British Sign Language (Scotland) Bill

The Law Society of Scotland’s response
January 2015
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes. To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Equalities Law Sub Committee of the Law Society of Scotland welcomes the opportunity to consider the Education and Culture Committee’s call for written evidence on the British Sign Language (Scotland) Bill. The committee has the following comments to put forward:

General comments

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?

We are supportive of the primary objective and the policy intent of the Bill which is “to promote the use and understanding of British Sign Language”. The approach of the Bill is to consider BSL as an indigenous minority language rather than a means of communication by people who have a hearing impairment. In treating BSL in this way, the Bill seeks to promote and protect the cultural and social identities of the Deaf Community in Scotland rather than assume that everyone who is Deaf self-identifies as being disabled.

Whilst the draft Bill is explicit in determining that BSL is to be promoted as a minority language rather than an equalities issue, we would suggest that there appears to be some confusion on the part of respondents to the initial consultation regarding this matter. This includes arguments which suggest that if the parliament legislates for a specific group then resources may be redirected from other disadvantaged or minority language groups; that
there are linkages between the promotion of BSL and equality of access, and the possibility of an increased demand from other linguistic minorities to ensure that their needs are also met. We would suggest that, if the promotion of BSL is to be legislated for, in a similar manner to the Gaelic Language Act, then there needs to be clarity as to the division of competence between the British Sign Language Bill and existing equalities legislation.

Public bodies in Scotland already have a legal obligation under Section 149 of the Equality Act 2010\(^1\) (the ‘public sector equality duty’) to eliminate discrimination, promote equal opportunities, and foster good relations between different groups. Under the need to eliminate discrimination most public bodies already offer translation and interpretation services as well as making information available in alternative formats (including BSL). To the best of our knowledge, there is no available information regarding the demand for such services at present or how effectively such services are being promoted by individual public bodies.

In addition, Scottish public bodies are required to comply with specific duties outlined within the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012\(^2\) which includes making certain public performance reports relating to equality matters available in an accessible format. This requirement includes the need to translate such reports into BSL. Within the Specific Duties Regulations there is an existing Duty for Scottish Ministers to publish proposals to enable better performance of the public sector equality duty. We would suggest that consideration should be given as to whether a more generic obligation to promote minority languages could be incorporated into a new specific duty. This would replace the need to establish new reporting procedures and governance processes for the Scottish Government and public bodies by incorporating these timescales within the existing specific duty obligations.

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,

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paragraph 4). How realistic do you think this aim is and to what extent do you believe the Bill can achieve this objective?

The assumption that the promotion of BSL will lead to an increased provision by listed authorities through the National and Authority Plans may be regarded as a reasonable position to take. However, clarity will be required as to the extent that the British Sign Language (Scotland) Bill will be responsible for the increased use of BSL under Authority Plans or whether any increased use is attributable to the obligations placed on Scottish public bodies under the general and specific duties within existing equalities legislation.

Most, if not all, public bodies in Scotland already offer the availability of translation and interpretations services, including for BSL users. There does not appear to be any evaluation of the effectiveness of how these services are promoted to the public or whether the capacity of individual public bodies to offer such services is sufficient to meet maximum demand at any particular time. There is a potential risk that the demand for interpretation services by BSL users may outstrip the availability of fully trained interpreters. With the reported low numbers of registered interpreters in Scotland this problem may be particularly acute in the near future and/or in rural areas.

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?

We would suggest that the Bill may lead to the belief that BSL is the only or main language of the deaf community, which may lead to feelings of actual or perceived inequality for those who use other languages or forms of communication.

There is a concern that listed authorities will comply because they must, and in doing so may be providing a higher rate of service provision to BSL speakers than to other members of the deaf community, or indeed to other speakers of minority languages, with potential for equality challenges.
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 with special responsibility for BSL should facilitate the coordination of different departments within the Scottish Government to prepare and publish the National Plan. This should include budgeting and undertaking impact assessments to enable the successful delivery of the outcomes published within the plan.

It is also perceived that the Minister will be responsible for producing the Performance Review. In doing so, this Minister will be accountable to the Scottish Parliament for delivering against the published outcomes. It would be helpful if the Minister also had responsibility for oversight and development of national capacity for BSL interpreters.

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 suggest that further details of the Performance Review process are necessary before this question can be considered in detail. However, within this process there should be sufficient objective criteria in place to prevent parliamentary or Ministerial scrutiny from becoming an opportunity for political point-scoring. To ensure that Performance Reviews are evaluated objectively then there may be a requirement for an independent body to have responsibility for this role (in a similar manner to how the Equalities and Human Rights Commission reviews performance of equality outcomes).

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?
There may be an argument that public bodies should already be meeting the requirements of Sections 3(3) and 3(4) under the public sector equality duty. However, the provisions of the Bill appear to require an explicit statement with regards to the measures that will be undertaken for BSL users. Clarity should be provided to public bodies as to how the requirements under the Authority Plan differ from existing obligations under equalities legislation.

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?

It is noted that the timescales regarding the publishing and reporting of National and Authority Plans relate to sessions of the Scottish Parliament. In the example provided in the Policy Memorandum the publication of the first National Plan must take place no later than 12 months after the commencement of the session. Listed authorities then have a further 12 months to publish their Authority Plans. If the first Performance Review is to take place no later than 12 months before the expected end of the parliamentary session the listed authorities will have less than 12 months to progress their Authority Plans.

As the Scottish Government will be seeking details of Authority Plan progress prior to their reporting deadline then this will not give listed authorities a full year in order to assess progress. It should be questioned whether this will be of sufficient duration to provide a meaningful progress update. If the Performance Review does not provide a meaningful report on the implementation of Authority Plans then it is questionable whether this can be used as a basis for updating National and Authority Plans for the next parliamentary session.

8. In preparing its Authority Plan, a public authority must consult with those who are “likely to be directly affected by the Authority Plan or otherwise to have an interest in that Plan” (Section 3(6)) and must take into account any comments made to it during the consultation (Section 3(5)). What effect do you think these requirements will have on you or your organisation?
We have no comment to make on this question.

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 have no comment to make on this question.
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