BSL (SCOTLAND) BILL

BDA SCOTLAND’s SUBMISSION TO THE SCOTTISH PARLIAMENT EDUCATION AND CULTURE COMMITTEE

Contact: directorcc@bda.org.uk

31st January 2015

“Then a light came shining through the night,
Showing BSL a language in its own right.” (Dot Miles, 1990)

Introduction

The BDA Scotland welcomes the BSL (Scotland) Bill as a much needed piece of forthcoming legislation and we welcome the language focus which is integral to the Bill. The BDA has been pressing for official governmental status for BSL since the 1980s. Our first formal document BSL: Britain’s Fourth Language: the Case for Official Recognition for British Sign Language (BDA 1987) set out the fundamental principles that BSL is one of the UK’s four indigenous languages. It demonstrated that promotion of BSL necessitates formal legislation of the kind developed to preserve and promote the Gaelic language. Last year we published a discussion paper on the Legal Status for BSL (BDA 2014a) showing the shortcomings of the Equality Act (2010) as a satisfactory mechanism for ensuring full equal opportunities for Deaf individuals and the lack of full citizenship accorded to members of the Deaf community in the UK (Emery 2009) for so long as BSL continues to lack legal status. We also outlined how other states (New Zealand, Finland, Austria and Hungry among others) have successfully achieved legal status and policy recognition of their indigenous sign languages.

It is often the case that those less familiar with BSL will perceive BSL as a disability rather than a minority indigenous language issue. This is an error in fact which has hitherto precluded effective policy making capable of promoting BSL in the UK. Common errors by those not familiar with BSL include a presumption that communication systems used by deafened and hard of hearing people may somehow be adversely affected by policies supporting BSL or that disability legislation such as the Equality Act (2010) is enough itself to meet the equality agenda. There is no evidential basis to support either of these assumptions. Furthermore, the Scottish Government’s ‘See Hear –Sensory Impairment Strategy’ now addresses the needs of these groups.

Our vision
Deaf people fully participating and contributing as equal and valued citizens in wider society
What has been lacking however until now is any form of legal status for BSL or any parity of treatment for BSL as one of the valued and culturally enriching indigenous languages of Scotland. The Scottish census (2011) indicated 13,000 people used BSL at home (Scottish Government 2014). BSL is an indigenous language of the UK. Scotland is now engaged at the cutting-edge of innovative policy making with this Bill. The Deaf community across the UK are placing their hopes on the forward thinking of the Scottish legislature in embracing this bill and enabling promotion of their language, BSL. It is hoped by many that this will be a beacon of change for the other UK nations. With this in mind, the BDA Scotland supports the private members BSL (Scotland) Bill and its enabling approach. We also very much welcome the Scottish government’s early indication of support.

General approach

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 (Scotland) Bill was the best approach. Do you think we need to change the law to promote the use of BSL and, if so, why?**

Yes we definitely support changing the law to promote and protect BSL and accord it legal status and parity with the Gaelic language as valued indigenous languages of Scotland deserving protection and promotion.

1.1 **Voluntary code**

Given the current situation where Deaf people report issues of linguistic exclusion and lack of access in all spheres of life (as evidenced in the recent consultations on the BSL (Scotland) Bill) we do not place any reliance on a voluntary code: instead legislation is certainly required. We are opposed to a voluntary code as it is neither a workable nor an enforceable solution. A voluntary code would require a far-reaching hearts and mind exercise to educate the broader population that BSL is a language not a ‘disability communication tool’. Our experience with the BDA’s BSL Charter 1 shows that take up was patchy and consistency could not therefore be guaranteed across the UK. The proposed BSL Act will achieve the desired outcome more cost effectively, with universal take up, and a great deal more quickly.

In addition, in Northern Ireland the Sign Language Partnership Group (a consortium of Government departments officials, deaf organisations) is proving that the voluntary code approach is not robust enough to make the necessary changes and the Department for Culture, Arts and Leisure (DCAL)’s latest roadmap review report (March 2014) and Review Action Plan (Jan 2015) are reaching a conclusion that a formal policy is required to enforce the necessary changes to create accessible environment for BSL users.

1.2 **BSL as a valued language**

Currently language rights for BSL are only offered under the aegis of disability legislation, however speakers of other indigenous spoken languages are not required to

---

1 a voluntary code signed up to by some local authorities in the UK: see Appendix 2
self-identify as disabled to access their language rights. The Equality Act (2010) does not make specific reference to BSL and it is therefore the subject of case law and legal interpretation as to what constitutes a “reasonable adjustment”. Reasonable adjustments are achieved primarily through the use of BSL-English interpreters (the majority of interpreters have acquired and use BSL as a second language). The mere provision of second language speakers acting as interpreters would not for one moment be considered adequate to safeguard and protect the integrity of other (spoken) indigenous languages.

The Equality Act (2010) does not therefore focus on the value and integrity of BSL and Deaf culture. It accords rights to individuals to protect them from discrimination but it does not protect or promote BSL as a language.

BSL (as used by those fluent in their native BSL) is a language capable of considerable depth and beauty. It has an innate productive capacity capable of evolving and changing in response to new concepts and ideas. BSL has a long history of signed folklore and storytelling: many are narratives not well known outside the Deaf community (Sutton Spence 2010, Limping Chicken 2013); however better known to hearing people will be examples such as Denmark’s BSL retelling of Iron Man and Hanafin’s BSL version of Little Red Riding Hood where all the characters are Deaf. Sutton Spence has argued that for “adults, too, signed storytelling and other forms of signed folklore are crucial for enculturation” (2010:266). Thus late-comers to the Deaf World often find a home within the Deaf community where there are no barriers and where they can develop their linguistic cultural identity and Deafhood (Ladd 2003).

For BSL poetry the outstanding work of authors such as Dorothy Miles (Miles 1976, Miles 1990, Read 1998, See Hear 2013) testify to the extraordinary versatility and beauty of BSL, capable of poetic register and offering a rich cultural linguistic resource and Deaf Gain for all (Bauman and Murray 2009).

However, BSL is a threatened language and without a BSL Act there is a real risk of losing the cultural and linguistic diversity it represents due to the very real threat posed by interrupted intergenerational transmission. Existing disability legislation is not capable of safeguarding, protecting and promoting the culturo-linguistic resource embodied in BSL. The current situation of absent statutory guidance on language protection also constitutes a threat to Deaf people’s collective culture-linguistic diversity and heritage and amounts to a diminution of prospects for self-actualisation and achievement.

1.3 International Obligations

The UNCRPD imposes a number of obligations on the UK including promotion, recognition, and support of Deaf people’s linguistic identity, sign languages and Deaf culture, recognition of sign languages, and employing Deaf teachers qualified in BSL. Currently this is not happening across the UK (BDA 2014a), so the BSL (Scotland) Bill would have the advantage of ensuring that these obligations are being met in Scotland. The matrix below summarises the key obligations that are required by the CRPD. Additionally Article 19 provides for linguistic access and the provision of sign language interpreters.
**Article 21**  
Freedom of expression and opinion and access to information  
States must “ensure disabled people have the right to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention.”

Article 21, (b) requires states to assist this by ‘accepting and facilitating the use of sign languages, ... by persons with disabilities in official interactions’

and by “recognizing and promoting the use of sign languages” (Article 21 e)

**Article 24**  
Education  
Clause 3 stipulates that inclusive education should be offered at all levels, requiring states to facilitate: (b) ‘...the learning of sign language and the promotion of the linguistic identity of the deaf community’; and, ensure that education (c)...‘is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.’

Clause 4 requires states to: ‘employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education’

**Article 30**  
Participation in cultural life, recreation, leisure and sport  
Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture’  
Article 30, Clause 4

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO 2005) imposes further obligations on the UK to protect and promote the diversity of cultural expressions and create conditions of cultures to flourish and build bridges between communities (article 1, objectives, see Appendix 1). In the case of the Scottish Deaf community this is through BSL. During the consultation process a contributor expressed the hope that the BSL (Scotland) Bill would help to:

“improve understanding between hearing and non-hearing communities and eliminate the fear hearing people have of Deaf / BSL users”

The BSL (Scotland) Bill would move the Scottish Government closer to fulfilling its existing international obligations for promoting the linguistic identity of the Deaf community, fostering cultural linguistic diversity and the potential economic value of the BSL community, and the value of BSL for shaping identities.

1.4 The Equality Act (2010)

Our research shows that the Equality Act is not always respected nor implemented on a day to day basis (as detailed in the BDA’s Legal Status for BSL discussion paper 2014).
This places a heavy burden on individual Deaf people having to sue for their rights using the Civil Procedure Rules for each and every instance of exclusion.

Existing legislation does not deliver linguistic rights as shown in the examples below.

**Holistic wellbeing / health**

Health services for Deaf people are so shocking that we believe the UK government is in serious breach of human rights.

During the consultation commentators complained of being forced to interpret for their Deaf relatives. This practice is dangerous as family members are emotionally involved and unqualified.

“I grew up with Deaf parents and have been using BSL all my life. Since I was young, I accepted responsibility for my parents… During my early teens, I interpreted for my parents at different events such as a parent evening or a doctor appointment. It was inappropriate”.

Failure to use qualified interpreters has led to poor understanding of medical treatment, reluctance to seek medical advice and issues with lack of informed consent (BDA 2014a).

“We need better access in hospitals because when I was in hospital for 2 weeks, I tried to ask for an interpreter but the staff kept ignoring me. I was upset in the 2nd week and my hearing daughter was furious and had a word with the staff. I got an interpreter in the next day. Why did they not listen to me? They only listened to my hearing daughter. I was the patient!”

“Why is it always awful in hospitals? Every time I ask for an interpreter for my hospital appointments, no one turns up. It is so frustrating. Why other people with different languages have better access to their interpreters?”

In March 2013 the Scottish Public Services Ombudsman ruled that failure by NHS Tayside to provide an interpreter for a Deaf patient was a breach of their informed consent policy. Sign Health states that “poor access and communication suggest the health service is at risk of harming Deaf patients. It is certainly not meeting the requirements of the NHS Constitution or the Equality Act.” (2014:3).
Access to Emergency Services

Access to emergency services is also severely restricted for Deaf BSL users and the potential for misunderstanding using written English potentially dangerous.

“I tried to ask for help from NHS24 when my friend was ill. I was using a minicom but it was awful. I was confused with their questions. It took 2 hours before the ambulance came to collect my friend who was really ill. If I was able to communicate in my language – VRS – my friend would be in hospital much quicker”.

The European Universal Service Directive (article 26)\(^2\) requires OFCOM to regulate electronic communications making caller location information available for such calls. Next Generation 112 aims to give full access to disabled users to emergency services, but so far only NG Text Relay is being implemented. We hope that the BSL (Scotland) Bill will be able to recommend that OfCOM add Video Relay Service (VRS) to the regulator’s mandate to make it possible to have the NG 112 service, that emergency control centres are able to use video when receiving calls, making services much faster (embracing Total Conversation); and that sign language interpreters can be invoked by the emergency centre operator (as happens for other non-English groups).

Education

The Equality Act also obliges schools to make reasonable adjustments. However, using level 2 Communication Support Workers in mainstream settings denies learning to deaf children who need BSL. Scotland offers Gaelic language education and should be able to offer enhanced BSL-medium instruction where this is required.

However, it is currently not possible for a family to choose sign bilingual-bicultural BSL-medium education for their child because there is virtually no provision. Grimes (2009) found that of the 205 teachers interviewed in Scotland in 2007 only 8% held BSL qualifications at level 3 or above. Under article 24 of the UNCRPD schools should now employ “teachers, including teachers with disabilities, who are qualified in sign language”.

“I teach BSL. That is my job. One of my students came on my introduction to BSL course. She told me she is a classroom assistant in a mainstream school. She is supporting 2 deaf children. But she doesn’t know how to sign yet so how can these children understand her?”

In addition, Deaf parents have also complained of lack of access to their hearing children’s schools and the abusive and inappropriate practice of asking children to interpret their own parent-teacher interviews.

“I asked for a BSL interpreter for the parent evening at my children’s school. They kept forgetting to provide one. It is not right to use my children to interpret for me and their teacher because they can sign”

There is also a strongly felt wish for BSL to be offered as a modern second language in schools, considerable work has already been invested into a National BSL curriculum for this which could be drawn on at minimal cost.

“BSL should be on the school curriculum in Scotland. If hearing children learn BSL at school, this will mean, in the future, the society will be more deaf and BSL aware and able to communicate with us”

**Employment**

Deaf people have reported difficulties in securing employment, and getting interpreters for appointments at the job centre.

“I went to the job centre to find a new job. The receptionist refused to help to contact a potential employer. She told me to use the phone but how can I hear or speak on the phone??”

“I asked the Job Centre for a provision of BSL interpreters. They refused or forgot to provide one. Because of this, I have difficulty in finding a job. My dad has been involved with helping find a job for me. He is unhappy with the Job Centre service. I am still looking for a job.”

Another contributor provided a brave and very emotional personal account of how failures by Job Centre Plus had resulted in him losing his home and his relationship. Also that, after becoming homeless, his efforts to get re-housed had failed due to social landlords not providing interpreters leaving him with a feeling of hopelessness. This avoidable tragedy was not unique and illustrates well the point that the BSL (Scotland) Bill would place greater responsibility on public services to deliver equal service access to Deaf people. It is not just the right thing to do, it is a necessity if tragedies like this are to be avoided in the future.

During the consultation Deaf contributors have also reported difficulties in retaining employment and in getting interpreters for interviews:

“I have great difficulty in finding a job for two years. I want to work as a cleaner but because of my bad English and being deaf, my application has been rejected. I got sacked because of my so-called attitude. No one believed me that I was bullied for
my lack of speech at my previous job.”

“For a job interview, I was refused a BSL interpreter. It was totally unfair”.

Since the late 1980s, Deaf people have relied on Access to Work (ATW) payments to enable them to be employed on an equal basis to hearing workers. The BDA survey (2014b) found numerous structural failures with this system. In acknowledgement of restrictions imposed by ATW, i.e. the ‘30 hour rule’ introduced in 2011 requiring Deaf people who use over 30 hours of ATW funded support to employ lower salaried Communication Support Workers, instead of freelance interpreters (BDA 2014c), the Government suspended the ruling for three months from May 2014 pending a review. This is a welcome development but the BDA remains concerned about the future of ATW.

Holistic wellbeing and health, access to emergency services, education and employment are just some examples of the many policy fields where Deaf people’s rights are neither protected adequately by the Equality Act nor by other legislative instruments such as the UNCRPD. The Equality Act has also failed to guarantee BSL for access to criminal justice, sport, telecommunications, broadcasting, leisure and civil justice among others (BDA 2014a, BDA 2015a). The Equality Act also places the onus on Deaf individuals to enforce their rights through the courts on a case by case basis without full access to the legal system. Given the lack of qualified legal representatives who use BSL it follows that invoking the Equality Act is generally intimidating, burdensome and inaccessible. However, one drawback with the proposed BSL (Scotland) Bill is that it will impose obligations only on the Public sector. BSL users will be forced to rely on the Equality Act for their rights within the private sector.

We nevertheless support the BSL (Scotland) Bill and wish to see it enter the statute books as the BSL (Scotland) Act.

1.5 Summary

Therefore the BDA Scotland strongly believes we do need legislative safeguards to:

- enable BSL users to participate as equals in an inclusive Scottish economy;
- promote and safeguard Scottish Deaf culture, our BSL language and heritage;
- protect our threatened British Sign Language and to facilitate resurgence and reconstruction within the Scottish sign language community; and
- counter the pervasive and endemic social exclusion of Scotland’s BSL community and their families.

These things have neither been protected by existing equalities legislation nor by voluntary codes of practice. People who do not have a good understanding of BSL traditionally see only disability and work towards integration of Deaf people into

---

3 The announcement was made by The Minister for Disabled People (Mike Penning MP), on 12 May 2014, to the House of Commons Select Committee <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news/access-to-work-launch/> accessed 13 June 2014.
mainstream society. However BSL is a minority indigenous language and deserves the same protection and promotion afforded to other indigenous autochthonous languages in Scotland. Without legislation the importance of BSL as an indigenous language of Scotland is almost always overlooked. In passing this BSL (Scotland) Bill, Scotland will become a beacon for change leading the rest of the UK to see a model for good practice which they can emulate. Scotland will also come much closer than the rest of the UK to meeting the existing international obligations under the UNCRPD and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

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?

The BSL (Scotland) Bill is an enabling bill aiming to increase the use of BSL in delivery of services and to enhance the profile of the language. The BSL (Scotland) Bill is a significant and important step towards this goal.

We agree that the requirements of the Bill will support our public authorities to increase the use they make of BSL and incrementally expand the extent to which they are in a position to respond to demand for services in BSL. This will in part result from an increase in confidence levels among Deaf people who will feel more empowered to ask for linguistic access through BSL both as individuals and as a collective group. There may be a transition period while authorities and individuals come to understand the changed policy position which enables BSL (as opposed to pushing it to one side).

We do not feel that “a lack of BSL/English interpreters” is a reason for not progressing on this point. Much use could be made, for example, to digital accessible BSL explanations of key documents giving greater access to Deaf individuals. These can be pre-recorded and made available on-line. Video Relay Service (VRS) would also expand the BSL-English interpreting capacity. The BDA can signpost ways to do this effectively with the Scottish Government. Advanced planning of access requirements is also much less costly and less difficult than endeavouring to put in place last minute access under the Equality Act. Ultimately we would expect there to be net gains in terms of enhanced linguistic and cultural diversity, and the reduction in costs that are associated with: failed health care provision, inaccessible isolating education, and minimal employment prospects.

Elsewhere in the UK, the BDA has had some success with local authorities and some hospitals and police services that have adopted the BDA’s BSL Charter (Appendix 2) but this has not happened in Scotland and provision across the UK remains patchy. The BDA’s BSL Charter consists of 5 pledges in the fields of information and services, teaching and learning, support for Deaf families, staff with BSL skills working with Deaf people, and consultation with the Deaf community. The BDA’s BSL Charter can be a useful toolkit for local authorities and public bodies who will be required to become accessible under this current proposed bill to enable them to comply with the BSL (Scotland) Bill and BDA would be happy to assist them to understand how they can implement the five pledges.
The argument that there has hitherto been little demand for BSL in some authorities is also an argument that there are parts of Scotland where Deaf people have found it harder to live and work. The whole of the territory of Scotland should be available to BSL users as it is to speakers of Scotland’s other languages.

In summary, legislation to support and promote BSL is essential to kick start an understanding and valuing of the linguistic diversity of BSL and to remove some of the linguistic barriers BSL users encounter. We believe this legislation is essential and will lead to a process of more inclusive and linguistically accessible governance.

We applaud Mark Griffin, MSP for taking a lead in this Bill: the first in the UK. We are also delighted that the Scottish Government has shown a positive reaction to the bill to date.

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?

No, we do not accept that there could be unintended consequences for other languages or forms of communication used by the Deaf community. There have not been unintended consequences in other states that have legally recognised their national sign languages such as New Zealand, Finland, Austria and Hungry among others. Interestingly, New Zealand conversely has only recognised two languages, New Zealand Sign Language and Maori. It has not recognised English as it recognised the power differentials which made indigenous languages in need of additional statutory protection.

3.1 Learning from elsewhere

The matrix below summarises the different policy domains covered by sign language legislation in the different states that have recognised their national sign languages.

<table>
<thead>
<tr>
<th>Policy Domain</th>
<th>States</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bilingual education</td>
<td>Hungary, Finland, Brazil, Greece, Cyprus, Norway, Iceland, Sweden, Slovakia, Portugal</td>
<td>Still quite rare.</td>
</tr>
<tr>
<td>Free sign language instruction to hearing parents</td>
<td>Iceland, Sweden,</td>
<td>New Zealand is working towards this</td>
</tr>
<tr>
<td>Provision of interpreters for witnesses and defendants in court.</td>
<td>UK, New Zealand, Austria, Finland</td>
<td>Applies to many countries – very common through disability legislation and a requirement of the EHRC</td>
</tr>
<tr>
<td>Access to public services</td>
<td>UK, New Zealand, Finland, Austria, Romania</td>
<td>Applies to many countries – very common</td>
</tr>
</tbody>
</table>

The existence of sign language legislation in these different states offers a precedent that shows that it can work cost effectively in small states and that other communication
systems have not been adversely affected. The Hungarian, Austrian, Finnish and New Zealand cases show how the requirements of the CRPD are being met and offer exemplars of good practice.

The New Zealand case is worthy of note as the New Zealand Sign Language Act (2006) was reviewed in 2011 and the Government has been working with the Deaf community to enlarge the policy domains covered to include:

- increased awareness training in government departments and courts,
- use of New Zealand Sign Language in schools and preschools,
- use of New Zealand Sign Language in health boards.

The review very strongly advocated increased access to education via NZSL; this is an important lesson in considering what can be learned from the New Zealand experience and the desirability to specify education and holistic wellbeing and Health in the BSL (Scotland) Bill. Key actors in the Deaf community in New Zealand have said:

“Much progress has been made. It has been a positive process and we are looking forward to the outcome”.

In Finland, Deaf sign language people have a budget that they can use for interpreting in social and civil situations which enables them to participate in voluntary activities such as school boards and local councils. Currently this does not exist anywhere in the UK further contributing to the social exclusion and lack of full citizenship of Deaf BSL people (Emery 2009, BDA 2014a).

Uniquely among minority language users, Deaf BSL people find barriers to acquiring spoken languages and are therefore not likely to change to a different language in a different policy context. This fact heightens the need for protection, promotion, usage and acquisition planning for BSL. As a group there are barriers to acquiring English, this causes linguistic exclusion which materially affects their lives in terms of accessing medical care, education, employment and other basic civil rights.

### 3.2 Other forms of communication

Other forms of communication will continue to be used by deafened and hard of hearing people. However, these are not fully developed natural living languages with their own culture and heritage. Other forms of communication used by deaf people in Scotland include Makaton (used primarily by people with learning difficulties with some signs borrowed from BSL and not a full language) and Sign Supported English (SSE) which is a signed version of the English language not a sign language in its own right. Acquired deaf and deafened people whose first language remains as English use other forms of assistive English language base aids to communication including oral expression with lipreading, loops, cued speech, text and written communication. They also use a variety of aids including implants. None of these would be adversely affected by the proposed BSL Act.

We see no reason why a BSL (Scotland) Bill should impact in any way on the communication choices made by other groups. The Scottish Government’s “See Hear
“Impairment Strategy” already addresses the needs of these groups and is separate, rightly, to the proposed BSL (Scotland) Bill.

BSL is Britain’s fourth indigenous language and used for the transmission of Deaf culture and heritage. It is the native language used fluently by most culturally Deaf people and by some hearing members of the sign language community. It is right that BSL should receive parity of treatment with Gaelic in Scotland. The Funding Memorandum shows that less funding is envisaged for BSL than the Gaelic language as there is no BSL Board and no additional funding for guidance on BSL education.

**Duties on the Scottish Ministers**

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 four years). The Scottish Government will also be required to designate a Minister with lead responsibility for BSL (Section 2). What should this Minister do?

The minister should be responsible for requiring the BSL (Scotland) Act to be delivered by the listed authorities and by the Scottish government.

S/he will be accountable for safeguarding the BSL (Scotland) Act and ensuring the interests of the BSL community are protected, that standards and quality maintained, and that BSL is promoted. The minister will be responsible for ensuring the spirit and principles of the BSL (Scotland) Act are delivered so that

“the profile of the language will be heightened and its use in the delivery of services increased” (Policy Memorandum point 2)

and that national plan and authority plans are delivered effectively.

S/he will also ensure consultation with and involvement of fluent native BSL people and their elected representatives. If established, the BSL national advisory group will advise of drafts and national plans. It will provide the consultation mechanism to involve and engage the Deaf community, embedding their knowledge of the socio-linguistic situation of BSL into the practical implementation of the BSL (Scotland) Bill. We argue strongly that this must consist of a minimum 75% fluent Deaf native sign language people in Scotland to have any credibility with the Scottish Deaf community. It would also be a useful source of advice to the Minister.

S/he will also ensure that the implementation of the plans is effectively evaluated with a view to ensuring continuous learning and sharing of knowledge takes place between the authorities. S/he will foster an organisational culture where appropriate changes can be made in response to lessons learned from what has not worked. S/he will facilitate the dissemination of good practice.

We would like the minister to develop sufficient BSL Awareness, Deaf Culture and Deaf Etiquette to effectively discharge their duties. We do not see this as a junior appointment and would caution against aggregating the portfolio with disability rather than other minority languages as this would be counterproductive in terms of the
message it gives out. It would be good to explore the possibility of a post for a native BSL user as to ensure smooth communication with the minister, the Scottish Government and the proposed BSL national advisory group. There may also need to be an ad-hoc committee set up to work on assessment/quality assurance with public authorities for the short term until national plans are agreed.

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?**

If performance review is the chosen evaluation approach it should not be a simple ‘tick-box exercise’, it should have both a formative and summative evaluation component. The formative component is essential to ensure real time learning of lessons and adaptability during the life course of a plan. The summative component should enable the extent of impact to be assessed as well as holding authorities to account.

We understand however that the current approach has shifted to *continuous improvement* at the level of individual authorities. This is likely to work well in the absence of any existing benchmarks against which performance could be realistically reviewed. Sustainable continuous improvement could be supplemented by building in an element of pan-authority knowledge sharing about *what works and why* to short-circuit organisational learning lead times and to disseminate good practices. The BDA BSL Charter provides the template to achieve this and has been proven to work with the local and public authorities who have signed up to this.

There is extensive literature on stakeholder evaluation approaches which work well in ensuring that the evaluation of strategies and plans are owned by the relevant stakeholders. This moves away from a summative style of evaluation (which assesses outcomes against benchmarks) but embeds a sense of collective shared mission to achieve the goals of the plans with the community it serves. Authorities would thus become accountable to the BSL community to ensure engagement, involvement, dialogue and continuous improvement.

**BSL Authority Plans**

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?**

The BSL (Scotland) Bill sets out what an Authority plan should include only in very generic terms (measures relating to the use of BSL and a timescale plus a response to any performance review). The Policy Memorandum sets out the objective that

“the profile of the language will be heightened and its use in the delivery of services increased” (point 2).

This is however no detailed specification of content for the plans. The content ideally needs to cover the key policy fields within that authority’s competence; health,
education, criminal justice, civil rights and accessibility as a minimum. However, we are keen to raise the profile of BSL education and holistic well-being for education for long term health and would like to see this specified.

Point 20 of the Policy Memorandum outlines the following areas for authorities to consider

- 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;\(^4\)
- any guidance issued by the Scottish Ministers.

As such the BSL (Scotland) Bill is an enabling bill. We hope that working closely with the BSL National Advisory group and using various on-line consultation tactics the authorities will be able to ensure they are meeting the stated needs of the BSL community.

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?**

Ideally we would like to see the national and authority plans being produced in a shorter timescale than specified, we support however the need to build capacity. The collective endeavour involving stakeholder evaluation and ownership of the plans is more likely to generate good will and act as a force for change.

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?**

The Bill states that “persons who use British Sign Language” should be consulted (1.6.a, 3.6.a). These leaves open their Deaf or hearing status and the extent of BSL skills they have.

The BDA is a directly elected democratic organisation. The Bill does not specify the need for elected representatives only asking for “persons who represent users of British Sign Language (1.6.b and 3.6.b). We would prefer to see those with a mandate to talk on behalf of Deaf BSL users being the focus of consultation, involvement and engagement exercises. We also ask for a minimum 75% of Deaf native BSL sign language people being included in any advisory committee.\(^5\) Deaf people have been

\(^4\) Or continuous improvement and stakeholder empowerment evaluations if this is adopted
\(^5\) Fluent native BSL people will have been using BSL since age 7 or younger.
disempowered for long enough and do not need unelected representatives purporting to speak on their behalf. It is therefore vital that native Deaf BSL sign language people are empowered to make decisions about their language and that their innate understanding and knowledge of BSL and Deaf culture is embedded into the BSL Act and the national plan.

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?

We would like to see schools being required to comply with the plans and education authorities being included. Other than this we cannot at this stage comment in depth on the list of authorities but would like to see a commitment to it being kept under review and scrutiny in each cycle.

Financial implications

The estimated costs of the Bill are set out in the Financial Memorandum (FM), which can be found at page 7 of the Explanatory Notes. The Finance Committee would welcome any views that could help it to scrutinise the Bill, including answers to the following questions.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes. There were a total of 9 events that BDA Scotland either set up or supported. So far 371 people involved with the consultations at these events.

1. BSL (Scotland Bill) Open Meeting, Glasgow (12/1/15) – 100 [16 video clips]
2. Crystal Palace Pub, Glasgow (23/1/15) – 85
3. Dundee, Tayside (27/1/15) – 20 [15 video clips]
4. Edinburgh (20/1/15) – 40
5. Edinburgh (29/1/15) – 45
6. Forth Valley Sensory Centre, Falkirk (28/1/15) – 32 [10 video clips]
7. Inverness (31/1/15) – 16 [7 video clips]
8. Motherwell, Lanarkshire (24/1/15) - 18 [20 video clips]
9. Deaf Connections, Glasgow (22/1/15) – 15 [10 video clips]

In addition, the BDA Scotland, jointly with SCoD, undertook a Live Streaming from BSL (Scotland) Bill in Glasgow, more than 400+ watched during and after the event. A total of 47 call of evidence video clips were recorded in BSL from the BDA Scotland.

The BDA’s website has a BSL (Scotland) Bill section with all the web links and video clips about the BSL (Scotland) Bill. There are a further 3 BSL dialogue clips on the SCoD website and contributions to the Scottish Parliament’s Facebook page.
A representative from the Scottish Government presented their response to the Bill including its financial implications at an open meeting hosted by BDA Scotland and SCoD in Glasgow earlier this month. The meeting attracted nearly 100 attendees and over 400 people watched via live streaming including at Deaf clubs in Edinburgh and Aberdeen. The video of the meeting was later shown at other BSL (Scotland) Bill events across Scotland.

Most of the comments made on the night were about how Deaf BSL users could get fair access to education, health and social care support. They wanted to see deaf children getting fair and equal BSL support at schools, Deaf people getting good BSL interpreters at hospitals and health centres and older Deaf people getting care support with good BSL. Participants also emphasised the need for a National BSL Curriculum in Schools, this is important as a stepping stone to career paths for hearing people in Deaf field (such as social workers, teachers, and BSL-English interpreters). Difficulty in accessing and retaining employment was also emphasised particularly in relation to lack of BSL-English interpreters to access services at Job Centre Plus. In addition participants emphasised the need for more BSL teachers for teaching in schools and training specifically for this group.

None of us knew how this would be funded but were happy to work with the Scottish Government to improve access and support to BSL users in Scotland through a national BSL and authority plan.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Further research is needed on current financial allocations, so it is difficult for us to make detailed comment but at the BDA Scotland we feel there are a number of ways to make sure funding and resources for BSL users are used effectively and provide better value for money. There are several devices which can be used to reduce costs:

1) Our existing BDA BSL Charter could be rolled out to the authorities listed in the BSL (Scotland) Bill.
2) Greater use could be made of VRS interpreting. This is has the effect of building interpreter capacity and enabling authorities to get closer to meeting their existing obligations under the Equality Act (2010). There will be times (especially in health care settings) where the physical presence of an interpreter is required, VRS cannot replace this, but it can in some situations provide a useful cost saving and capacity building mechanism for ensuring access.
3) Similarly better use of digital media will also enable greater involvement in the BSL (Scotland) Bill as has been shown by the success of the Scottish Parliament’s Facebook page with over 1,600 members in a short period of time.
4) Although difficult to quantify, there will be cost savings to the public purse generated by greater social inclusion of Deaf people; more Deaf people in employment, fewer Deaf people suffering from preventable physical and mental illnesses, higher levels of attainment by Deaf school leavers, and a reduction in social marginalisation.
5) Adoption of a strategy for pan-authority knowledge and good practice sharing to reduce up front and on-going costs and ensure greater efficiency in delivering obligations under the BSL (Scotland) Bill.
3. **Did you have sufficient time to contribute to the consultation exercise?**

We have done a significant amount of work in spreading the word to BSL users living in Scotland. This has been done via the BDA website, social media videos and contributions to the Scottish Parliament BSL Bill Facebook. We have also published information in British Deaf News magazine and encouraged our thousands of followers on social media to contribute to the consultation exercise.

We wanted to do more to reach those who don’t have access to the internet or social media, especially small BSL user groups in remote rural areas.

In conclusion we applaud the Scottish Parliament for setting up a BSL (Scotland) Bill Facebook page that is truly accessible for BSL people. We feel the consultation exercise has been reasonably fair. Some of our members would have appreciated more information on how the process of the Bill becoming a statute works. Our only regret is not having the time to reach those who don’t have access to website, social media and were unable attend BSL (Scotland) Bill consultation events.

**Costs**

4. **If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.**

   Not applicable. We do not anticipate the BSL (Scotland) Bill incurring significant direct costs to the BDA.

5. **Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**

   We believe the up-front cost of setting up the National and Authority plans are justified on the basis of the need for legislation to redress the on-going social and linguistic exclusion of Deaf people within Scotland. The BDA has long argued for legal status for BSL and we see the current BSL (Scotland) Bill as essential to this.

   The current Bill envisages funding for preparation of plans only. There is no requirement that plans are translated into BSL. Although £1,474,000 was allocated to deaf organisations and the BSL Consortium from the Equality Fund (2012-15), this is not intended for the preparation of BSL plans. The Financial Memorandum expresses considerable caution in producing estimates but does indicate a possible expenditure of £2,380,000 - £3,590,00 in the first session reducing to £1,210,000 - £2,400,000 in subsequent sessions. This is appropriate as the initial set up costs will necessarily exceed those that follow when ground work is already in place and plans will only need updating and revising.

6. **If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?**

   We do not anticipate the BSL (Scotland) Bill incurring significant direct costs to the BDA.
7. **Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?**

We are not in a position to forecast costs effectively with the information available so far.

**Wider Issues**

8. **Do you believe that the FM reasonably captures all costs associated with the Bill? If not, which other costs might be incurred and by whom?**

This would need to be the subject of a more detailed cost effectiveness analysis. We have indicated earlier in this document (financial implications, question 2) that we can see places where costs savings can be made through pan-authority knowledge and good practice sharing and the use of digital media to reduce face to face translation costs. Face to face interpreting will always be a requirement though (however this is provided for as a reasonable adjustment under the Equality Act so does not necessarily entail significant extra costs).

In addition we anticipate significant savings will result from lessened social exclusion of Deaf BSL people: more Deaf people in employment, fewer Deaf people on benefits, higher and better career paths and options, fewer Deaf people requiring treatment for preventable illness within the NHS, holistic wellbeing and a reduction of mental health issues in long term, and a higher standard of literacy and achievement among deaf students.

We also anticipate an unquantifiable benefit from safeguarding, protecting and promoting the linguistic diversity embodied by BSL for Scotland. This has the added advantage of enabling Scotland to show it has legislated to meet the requirements of the UNCRPD and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Passing the bill will also place Scotland at the cutting edge of policy making in this field enhancing its reputation across the UK as an exemplar of good practice and therefore will generating good will (equally difficult to quantify in cost terms).

9. **Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

We would envisage an expanding public interest in learning BSL supported by the offer of national BSL curriculum and BSL qualifications in schools. This would ultimately pay for itself in terms of expanding the numbers of possible BSL-English interpreters available for authorities to use to deliver their obligations under the Equality Act.

We also anticipate that hearing parents of Deaf children would benefit from being offered free BSL instruction in order to comply with the spirit of Article 8 of the Human Rights Act (HRA 1998) Right to private and family life. However this is not therefore
necessarily a cost generated by the proposed bill but a pre-existing obligation implied by the HRA 1998. In the words of one commentator during the consultation:

“Most deaf babies are born to hearing parents. These parents should be offered free BSL classes to help them to communicate and bond their child. It is happening in other countries like Sweden. Parents of deaf children have free sign language classes. It should be the same in Scotland.”

There are no direct costs that we are aware of envisaged by the BSL (Scotland) Bill itself which have not already been specified in the Financial Memorandum. The exception to this would be an expectation that public documents linked to implementation of the BSL (Scotland) Bill are available in accessible BSL versions. A small additional cost would consist of training for the Minister to meet the Deaf community’s strongly held belief that the minister should commit to Deaf awareness, Deaf culture and BSL training.
REFERENCES

British Deaf Association Publications


BDA (2012), *Response to the Consultation on the proposed BSL Bill (Scotland) Report*, October 2012


BDA (2014d), *Access to GPs in North Derbyshire Report*


BDA (2014f), *Early Years Intervention for Deaf Children in Northern Ireland Report*

BDA (2014), *Report on Health Services Provision to BSL Users in Scotland Report*

BDA (2015a), *Supplementary Report UK Shadow Report to the UN CRPD To the Reclaiming our Futures Alliance*


BDA (2015c), *Access to Council Services for Deaf People in Derby Report*

BDA (2015d), *Access to Council Services for Deaf People in Birmingham Report*

Other Publications


Emery, S., 2009, In space no one can see you waving your hands: making citizenship meaningful to Deaf worlds, Citizenship Studies, 13:1, pp.31-44


Miles, D. 1976, Gestures: Poetry in Sign Language Dorothy Miles (Paperback) (Dec 1, 1976)


Article 1 – Objectives, the objectives of this Convention are:

(a) to protect and promote the diversity of cultural expressions;
(b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
(c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
(d) to foster interculturalism in order to develop cultural interaction in the spirit of building bridges among peoples;
(e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;
(f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;
(g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
(i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.
**APPENDIX 2**

**BSL Charter**

---

**Introduction to the BDA’s Charter for British Sign Language (BSL)**

The BDA is asking local authorities and public services across the UK to sign up to our Charter for British Sign Language (BSL). The Charter sets out a number of key pledges to improve access and rights for Deaf people who use sign language. Each pledge requires a commitment, to overcome the disadvantages that Deaf people using BSL face, in order to achieve the stated objective. The benefits that will ensue from achieving the stated objective are also listed.

**The five pledges are:**
1. Ensure access for Deaf people to information and services
2. Promote learning and high quality teaching of British Sign Language
3. Support Deaf children and family
4. Ensure staff working with Deaf people can communicate effectively in British Sign Language
5. Consult with our local Deaf community on a regular basis.

---

**ANNOUNCEMENT OF RECOGNITION**

On 18 March 2003 the Department of Work and Pensions in the UK Government announced the recognition of BSL as a language in the UK.

---

**DEVON COUNTY COUNCIL**

Hosted the first SignVision conference. It included a review of progress made in implementing the BSL Charter in Devon.

---

**BDA revamps the BSL Charter**

with the assistance of staff from Bristol City Council, Devon County Council, Deaf Project, Cardiff Council and the London Borough of Lewisham.

---

**2003**

**BRISTOL CITY COUNCIL**

Adopts BSL Charter. They have over 130 video clips in BSL on their website.

---

**2004**

---

**2005**

**DEVON COUNTY COUNCIL**

Adopts the BSL Charter. They have 12 local organisations signed up to the Charter.

---

**2006**

---

**2009**

Two Deaf Equality Officers organised a conference at Bristol City Council that aimed to raise awareness of the BSL Charter.

---

**2011**

The BDA launches the BSL Charter Toolkit. The Toolkit aims to assist public bodies to self-assess their progress.
Trevor Phillips, former Chair of Equality and Human Rights Commission:

"The essence of the Charter is that Deaf people deserve equal access to services which will, in the long-term, lead to better life outcomes. But organisations will also benefit by adopting the Charter. Not only does it add a new dimension to communication with customers, service users and staff; it also makes good organisational sense to become accessible to the many thousands of BSL users throughout the UK."

Why was official recognition so important?

It was hoped that Deaf BSL users would be able to gain access to health services, council services and services by public bodies through front line staff being able to use BSL and the provision of sign language interpreters.

2013

- **Derby City Council**
  Commitment to Deaf people.
  26 September.

- **Nottingham University Hospital NHS Trust & Nottingham City Council**
  BSL Charter.
  8 January.

- **Derbyshire Healthcare NHS Foundation Trust**
  BSL Charter.
  9 May.

- **Leicestershire Police**
  BSL Charter.
  24 September.

2014

- **Leicestershire County Council**
  BSL Charter.
  12 November.

- **Nottinghamshire Healthcare NHS Trust**
  BSL Charter.
  7 May.

- **Derbyshire County Council**
  BSL Charter.
  23 September.

- **Bridgend Council**
  is the first to use the BSL Toolkit. An Awards ceremony will be held in December to congratulate Bridgend Council on their progress.
BSL CHARTER SUCCESS: Advancing equality

BDA's Chair, Dr Terry Riley OBE and Robin Ash, Empowerment and Campaigns Officer made their way to Matlock last month, to celebrate its partnership with Derbyshire County Council signing of the BDA's Deaf Charter.

More than 40 people were present to witness the momentous occasion, with 10 stalls dedicated to providing information on local services.

Councillor Kevin Gillott opened proceedings, offering his own personal experiences of hearing loss from within his family.

Gillott said: "We're committed to improving equality and want all Derbyshire residents to be able to access our services when and where they need them."

Ian Stephenson, Chief Executive of Derbyshire County Council, expressed excitement demonstrating their pledge to the Deaf Community despite the £152 million cuts the council have been forced to make over the next several years.

Said Dr Riley: "United we stand, divided we fall, together we can achieve equality." He also commended the Derbyshire County Council for its commitment at a time of austerity where several County and local Councils are cutting back on services for the most disadvantaged in the community.

Attendees were then entertained by a lively storytelling of Derbyshire and its local landmarks by local deaf resident Jerry Hamilton.

Paul Barker, of the newly formed North Derbyshire Deaf Forum, concluded the proceedings by highlighting related historical moments in Deaf history and linking it in with the Signing of the Charter - a new moment in history for all concerned.

Robin Ash, Empowerment and Campaigns Officer

100 Guests see Leicestershire Police Pledge to Deaf Community

Leicestershire Police has become the first UK force to sign BDA’s BSL Charter - to coincide with last month’s International Week of the Deaf.

There was an amazing atmosphere at the Police Headquarters, where members of the Deaf Community and Police Officers were all seen to be communicating in BSL.

Chief Constable Simon Cole said: "We are proud to be the first police force to sign the BSL Charter. We have worked hard over the years to build strong relationships with the deaf community and we hope that by signing this charter we will show further commitment to supporting them."

The Police and Crime Commissioner, Sir Clive Loader, who visited the Leicester Deaf Action Group said: "It is extremely important that we maintain a good relationship with the deaf community."

Robin Ash, BDA’s Empowerment and Campaigns Officer, gave examples of the good working relationship enjoyed with Leicestershire Police and how incredibly efficient the police service have been in terms of exceeding the expectations of the Charter before it was even signed.

BDA’s Chair Dr Terry Riley, OBE also gave examples of his involvement with the Police spanning 30 years and said: "together we can achieve our rights as equal citizens."

"Being disadvantaged is not just about financial poverty but also poverty of information and being denied access to services. Without Information one is denied their human rights. Without information one cannot participate in democracy. Without information one is denied the right to participate. Without equality we are vulnerable."

Prior to the formal signing of the Charter, three of the 18 Police Link Officers for the Deaf shared their own personal journey of learning BSL and their involvement in the local Deaf community. They were all congratulated by huge waves in the air from the audience.

Robin Ash, BDA Empowerment and Campaigns Officer

November 2014 • British Deaf News