30 January 2015

Clerk to the Education and Culture Committee
Room T3.40
The Scottish Parliament
EDINBURGH
EH99 1SP

For the attention of Committee Members

Dear Committee Members

British Sign Language Bill – Call for Evidence

COSLA welcomes the opportunity to respond to the Education and Culture Committee call for evidence. Our Executive Group for Health and Wellbeing discussed the Bill at an early stage and again in November 2014, following publication. We have also met with Mark Griffin MSP and observed the first evidence session to your Committee on 16 December 2014.

In addition COSLA Officers have been involved in the group which produced the “See Hear” Sensory Impairment Strategy. As part of the “See Hear” strategy Scottish Government have funded a Sensory Impairment Lead Officer in each of the 32 local authority areas for two years. These officers are currently auditing the number of individuals with a sensory impairment and the services which are available to them and any gaps in provision. The strategy encourages partnership working between the private, third sector, health and local authorities. The main thrust of the Sensory Impairment Strategy is that early identification should encourage early support to be provided, and that in the longer term this will help individuals to maintain their independence. We support this strategy and think it should lever additional support for BSL users. Our members are not convinced of the need for a separate BSL Bill.

Specific issues of concern

- BSL Bill – should we be spending scarce resources on producing plans rather than providing services
- BSL Plans - lack of content in the Bill on what should be in plans
- Performance Review - local authorities having to report on performance to Scottish Government
- Financial Memorandum – fails to quantify any additional costs for new duties which may fall on local authorities as a result of the Bill
BSL Bill
COSLA agrees that BSL should be promoted and that BSL users should be able to access services and information. However, we are unsure that the Bill as produced will improve provision, in fact there is a risk that it will become an expensive bureaucratic exercise which draws funding and expertise away from the provision of services for BSL users to the production, interpreting, consulting and reporting on 117 public authority plans. We are unsure what a Scottish Government BSL National Plan will contain, but would stress that if the national plan places additional duties and this involves additional costs to local authorities the Scottish Government will need to provide for these additional costs.

We wonder if there is additional funding available to operate a new bureaucracy whether the BSL Bill is the best use of these resources, or whether such an amount could be spent in other ways; such as raising awareness, providing training and employing more BSL interpreters and providing initial training to front line staff to aid BSL users in communicating with them.

BSL Plans
The Bill calls for the National Plan to be consulted upon by those who the Scottish Ministers consider are likely to be directly affected by the National Plan and lists these as particularly being persons who use BSL and persons who represent users of BSL. We would suggest that listed authorities who will be directly affected by the National Plan, as they will potentially incur additional costs, should also be consulted.

The Bill calls for all 117 listed authority plans to be consulted upon by BSL users. We have held some discussions with Scottish Government officials and recognise that consulting on 117 separate plans will place a burden on BSL users and perhaps an even heavier burden on interpreting services, which are likely to be diverted from their key role in providing support to BSL users. Scottish Government proposals to limit the burden on those to be consulted by some form of a joint consultation exercise is of interest to us.

The Bill says listed authority plans should set out measures to be taken in relation to the use of BSL in connection with the exercise of the authority’s functions, and set timescales by which any such measures are to be taken. In some areas there are few BSL users and demand would need to be assessed and decisions taken on whether exercising functions in BSL forms was justifiable on likely uptake and costs. Conducting all functions in BSL would be a boon for interpreters and instructors but a waste of scarce money if there was no demand.

Other than exercise of authority functions in BSL and setting timescales there appears to be a lack of detail in the Bill on what should be in the national or listed authority plans. We viewed your committee’s evidence session on 16 December 2014. Questions asked included what should be in plans and whether this is about setting minimum standards, the answer provided to these questions was; “that will be for the Parliament to decide”. So the Bill seems to have been written in such a way that the blanks will be filled in by amendments as the Bill passes through Parliament. This makes it difficult to try to estimate costs both to produce a plan and to cost any additional duties.

Performance Review
We met with Mark Griffin MSP on 27th November 2013 to discuss what was at that stage his proposed Bill. We raised concern around the tone which suggested that Scottish Government would hold local authorities to account on their performance against BSL plans. We explained that this proposal confused the accountability relationships that exist within local government and suggests a top down, command and control relationship between the Scottish Government and local authorities rather than the partnership relationship which currently exists.
Details of the meeting and the indicated direction of travel were fed back to our members. We did not see the Bill in advance of publication and were surprised to see the Performance Review in the final Bill.

It is our view that any monitoring or scrutiny of local authority plans should be done at a local level and would suggest this could be done by local community planning partnerships. This partnership approach is in line with the “See Hear” Sensory Impairment Strategy.

The Policy Memorandum talks of there being no statutory sanctions for non-compliance with the legislation but that Scottish Ministers will hold listed authorities to account. The Policy Memorandum also says that the risk of being “named and shamed” for poor performance should act as a significant incentive for listed authorities. We do not consider this to be appropriate for local authorities who are accountable to their electorate and local communities. Local authorities will always do the best job they can for all their constituents, whilst attempting to balance competing priorities, and we find the language of naming and shaming being an incentive to be of concern.

If an ability to hold listed authorities to account through the Parliament is created and restricted to BSL users alone then this is unfair to other citizens who do not have recourse to such an option, and sets a precedent. Currently if individuals or organisations are unhappy with decisions taken by local authorities they can lobby their council or complain to the Scottish Public Services Ombudsman. We see no reason to transfer such powers to the Scottish Ministers or the Scottish Parliament.

The proposed timescale for the publication of the Performance Review; one year after the production of the listed authority plan, seems too short. Implementation of plans would just come into effect and then almost immediately performance would need to be analysed. We would suggest there needs to be time for plans to be put in place and established. Plans being in place for a minimum of 2 - 3 years would seem a reasonable timescale prior to beginning the process of assessing effectiveness.

Financial Memorandum (FM)
The FM comes up with a series of figures for the cost of producing plans and the performance review mechanism of approximately £6 million but notes that it does not attempt to quantify any potential additional costs in support of additional activity linked to the Bill, nor does it consider the costs to listed authorities in providing information to the performance review mechanism.

We think that the lack of detail in the Bill on what should be in plans makes it hard to quantify additional costs. If the National Plan places new duties on listed authorities this will introduce new costs. The intent is that listed authority plans will take account of the national plan. If the Bill suggested what should be in the national plan we could potentially work out likely additional costs.

Conclusion
We are concerned that the Bill will divert scarce funding from the provision of services to the creation and maintenance of an expensive bureaucracy. The lack of detail in the Bill on what will be in the National Plan makes it difficult to work out additional costs to local authorities and that such costs are missing from the Financial Memorandum. The Performance Review confuses local governments partnership relationship with Scottish Government as one of inspected and inspector. The Bill takes no account of “See Hear” the Sensory Impairment Strategy and appears to have been developed in isolation of it.

Finally local authority budgets are under strain and need to be balanced and there are many competing priorities. If this legislation imposes unfunded additional duties on local authorities,
which will effectively ring fence spend, this will protect any new duties at the expense of other areas of local authority activity which will consequently see funding reduced.

We are of course happy to work with the Scottish Government and the Parliament and will watch your deliberations with interest.

Yours faithfully

Councillor Peter Johnston
Spokesperson for Health & Wellbeing