

BRITISH SIGN LANGUAGE (BSL) BILL – GOVERNMENT MEMORANDUM

Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the [Education and Culture] Committee of the British Sign Language (Scotland) Bill (“the Bill”), which was introduced by Mark Griffin MSP on 29 October 2014.

Background

2. The main provision of the Bill is to promote the use and understanding of British Sign Language (BSL). It requires BSL plans to be prepared and published by the Scottish Ministers (the National Plan) and listed public authorities (Authority Plans). BSL 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. The detailed provisions of the Bill require:

- Scottish Ministers to publish a National Plan for BSL, setting how they will promote and facilitate the use and understanding of BSL across their activities.
- Listed public authorities are to publish a BSL Plans, setting out what they will do to increase the use of BSL across their activities, taking account of current and potential use of BSL. Authority plans must be consistent with the most recent National Plan.
- Scottish Ministers and listed public bodies to consult with BSL users and those who represent them on their draft plan, and take account of their views.
- The first National plan to be published within a year of the start of the first parliamentary session after the Bill for the Act receives Royal Assent. The first Authority Plans are to be published within a year of the publication of the first National Plan. Subsequent National Plans are to be published within six months of a new parliamentary session, and subsequent Authority Plans within six months of the publication of the National Plan.
- Scottish Ministers to publish its first performance review covering the Scottish Government and all listed public authorities twelve months before the end of the first parliamentary session after the Bill for the Act receives Royal Assent. Subsequent performance reviews must be published six months before the end of the parliamentary session in which the BSL plans have been published. The performance review will report on progress and will highlight best practice and poor performance and will inform subsequent plans.
- A lead Minister to be assigned “special responsibility” in relation to the exercise of the Scottish Ministers’ functions under the Act.

3. The Bill includes provision to take account of the possibility of the early dissolution of parliament and how this will impact on the timing of the publication BSL plans and the performance review.

Consultation

4. Mark Griffin MSP conducted a consultation on his draft proposal for this Bill in 2012. Its focus was on promoting and encouraging wider use of BSL rather 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. 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.

5. A strong theme which emerged 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 respondents referred to the cultural aspects of the language. Respondents also highlighted the importance of being able to access services and information in one's own language.

Discussion

BSL National Plan

6. The proposal to place a duty on the Scottish Ministers to publish a BSL National Plan is welcomed. We believe this offers an opportunity for the Scottish Government to demonstrate leadership on this issue. It will also provide momentum, co-ordination and focus across the public sector to improve BSL users' access to public services, and to enable them to participate fully and equally in daily and public life.

7. The BSL National Plan would build on the work of the BSL & Linguistic Access Working Group (BSL&LAWG) which has worked with the Scottish Government since 2000. The group has helped to develop a cohesive approach to improving linguistic access for Deaf people in Scotland, as well as raising awareness of Deaf issues among policy makers, service providers and the general public. The focus of work with the BSL&LAWG to date has been on building a stronger infrastructure for the delivery of BSL in Scotland. This has included substantial investment to increase the number of BSL interpreters and advanced level BSL tutors in Scotland.

8. In 2009, the Scottish Government published a detailed report from the group known as The Roadmap¹ which outlined many of the major issues of access for BSL users in Scotland, and identified policy solutions. However, despite our activities and our investment:

¹ The Long and Winding Road – A Roadmap to British Sign Language & Linguistic Access in Scotland (2009)

- Deaf pupils have significantly lower school attainment than their hearing peers, and are not always able to access education in BSL;
- BSL users are still rarely able to access public services or information directly in BSL;
- There is limited understanding of the needs of BSL users amongst many public bodies and a lack of awareness about how to ensure that Deaf people can access services and information;
- There are very few bilingual professionals who can communicate in BSL;
- There is a shortage of registered BSL interpreters in Scotland;
- Understanding and testing of when and how technology can be used to assist in the development of alternative models of interpreting (such as remote interpreting) is under-developed;
- The cost of interpreting and translating from written English into BSL (and vice versa) remains high;
- There is no formal provision for teaching BSL in schools alongside other modern languages, meaning that the wider learning and usage of the language is not being promoted (for example in the way that Gaelic and Scots is being promoted); and
- there is no clear career progression pathway for linguists wishing to pursue a career in BSL, or for professionals wishing to deliver their service directly to BSL users in their own language.

9. In 2014 the Scottish Government asked the BSL&LAWG to update the Roadmap, to identify where progress had been made and to highlight priority areas for action. This will shortly be available on the Scottish Council on Deafness website. The obvious starting point for the BSL National Plan is the 2009 Roadmap and the 2014 review of the Roadmap. The draft national plan can set out measures for achieving improvements in the priority areas identified by the group.

Authority Plans

10. Most of the day-to-day services which Deaf people use are provided by public bodies other than the Scottish Government. Therefore the duty for listed public bodies to set out how they will improve BSL users' access to information and services they deliver could have real, practical benefits and is welcomed. The requirement for Authority Plans to mirror the National Plan is also sensible because:

- it will contribute towards more consistent delivery of priorities (tailored to local circumstances); and
- it will make processes of consultation, reporting and performance review more straightforward, if outputs from public bodies are reasonably similar in format and content

11. There is a real danger that the focus on publishing plans could create a heavy (and expensive) bureaucratic burden which may not result in improved access to information and services in BSL. It may be preferable to require listed authorities to publish a BSL statement, including information setting out how they will work towards agreed priorities set out in the National Plan.

12. In developing guidance for and assessing the first Authority Plans, the Scottish Ministers will need to take account of the current state of play in terms of BSL access. This will be informed by the 'Equality and Access for Deaf People' project commissioned by the Scottish Government through a BSL Consortium led by Scottish Council on Deafness (£301,000, 2013-15). The project has gathered evidence about the use of BSL in public bodies across Scotland and the barriers that exist and started to build a picture of what information, support and guidance would help public bodies to better meet the needs of BSL users.

Requirement to consult on draft BSL plans

13. The requirement for all listed public bodies to consult with BSL users and those who represent them on a draft plan is problematic for a number of reasons:

- the capacity of the BSL sector/community in local areas and even at a national level is limited, and there is a real danger of the same few organisations and individuals being swamped with requests to review their draft plans;
- the Bill does not require draft (or final) plans to be translated into BSL. If they are presented in written English they will not be accessible to Deaf BSL users, who are the target audience. Therefore an amendment to the Bill should be considered which ensures plans to be translated into BSL. This will result in an additional cost which was not included in the Financial Memorandum.
- However, if the Bill is amended to require draft and final BSL plans to be translated into BSL, it is likely that there will be significant demand for BSL translation services at key times which could result in delays to a process which has been set out in legislation.

14. A possible way forward would be for the Scottish Government, in partnership with COSLA and representatives from the BSL sector to formulate a BSL National Advisory Group, including a significant proportion of BSL users which would advise on the draft BSL National Plan, and on draft Authority Plans on a collective basis. This would require an amendment to the Bill since it would remove the duty on individual public bodies to consult on their draft plan, and instead introduce a requirement for public bodies to submit draft BSL plans to the Scottish Government who would then manage a collective consultation. An alternative way forward would be to encourage locality-based listed authorities to carry out joint consultation on a local BSL plan. As noted above, a further amendment to require the collective consultation, and all final BSL plans to be translated into BSL should also be considered.

Performance review

15. The performance review (which reports on both the National Plan and Authority Plans) will provide an account of the measures taken and outcomes attained, examples of best practice and of poor performance. Subsequent BSL plans will need to take account of the performance review. One option would be for the BSL National Advisory Group mentioned above to play a key role in gathering updates from listed public bodies and advising Scottish Ministers on the content of

the performance review, based on progress towards the agreed priorities set out in the National Plan. This would ensure that the process has a degree of independence.

Timing of reports and of the performance review

16. The timing of the publication of the plans etc. under the Bill is quite complex as the time limits for publishing the National Plans are calculated from the start of the session of Parliament “which next follows the session in which this Act receives Royal Assent” and the time limits for publishing Performance Reviews are calculated with reference to the end of each parliamentary session presuming that it continues for the maximum period of 4 years less 28 days. Tying the time limits for publishing plans etc. to the start and end of parliamentary sessions means that provision is made in a schedule to address the case where: (a) the Parliament is dissolved before the expiry of the period allowed for publishing the plan etc. and (b) the plan etc. has not been published by the date of dissolution. A more straightforward approach would be to require plans etc. to be published within a period of the Act coming into force etc. and then at regular intervals thereafter. In addition, the Bill presumes that the Bill for the Act receives Royal Assent when the Scottish Parliament is in session which may not be the case

17. Experience from implementing the Gaelic Language (Scotland) Act 2005 suggests that that the reporting and review cycle set out in the Bill could be too frequent. The Bord publishes a National Plan on a 5 year cycle and this has significant resource implications. Comments from the Bord, amongst others, suggest that this is too short a period as once a cycle is complete they feel the need to begin the process again almost immediately. Under the timetable set out in the Bill, there is just over a year between the publication of the first authority plans and the first performance review which would leave insufficient time to gather meaningful information on performance, and there is only three and a half years between the publication of the first and the second national plan (three years between publication of the first and the second authority plans). Given that some authorities feel that a five year cycle for Gaelic Language Plans is too short, we would suggest a cycle of seven years as follows:

	Timescale suggested in the Bill	Suggested timescale
First National BSL Plan published	May 2017	May 2017
First Authority Plans published	May 2018	May 2018
First performance review published	June 2019	May 2021
Second National BSL Plan published	November 2020	May 2023
Second Authority Plans published	May 2021	May 2024

Appointment of lead minister

18. The Bill imposes a duty on the Scottish Ministers to assign a Minister or a Junior Minister as having “special responsibility in relation to the exercise of their functions under this Act”. This does not accord with the collective responsibility of the Scottish Ministers. However, the Scottish Government will assign BSL to a ministerial portfolio, which will in effect give a minister lead responsibility but this will not be set out in legislation.

Listed public authorities

19. Following the consultation, and in the interests of achievability and affordability, public 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 have been included as listed public authorities subject to the Bill. A full list is included as part of Annex B. The list of public authorities will require some further consideration as it does not concur with the list held by the Scottish Government Public Bodies Unit, or the Scottish public bodies subject to the Equality Act 2010. We would also like to explore the possibility of groups of listed authorities in geographical areas, or similar listed authorities being able to contribute to a shared plan. This would reduce the burden and cost on public bodies (particularly those serving small numbers of BSL users) and create the possibility for more shared expertise and resources.

Financial implications

20. The Financial Memorandum sets out the Member’s best estimates of the administrative and other costs to which the provisions of the Bill will give rise and covers the cost of implementing the Bill – the production and publication of National Plans, Authority Plans and performance reviews. These costs include only estimates for the cost of staff time and are between £20,000-£30,000 per authority. It is difficult to assess whether these costs are realistic as the Bill does not specify what BSL plans should cover, or what process will be involved in developing them.

21. Initial discussions have taken place with COSLA who have suggested that the estimates in the Member’s Financial Memorandum are too low and that the higher estimate for producing BSL plans should be raised to £40,000 per authority. This is based on a short survey of members on the likely costs of producing a BSL plan, drawing on their knowledge of the current levels of activity around BSL, and the experience of developing a Gaelic Language Plan. COSLA officials have also noted that the Financial Memorandum does not include costs for local authorities contributing to the performance review. The suggestion to change the requirement in the Bill to the publication of a BSL Statement, with concise information about how the listed authority will contribute to priorities set out in the National Plan is likely to significantly reduce the cost of the exercise.

Table 1: Estimated costs for the preparation of BSL plans (and performance review²) taken from the Financial Memorandum produced by the Member³

	First session (2016-2020)	Subsequent sessions
Scottish Government	80,000-140,000	60,000-100,000
Authorities within the Scottish Administration	120,000-180,000	60,000-120,000
Local authorities	640,000-960,000	320,000-640,000
Other listed authorities	1,540,000-2,310,000	720,000-1,540,000
Total	2,380,000-3,590,000	1,160,000-2,400,000

22. The Bill as published does not include any requirement for consultation exercises and plans to be produced in BSL format, and the Financial Memorandum does not include the cost of publication in multiple formats. This appears to be inconsistent with the general duty to promote BSL and to facilitate the promotion, use and understanding of BSL. I have proposed that the Bill should be amended to place a duty on the Scottish Government and listed authorities to ensure their consultation is accessible to BSL users, and to translate BSL plans into BSL. This would necessarily incur some additional costs to the Scottish Government, as set out below:

Table 2: Cost to the Scottish Government for consulting and translating into BSL

	Estimated cost (£)	Financial year
Consulting with BSL users on the first BSL National Plan	25,000	2016-17
Publishing the National Plan in BSL, and managing a collective consultation of authority plans	45,000	2017-18
Consultation with BSL users to inform the Performance Review, and publishing the Performance Review in BSL	25,000	2018-19
Consulting with BSL users on the second BSL National Plan	25,000	2019-20
Total (2016-2020)	120,000	

23. In subsequent periods, the additional costs for consulting with BSL users on the National and Authority Plans, translating the National Plan into BSL, and developing and publishing the Performance Review are likely to be replicated. Although the Financial Memorandum suggests that the cost of producing subsequent plans will be around 30% lower, this will be offset by increased activity to implement measures set out in the BSL plans and monitor progress, so it I would suggest the estimates for the first cycle should be retained for subsequent cycles for financial planning purposes.

² Staff costs only

³ The Financial Memorandum estimates an average cost per listed authority for preparing plans over a four year cycle. It is difficult to assess in which financial years these cost will fall. Table 6 assumes that the expenditure breaks down equally between the four years, which may not be the case. Additional costs for translating BSL plans in 2018-19 have also been added and appear in Table 5.

24. If the Bill is amended to require Authority Plans to be translated into BSL, this will incur a minimal additional cost to listed authorities. This is likely to be in the region of £1,250-£3,150 per authority, depending on the length of the plan. It is assumed that the cost of translating Authority Plans into BSL should be subsumed by the relevant authority, since the requirement does not substantially exceed their current duties under the Equality Act 2010.

25. The proposal to develop a BSL National Advisory Group with a role in managing the consultation of BSL plans, and gathering information for the performance review, with the appropriate level of expertise and capacity to carry out these functions is likely to have resource implications. These could be in the region of £200,000 per year which is roughly equivalent to current levels of SG funding to the BSL sector, and could be met from the Equality Unit budget for 2016-19 as set out below.

Table 3: Cost to the Scottish Government of supporting a BSL National Advisory Group to support implementation of the Bill

	Estimated cost (£)	Financial year
Establishment of BSL National Advisory Group. Development of resources/support for Scottish Government and listed authorities. Supporting the development of the first BSL National Plan	200,000	2016-17
Assisting with the collective consultation on Authority Plans. Ongoing support for Scottish Government and listed authorities.	200,000	2017-18
Working with the BSL National Advisory Group to inform the Performance Review. Ongoing support for Scottish Government and listed authorities.	200,000	2018-19
Supporting the development of the second BSL National Plan Ongoing support for Scottish Government and listed authorities	200,000	2019-20
Total (2016-2020)	800,000	

26. In addition, if the Scottish Government continues to support the development of a national shared system for online interpreting during the period of the first national plan, this could cost in the region of £150,000-£300,000 per year (2016-19) depending on the specification (the current level of investment in an online BSL interpreting pilot for NHS 24 receives funding of around £150,000 per year. The additional cost assumes that the system would require resources for further development and expansion

Table 4: Cost of developing/piloting a shared national system for online interpreting

	Estimated cost (£)	Financial year
Supporting the development of a shared national system for online interpreting	150,000-300,000	2016-17
	150,000-300,000	2017-18
	150,000 – 300,000	2018-19
	150,000-300,000	2019-20
Total (2016-2020)	600,000-1,200,000	

Table 5: Total costs of implementing the BSL Bill (upper estimates) for the period 2016-2020

Upper Limits of Estimates	SG £	Scot Admin £	LAs £	Other £	Total £
Preparation of BSL plans (Table 1)	140,000	180,000	960,000	2,310,000	3,590,000
Cost to listed authorities for translating BSL plans ⁴	-	18,900	100,800	233,100	352,800
Cost to SG of Translation and consultation (Table 2)	120,000				120,000
Cost to SG of National Advisory Group (Table 3)	800,000				800,000
Cost to SG of Shared National System ⁵ (Table 4)	1,200,000				1,200,000
	2,260,000	198,900	1,060,800	2,543,100	6,062,800

Table 6: Estimate of total costs, by financial year (2016-2019)

	2016-17 £	2017-18 £	2018-19 £	2019-20 £
Scottish Government	560,000	580,000	560,000	560,000
Scottish Administration	45,000	45,000	63,900	45,000
Local Authorities	240,000	240,000	340,800	240,000
Other Listed Authorities	577,500	577,500	810,600	577,500
Yearly total	1,422,500	1,442,500	1,775,300	1,422,500
Total (2016-20)	6,062,800			

⁴ Based on an estimate of the plan being up to 25 pages in length, which would cost £3,150 to translate into BSL.

⁵ This estimate represents twice the current annual investment in the NHS24 BSL pilot.

27. These costs summarised in Tables 5 and 6 represent a total cost over the period 2016-20 of £6,062,800 (using upper estimates) and will need to be considered as part of the next and subsequent Spending Reviews. However, in line with current investment, the Scottish Government would be likely to invest around £2m over the period 2016-20 in BSL. This reduced the new burden to £4,062,800.

28. The Member hopes that the obligations under the Bill will in practice lead to an increase in the use made of BSL by public authorities, but the Financial Memorandum does not attempt to quantify the potential additional costs that may arise as this falls outside of the scope of implementing the Bill. COSLA has noted that the Scottish Government 'will not just want the BSL plans published, but want to see practical steps taken to implement the plans'. The paper submitted to the Non-Executive Bills Unit by COSLA pointed out that it was difficult to assess cost of implementing the Bill in the absence of the National Plan, but that it expects to work with Scottish Government on likely implementation costs as the Bill progresses. COSLA is clear that the costs of implementing the Bill – including increased provision of services for people who use BSL - should be met in full. However, it is important to be clear that unlike the Gaelic Language (Scotland) Act 2005, the Bill does not include the implementation of the plans and so this has not been considered as part of the financial implications. The Scottish Government's view is that the 'new burden' applies only to implementing the provisions of the Bill itself (production of plans and performance review) and not the cost of implementing the actions set out in the plans.

Policy context

29. The principles of the Bill are in line with existing Scottish Government policy on BSL and Linguistic access, and implementation of the Bill – particularly the production of a BSL National Plan – will build on the work we have undertaken in partnership with the BSL & Linguistic Access Working Group since 2000. Since 2007, BSL&LAWG has focused on a) building a stronger infrastructure for the delivery of BSL in Scotland and b) raising awareness of BSL and linguistic access across the Scottish Government and the wider public sector.

30. In 2009, the Scottish Government published a detailed report from the group known as The Roadmap which outlined many of the major issues of access for BSL users in Scotland, and identified policy solutions. This report is in the process of being updated and will provide a very good starting point for the BSL National Plan. In addition, our funding to support BSL in 2012-15 through the Equality and Access for Deaf People project (hosted by the Scottish Council on Deafness) has provided some useful information about the current provision of information and services in BSL in local authorities. We are in the process of commissioning an extension to this project for 2015-16 which will focus on what listed authorities need in order to promote the use and understanding of BSL across their activities. In summary then, we see the provisions of the Bill as being consistent with the direction of current Scottish Government policy in this area.

Scottish Government's position

31. The Scottish Government supports the principles of the BSL (Scotland) Bill, and shares the Member's view that requiring the Scottish Government and key public authorities to develop information about BSL provision will help promote the use of BSL in Scotland, improve linguistic access for Deaf BSL users, and enable Deaf people who use BSL to enjoy greater participation in daily and public life. We would suggest the following changes which would simplify and strengthen its provisions:

- a) replace the requirement for listed authorities to publish language plans with a requirement to publish a BSL statement, setting out how they will make progress towards priorities identified in the National Plan.
- b) listed authorities should be required to translate BSL plans into BSL.
- c) the requirement for listed authorities to consult individually on their plans should be reconsidered.
- d) A BSL National Advisory Group should be established, including a significant proportion of BSL users, to support the Scottish Government and listed authorities.
- e) The cycle for publishing BSL plans and the performance review should be extended.
- f) Remove the requirement to assign special responsibility to a lead minister.
- g) Consider changes to the listed authorities covered by the Bill.

Conclusion

32. The Scottish Government recognises the importance of supporting BSL as a language, and improving the access which Deaf BSL users have to public services and public information. We recognise that requiring the Scottish Government and key public authorities to develop BSL plans will help promote the use of BSL in Scotland, improve linguistic access for Deaf BSL users, and improve enable Deaf people to enjoy greater participation in daily and public life in Scotland. The Scottish Government therefore supports the main purpose of the BSL Bill but wishes to highlight the additional costs that are likely to fall to public bodies subject to the Bill. Ministers are keen to work with the member to explore ways of simplifying some of the provisions to streamline the process of developing BSL plans.

Scottish Government Equality Unit
10 December 2014

List of public authorities subject to the BSL Bill

Children's Hearings Scotland.

The Commissioner for Children and Young People in Scotland.

The Common Services Agency constituted under section 10 of the National Health Service (Scotland) Act 1978 and known as NHS National Services Scotland. 10

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994

The Crown Office and Procurator Fiscal Service.

The executive agency known as Education Scotland.

A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

The Mental Welfare Commission for Scotland.

The Office of the Scottish Charity Regulator.

The Parole Board for Scotland.

A post-16 education body (as defined by section 35(1) of the Further and Higher Education (Scotland) Act 2005 (asp 6).

The Scottish Children's Reporter Administration.

The Scottish Court Service.

The Scottish Fire and Rescue Service.

The Scottish Further and Higher Education Funding Council.

The Scottish Legal Aid Board.

The Scottish Parliamentary Corporate Body.

The Scottish Police Authority.

The Scottish Prison Service.

The Scottish Public Services Ombudsman.

The Scottish Qualifications Authority.

The Scottish Social Services Council.

The Scottish Tribunals Service.

Social Care and Social Work Improvement Scotland.

The Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978 and known as the Scottish Ambulance Service Board.

The Special Health Board constituted under that section of that Act and known as NHS 24.

The Special Health Board constituted under that section of that Act and known as the National Waiting Times Centre Board.

The Special Health Board constituted under that section of that Act and known as the State Hospitals Board for Scotland.

The Student Awards Agency for Scotland.