



## **BSL (Scotland) Bill – A RESPONSE**

### **Introduction**

This paper has been produced by Deaf Action, the largest deaf-led registered charity working across Scotland, with services in Edinburgh and Lothian, Fife, Tayside, Highland and Aberdeenshire. For 180 years we have worked together with deaf people to raise awareness of the needs and rights of those who are deaf, to challenge discrimination, and provide services to promote independence and quality of life.

Our services include:

- the provision of specialist social work support
- advice and information
- specialist equipment
- care home and care at home support
- communication support services (including BSL/English interpreters, note takers, & lipspeakers)
- health information
- sensory services
- training (including BSL & Deaf Awareness courses)
- youth service
- money advice service
- multi media provision
- adult learning opportunities for deaf people
- social and leisure activities

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

The law needs to change. Establishing a voluntary code does not go far enough or put any formal obligations on the listed authorities to actually increase the use of BSL in the delivery of their services. The Equality Act 2015 has Deafness and BSL users categorised along with other disabilities and the Deaf community see themselves as part of a linguistic minority and not as a disability group. Because of this difference and in for the preservation of BSL, Deaf Culture and Deaf community, a separate Law needs to be in force.

The Universal Declaration of Linguistic Rights (Barcelona, 1996) notes in Article 3 the right of any member of a language community to use/own their own language and to be taught/receive information in that language, and in Article 5 that the rights of all language communities are equal and independent, both legally and politically. Deaf Sign Language users in Scotland are consistently denied that right. Whilst some public bodies make every effort to provide information and services in BSL, many do not, citing expense as an argument. Work carried out by the Scottish Sensory Centre at Moray House indicates that Deaf school leavers' depressed reading age has not substantially improved from the 1979 recorded average of around 9 years old. It is unrealistic to expect that members of the BSL community will be able to access information in English (unlike users of other minority languages, they will never be able to HEAR the spoken language in order to acquire it). To deny them access in BSL is to further marginalise a vibrant and significant Scottish linguistic minority.

The following countries which have formalised recognition of their indigenous sign language within their legal structures:

- the Czech Republic (in their Constitution since 1988)
- Finland (in their Constitution since 1995, and Laws on the Research Institute for the languages of Finland, on basic education, vocational education, on the position and rights of the social welfare client and Acts on Broadcasting, interpreter services, the status and rights of patients, as well as the Nationality Act, Language Act and Administrative Procedure Act)
- Germany (in the Law on Equal Rights for Persons with Disabilities)
- Greece (in the Constitution since 2000 )
- Kosovo (in the Constitution since 2010)
- Latvia (in the Law of languages, 2000)
- New Zealand (in the Constitution since 2006)
- Norway (in the Education Act )
- Portugal (in the Constitution since 2000)
- Slovakia (in the Constitution since 1995)
- Uganda (in the Constitution since 1995)
- Venezuela (in the Constitution since 1999)

The Convention on the Rights of Persons with Disabilities, 2009, mentions the rights of sign language users in many articles. It defines clearly that languages include both spoken and signed languages (Article 2 Definitions). It affirms that states must recognise and promote deaf culture and linguistic and cultural identity of sign language users as well as their right to receive education in their own language. It also affirms that the states must recognise and promote the use of sign languages (Article 21 Freedom of expression and opinion, and access to information). Furthermore, Article 24 of the CRPD states, that States Parties shall facilitate the learning of sign language and the promotion of the linguistic identity of the deaf community and Article 30 mentions that 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. It is clear that national government of some other countries, and well as UN bodies have recognised the importance of legal recognition of signed languages and the relevance of such protective measures to ensure the inclusion of those who are Deaf into everyday society on an equal basis to those who can hear. Deaf people in Scotland should be entitled to the same.

**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 listed authorities mentioned in the proposal should already be providing access to BSL for their services. Our experience suggests that this is sadly, not always the case and there is definitely a lack of consistency in service provision across Scotland. This may be due to a lack of knowledge and/or understanding of the needs and issues of deaf people. Access to information and public services should be a right to all people living in Scotland but sadly this is not the case at the moment. Written information and access to interpreting services for other minority languages are readily available yet for Deaf, BSL users who have been born and raised in Scotland, who are Scottish, struggle to access information. We recognise that the BSL Bill is the start of a process but would hope that some joined-up planning and sharing of resources by statutory bodies might be introduced in order to respond to demand and spread costs.

**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?**

People who use BSL form part of a cultural and linguistic minority. BSL will be their first and preferred language and method of communication. The Scottish Government has demonstrated commitment to increasing linguistic access by recognising that the first step is to train more native users of BSL in the skills to teach it i.e. the Building Bridges project, which enabled the Scottish Association of Sign Language Interpreters to support the Training of Trainers Graduate Diploma in teaching of BSL course at Heriot Watt University. Additionally, we welcome the undergraduate degree in BSL / English Interpreting, Translation and Applied Studies.

Lipspeakers are used by some deaf people who wish to access spoken English visually: others may prefer access through the written form of the language, eg; through speech-to-text services. Lipspeakers reproduce the spoken message without voicing the words, while articulating in such a

way that the deaf person can recognise English words more easily. Lipspeakers can provide a consistency of rhythm and expression which means that the deaf people concerned do not have to struggle to lipread a wide range of speakers with varying types of lip pattern. Currently, the provision of classes in Scotland is sporadic and inconsistent with classes only taking place because of the efforts of agencies like Deaf Action to secure funding to deliver them. The focus on BSL may well exacerbate this situation.

There may also be a risk that the emphasis on BSL has an impact on Notetakers. An Electronic Notetaker can provide communication support for deaf people who are comfortable reading English at high speed. The Electronic Notetaker produces a real-time summary of what is said using an ordinary laptop computer – usually linked to a second laptop for the client to read from. The laptops are connected by cable, wireless or Bluetooth networking or linked to a braille machine for deafblind clients. This is a very skilled job and it's possible that the focus on BSL might impact on the recruitment and training of Notetakers in the future.

***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?***

This Minister should have a good grasp of what BSL is, the people who use it and an understanding of the Deaf community. For example, the experience of Deaf BSL users is somewhat different from those hearing people who use minority languages. For many Deaf people, it is not possible or realistic for them to learn to use spoken English, as may be an option for hearing speakers of minority languages. The experience of pre-school deaf children (including those who are now adults) may be very different from hearing children. Most hearing children have opportunities to acquire a language, without conscious teaching or effort, via normal interaction with parents or carers. By the time of starting school, most hearing children are able to recognise and reproduce language with a fairly well-developed grammar and other linguistic features. Most deaf children are born into hearing families, who are unlikely to have skills in BSL. Unable to hear everyday spoken communication, and without access to a visual language, many deaf children miss out on the opportunity to acquire language to a sufficient level at this crucial stage in their linguistic development. They should have an overview of what is currently available across Scotland and be prepared to make the necessary changes needed. The Minister should acknowledge and take account of the significant numbers of BSL users that participated in the many BSL Bill consultation sessions and who enthusiastically seized the opportunity to register their opinions and build on this important engagement. The BSL community is the repository of a rich cultural and linguistic heritage, and this should be used to the full. Members of the BSL community have historically been distanced from civic life, and yet have the largest vested interest in the success of the Bill, so involvement at the heart of developments is essential. The designated Minister would be responsible and accountable for demonstrating progress towards the aims of the BSL Bill and, as BSL is one of Scotland's indigenous languages, this work should fall under the remit of the Minister for Learning, Science & Scotland's Languages.

**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?**

We know that authorities are juggling competing priorities of which their responsibilities in relation to the promotion of BSL are only one. However, the Performance Review process is a reasonable mechanism to identify where authorities might be meeting or falling behind in terms of their obligations. It should encourage a consistent approach across Scotland and may also help identify areas of good practice that can then be shared with other authorities. It will be important, however, to be confident that action will be taken against authorities that are consistently falling short on reaching their targets.

**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 key point on the proposed content of the plans is that there doesn't appear to be any requirement to publish the BSL Authority Plans in BSL. This is crucial if we are to ensure BSL users are engaged in this process. The proposed Authority Plans will go some way to achieving engagement with BSL users but we understand that the Scottish Government has suggested an amendment to the Bill to:

*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.*

This would make more sense and encourage authorities to use established bodies such as Community Planning Partnerships to ensure BSL users and their representatives can be more involved in the process rather than just consulted with.

**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?**

We understand the Scottish Government's view is that consideration should be given to extending the timescales, possibly in response to the Gaelic language experience where many considered the timescales too ambitious. This would certainly allow authorities to develop more thought through plans that focus on the results that the process might yield rather than on the process itself. However, it must be acknowledged that authorities should not be approaching this process from a standing start as they already have significant responsibilities in this area under the Equalities Act.

**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 organization?***

Deaf Action is a deaf-led charity that has been working for an equal and better future for Deaf people since 1835. This vision remains at the heart of everything we do today and is central to all the services we provide. We have considerable experience of engaging with BSL users and their representatives and would welcome either inputting into such plans or facilitating this input by the Deaf community.

***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?***

Suggested additions would be:

- The Scottish Social Services Council
- Audit Scotland
- The Care Inspectorate
- General Register Office for Scotland
- Scottish Enterprise
- Skills Development Scotland
- Historic Scotland
- Transport Scotland
- The Scottish Children's Commissioner
- The Scottish Information Commissioner

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

Deaf Action did participate in the consultation exercise preceding the Bill and also hosted a fact finding mission by the Parliamentary Committee charged with scrutinising the Bill. We made no comment on the financial assumptions made.

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

N/A

***12. Did you have sufficient time to contribute to the consultation exercise?***

Yes.

***13. 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.***

We require all our staff to achieve at least an accredited intermediate level BSL qualification and to complete an accredited Deaf Awareness course. The costs of this are covered by Deaf Action. On occasion, we have used our own charitable funds to cover costs of interpretation, where service providers have refused to pay. We currently deliver a range of BSL and Deaf Awareness courses, on a not-for-profit basis.

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

**15. 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?**

As an agency actively involved in promoting BSL and providing a professional Communication Support service, we are already aware of areas where we are incurring costs because of the reluctance of some organisations to provide interpreting support. This is likely to remain the case in the foreseeable future. These costs should clearly be picked-up by the agency with whom the BSL user is engaging.

#### **General Point**

We believe that the BSL Bill will have a positive impact, because it will allow us to move a step closer to BSL language being more widely “endorsed” within society. Although the Bill is primarily concerned with the promotion of BSL and doesn’t impose obligations on service providers or confer rights on BSL users, it does place a duty on 117 public authorities to prepare a BSL Authority Plan that set out the measures to be undertaken by each authority in relation to the use of BSL and to establish timescales on their achievement. It may not be the Bill that we would have hoped and campaigned for, nevertheless, it represents progress and this is to be welcomed.