out the expectations and measures we should be undertaking.

7. The Policy Memorandum (see diagram on page 6) explains the timescales for publication of Authority Plans. Do you have any comments on these proposed timescales?

The timescales do not clash with other statutory reporting (eg under the Equality Act Public Sector Equality Duties) and in that respect do not pose a problem. However, should listed authorities publish their Authority Plans by April 2018, the obligation for Scottish Ministers then to produce a Performance Review by no later than April 2019 may not leave sufficient time - just 12 months - for measures to be embedded, progress assessed and the Review report finalised.

8. In preparing its Authority Plan, a public authority must consult with those who are "likely to be directly affected by the Authority Plan or otherwise to have an interest in that Plan" (Section 3(6)) and must take into account any comments made to it during the consultation (Section 3(5)). What effect do you think these requirements will have on you or your organisation?

We may struggle to achieve meaningful consultation. Historically, we have had hardly any demand for BSL by any service users; therefore, we may find it challenging to identify sufficient users of BSL who come into contact with our Service with whom to engage. The consultation requirement will add to the time it takes to prepare and publish a Plan. We will have to set up methods of consultation but no significant disruption is envisaged. The cost may be of concern as it may necessitate translating the proposed plan into BSL. Although this is not required by the Bill, it seems logical in order to engage with some BSL users (as the Bill does stipulate). We would then also have to take into consideration how feedback is received - if it is in BSL, then there may be a cost to translate it into English.

9. The Bill (Schedule 2) lists 117 public authorities that will be required to publish Authority Plans. Would you suggest any changes to the list of public authorities?

No.

I appreciate the opportunity for the Scottish Prison Service to submit our views in relation to this Bill.

Yours faithfully

COLIN McCONNELL
Chief Executive

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