Education and Culture Committee

Stage 1 report on the British Sign Language (Scotland) Bill
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Education and Culture Committee

The remit of the Committee is to consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning; matters relating to youth employment, skills and employment training, implementation of the recommendations of the Commission for Developing Scotland's Young Workforce, Skills Development Scotland and other matters falling within the responsibility of the Cabinet Secretary for Fair Work, Skills and Training, and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture, Europe and External Affairs.

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Committee: Education and Culture Committee

Stage 1 report on the British Sign Language (Scotland) Bill, 4th Report, Session 4, (2015)
Introduction

1. The British Sign Language (Scotland) Bill was introduced by Mark Griffin (the Member in Charge) on 29 October 2014.

2. The Education and Culture Committee was designated as lead Committee for the consideration of the Members Bill.

3. The Finance and Delegated Powers and Law Reform committees also considered the Bill, with regard to their particular remits.

Evidence gathering by the Committee

4. We have sought to engage directly with British Sign Language (BSL) users and the Deaf community throughout our scrutiny of the Bill. We published various key documents in BSL, including our call for views and other briefing material. Also, our evidence sessions were broadcast with live BSL/English interpretation, as well as in Gaelic on one occasion. We received 95 written submissions and 39 BSL videos in response to our call for views on the Bill.

5. We also set up a BSL Facebook group to invite BSL users and others to share their views on the Bill. The initiative was suggested by Professor Graham Turner as providing an easy way for people to communicate their views to us by posting BSL video clips. The initiative was widely welcomed as an excellent example of a public body being inclusive and accessible for Deaf people. Hundreds of BSL videos were shared by the group commenting on the Bill, and the group now has over 2,300 members.

6. We also held two fact-finding visits to help us understand the challenges experienced by Deaf people, discuss the importance and benefits of using BSL, and consider what impact the BSL Bill might have. In December 2014, we visited Windsor Park School and Sensory Service, in Falkirk, where we met Deaf pupils who attended the secondary and members of the Sensory Services Team based in the Forth Valley Sensory Centre. In January 2015, we held an open meeting at Deaf Action in Edinburgh and discussed the Bill with adult BSL users, including members of a local BSL social group, the Golden Amber Club.

7. The views of the Deaf community have been extremely valuable in helping us understand the context to the Bill and we are grateful to everyone who submitted views on the Bill.
Executive Summary

INTRODUCTION

We engaged directly with British Sign Language (BSL) users and the Deaf community throughout our scrutiny of the Bill:

- we published key documents in BSL;
- our evidence sessions were broadcast with live BSL/English interpretation;
- we set up a BSL Facebook group to invite BSL users and others to share their views on the Bill by posting BSL video clips; and
- we held two fact-finding visits to help us understand the challenges experienced by Deaf people and met school pupils and adult BSL users.

The views of the Deaf community have been extremely valuable in helping us understand the context to the Bill and we are grateful to everyone who submitted views on the Bill.

GENERAL PRINCIPLES OF THE BILL

We support the general principles of the Bill and recommend the Scottish Parliament agrees to them.

We consider the Bill is an important step in helping to meet the linguistic needs of BSL users, in the same way as previous legislation did for the Gaelic language in Scotland. This is distinct from the protection offered by existing equality legislation, which identifies BSL users as disabled.

SPECIFIC PROVISIONS

National and authority plans

We support the Bill’s proposal to establish a planning framework for action on BSL. The proposal for a national plan that will then be reflected in lower level authority plans seems sensible.

The most important thing is whether the plans deliver the improvements that the Bill aims to achieve: to heighten the profile of BSL and increase its use in the delivery of services.

While we welcome anything that will reduce the bureaucratic burden of producing plans, we look forward to further detail about the Scottish Government’s suggestion for statements to be produced rather than plans before we can comment on whether it will improve what is already in the Bill. We support the Scottish Government’s proposal to extend the scope of the national plan to include certain national public
authorities. However, this must not in any way dilute public authorities’ accountability for delivering the actions included in the plan.

Effective engagement and consultation with BSL users is crucial to the development of meaningful plans. Therefore, we strongly agree that the Bill should require BSL plans to be made available in BSL.

We support the proposal to establish an advisory group to develop the national plan and provide advice on engagement with the BSL community. The group will have a key responsibility in ensuring the Bill is implemented and it meets the needs of BSL users. We welcome the Scottish Government’s commitment to ensure BSL users, including deafblind BSL users, are represented on the group.

We consider it is important that people have an opportunity to contribute to the development of authority plans and to comment on local service provision. This would help to promote local accountability for the promotion of BSL.

Effective engagement with the BSL community will be important as the legislation takes effect and the advisory group may wish to reflect on the initiatives we adopted during the scrutiny of the Bill, for example, our BSL Facebook group.

The Finance Committee recognised that while the Bill itself did not include the implementation of plans, it considered that attention should be paid to concerns about implementation costs. We agree with the view of the Finance Committee and recognise the plans could give rise to cost implications for public bodies. In doing so, we acknowledge the role the plans will play in supporting a linguistic minority.

**Performance review**

The performance review is critical to the success of the Bill. It provides the mechanism for ensuring progress is made in delivering tangible improvements for BSL users.

While we agree with the approach in the Bill not to include sanctions for non-compliance (and to rely instead on naming and shaming), we are keen to ensure listed authorities are held to account for their actions in relation to BSL. We believe consultation and engagement with the BSL community at national and local levels will be critical to achieving this.

Also, there needs to be a clear process for taking action if a listed authority plan is found to be unsatisfactory in any way. We note Scottish Government proposals for a progress report but remain unclear whether it would meet the aims of the Bill.

**Planning cycle**

We consider the planning cycle proposed in the Bill could be simplified by decoupling it from the parliamentary sessions, and setting a regular timeframe for publishing plans and reviewing progress against them.
We note the Scottish Government’s suggestion of moving to a six or seven-year cycle. The important issue for us, as it is for the BSL community, is that progress begins against the priorities in the national plan as quickly as possible.

We accept there would be benefits in allowing a longer lead-in time for the publication of the first national plan than provided for in the Bill. The first national plan will be crucial in setting the framework for all subsequent action on BSL, and we consider it vital sufficient time is available to ensure extensive consultation and engagement can take place with the BSL community across Scotland.

**Ministerial responsibility**

We welcome the Scottish Government’s assurance that direct responsibility for the promotion of BSL is included in a ministerial portfolio and would, therefore, be content should the existing requirement be removed from the Bill at Stage 2.

**Listed authorities**

We recognise that a case could be made for adding more public authorities to the list of listed authorities in the Bill and recommend the list includes all public-facing, service-oriented bodies whose duties impact on BSL users.
General principles of the Bill

Policy intention

8. The policy intention of the Bill is that “the profile of the language will be heightened and its use in the delivery of services increased”\(^5\). Although the Bill does not impose obligations on service providers or confer rights on BSL users, the intention is that it will “represent an important stepping stone in the process for the development of BSL provision”\(^6\).

9. To achieve this, the Bill requires the Scottish Government to produce every parliamentary session a national plan setting out a framework for action on BSL. Also, certain specified public authorities will be required to produce their own BSL authority plans. Performance against the plans is to be reviewed at the end of each parliamentary session. The Bill also requires the appointment of a Minister with lead responsibility for BSL.

10. The Member in Charge of the Bill explained he wanted BSL to be put on an equal footing with Gaelic, so that “people who use BSL feel just as important as any other language group”\(^7\). The Bill would, he said, enable the Scottish Government to co-ordinate public authorities’ actions, give them a strategic policy lead through a national plan, and say clearly that Scotland values BSL by putting the approach on a statutory footing.

11. The Member in Charge intended the Bill to increase awareness of BSL and, as a result, ensure public authorities’ front-line staff are more appropriately trained in BSL. It was also intended to lead to more opportunities for people to learn BSL and help the language to “grow and flourish”\(^8\). He also hoped it would end the current “postcode service provision”\(^9\) by giving the Scottish Government the platform to take forward good practice and have it replicated across Scotland.

Views on the Bill in general

12. The Member in Charge told us BSL users have an overwhelming appetite for legislation on their language. This was reflected in much of the evidence we received.

13. Many supporters of the Bill focused on the need to increase recognition of BSL as an indigenous language of Scotland. This view was based on the value of promoting a language used by a small but significant proportion of the Scottish population, rather than the need to provide communication support to Deaf people. Some felt the language was under threat and wanted more to be done to ensure its survival.

14. Others drew comparisons with Gaelic speakers and the success of the Gaelic Language (Scotland) Act 2005. Like Gaelic speakers, Deaf people have their own
culture and identity and should be able to access information and services in their first language.

15. Also, witnesses thought the Bill would encourage a change in attitude towards BSL and increase awareness of Deaf people’s language needs and culture. They welcomed the Bill as a first step to improving services for BSL users, and saw it as a framework that could be developed over time.

16. There were also positive comments about the approach taken in the Bill to promote sign language, noting parallels with the Finnish Sign Language Act. Finland is generally regarded as a good model in terms of support for minority languages, including sign language, and the above Act was passed in March 2015.

17. However, some public authorities opposed the Bill, not on the basis that they did not agree with its intention, but because they felt existing legislation was sufficient. Most cited the Equality Act 2010 - which provides protection for people with certain characteristics, including disability - as the appropriate mechanism for addressing the communication needs of Deaf people. It was suggested BSL users were already protected under the Equality Act as employers and service providers have an obligation to anticipate the needs of employees and service users and to make reasonable adjustments for them. Others suggested the Patient Rights (Scotland) Act 2011 and the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009 afforded protection for Deaf people by requiring the needs of individual service users to be met.

18. Other people rejected the view that existing disability legislation could adequately address the needs of BSL users. British Deaf Association (BDA) Scotland told us that “speakers of other indigenous spoken languages are not required to self-identify as disabled to access their language rights”\(^\text{10}\). The Equality Act, BDA Scotland said, “accords rights to individuals to protect them from discrimination, but it does not protect or promote BSL as a language”\(^\text{11}\).

19. Dr Alasdair Allan, the Minister for Learning, Science and Scotland’s Languages, responded to comments that profoundly Deaf people are covered by existing legislation, such as the Equality Act 2010. The evidence suggests, he said, despite those legal protections, their needs are still not being met:

- People who are profoundly deaf are often marginalised and excluded because they do not have linguistic access to information, to services or to opportunities and benefits that many of the rest of us take for granted.

- I appreciate that the current picture is mixed. I understand that the committee has seen and heard evidence of truly excellent work that is going on to promote and support the use of BSL. I applaud all that, but I fear that it might be the exception rather than the norm, and I recognise that we can and must do a lot more across Scotland.\(^\text{12}\)
20. The Scottish Government believes the Bill will be an important step in helping to meet the needs of BSL users in Scotland, and supports the Bill’s principles. The national plan, the Government said, would 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”\textsuperscript{13}.

21. In addition, the Scottish Government suggested the Bill would build on the work of the BSL and Linguistic Access Working Group, which was set up by the former Scottish Executive in 2000. It would also follow on from the Ministerial statement, in 2011, recognising the need to provide support for BSL users.\textsuperscript{14}

22. While the Scottish Government supports the Bill’s principles, it has proposed a number of changes to the Bill. The Minister indicated the changes would “simplify and streamline the requirements in the Bill and reduce any bureaucratic burden on public bodies, while making the Bill more action oriented and outcome focused”\textsuperscript{15}.

23. The Member in Charge told us he was in discussions with the Scottish Government on its proposed amendments and “is open to all of the changes being progressed”\textsuperscript{16}. He suggested further consideration would be required once the detail of the amendments was available.

**Conclusions on the general principles of the Bill**

24. We support the general principles of the Bill and recommend the Scottish Parliament agrees to them.

25. We acknowledge the strong support for the Bill from the BSL community and its recognition that the Bill is a stepping stone in a long-term project. However, the legislation has the aim of heightening the profile of BSL and increasing its use in the delivery of services, and ultimately, to lead to better outcomes for BSL users in Scotland.

26. We consider the Bill is an important step in helping to meet the linguistic needs of BSL users, in the same way as previous legislation did for the Gaelic language in Scotland. This is distinct from the protection offered by existing equality legislation, which identifies BSL users as disabled.

27. However, we hope the legislation will complement the existing equality legislation, and fully expect public authorities to continue their efforts in meeting their public sector equality duty.

28. We also recognise that, throughout the process, the Member in Charge and the Scottish Government have shown willingness to work together to develop improvements to the Bill, and look forward to this continuing during the consideration of any amendments. We expect the full cost implications associated with any amendments to be available for scrutiny in advance of the amendments.
Specific provisions

29. As stated we support the general principles of the Bill. The remainder of the report, therefore, deals with the main provisions of the Bill and discusses whether they can be improved in any way.

30. While our role is to report on the Bill as introduced, we will also consider the range of suggested changes outlined by the Scottish Government in its Memorandum and subsequent evidence session. In doing so, we will refer to the views we received in response to some of those suggested changes. We hope this approach will assist the Parliament in considering how the Bill could look if the Government sought to amend the Bill in line with its current thinking.

National and authority plans

General approach and views

31. The preparation of BSL plans is the primary means by which the Bill seeks to promote BSL. They are crucial to the delivery of the Bill’s objectives.

32. The framework for action on BSL set out by the Scottish Government in the national plan is to provide the basis for individual authority plans. Authority plans will set out the measures to be undertaken by listed authorities in relation to the use of BSL, and place timescales on their achievement. In preparing their plans, listed authorities are to “try to achieve consistency” with the national plan. Plans are to be produced early in each parliamentary session, and the Scottish Government and listed authorities must consult the BSL community on their draft plans.

33. People’s views about the requirement to produce BSL plans reflected the same mixed opinion about the need for the Bill. Those who supported the Bill as an important tool for promoting BSL suggested the proposals for plans were straightforward and sensible. Those who questioned the need for the Bill on the basis that existing legislation adequately protected BSL users, saw the plans as an unnecessary duplication of existing duties under the Equality Act 2010.

34. The Scottish Government welcomed the proposals for national and authority plans. The national plan, it said, would provide an opportunity for the Government to demonstrate leadership in relation to BSL, and the duty for listed authorities to set out how they will improve BSL users’ access to information and services “could have real, practical benefits”.

35. The Scottish Government also welcomed the proposal for a national plan as a way of progressing improvements against issues previously identified by the BSL & Linguistic Access Working Group. The Group identified a number of key priority areas in its Roadmap for improving linguistic access for BSL users.
36. There was general agreement that the national plan was key to delivering the aims of the Bill. For example, Rachel Mapson, a BSL/English interpreter, said “if authority plans are to be informed and guided by the national plan then it is crucial that the national plan is well-constructed and provides a good model for others to follow … everything depends on the integrity and scope of the national plan”\footnote{20}. Others emphasised the national plan must have a clear vision, set out clear priorities and be linked to measurable outcomes.

37. Another key factor of importance to many people was that the Bill should be amended to require BSL plans to be made available in BSL. People felt it would be unreasonable to expect the BSL community to have involvement in the plans unless the plans are produced in BSL.

38. The Scottish Government agreed and considered that not requiring plans to be published in BSL “appears to be inconsistent with the general duty to promote BSL”\footnote{21}. It has, therefore, proposed that the Bill be amended to require plans to be produced in BSL. The Government suggested “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”\footnote{22}. The Member in Charge welcomed the Scottish Government’s suggestion.

**Content of plans**

39. We invited comments about what the plans should include, and what the priorities should be. We received numerous comments via our BSL Facebook group and during our fact-finding visits, as well as from witnesses. BSL users told us about the challenges experienced by Deaf people when accessing services and called for the plans to address the following key priorities:

- promotion of BSL in an education setting, including closing the attainment gap for Deaf learners, a commitment for BSL to be part of the school curriculum, and raising the minimum BSL qualification level required by communication support workers and Teachers of the Deaf;

- improving access to healthcare and social care by, for example, ensuring healthcare professionals are Deaf aware and they adopt appropriate communication methods for Deaf patients and their families, and give consideration to the needs of elderly Deaf people who suffer from dementia and other conditions;

- improving employment opportunities for Deaf people, such as providing appropriate induction support for new starts, and interpretation facilities at job interviews;

- providing early years support for children and families to facilitate healthy development particularly given that the vast majority of Deaf children are born into hearing families;
enabling the inclusion of Deaf people in cultural and leisure activities, such as using more visual communication at train stations, and improving signage at tourist attractions; and

recognising the particular communication needs of deafblind people and ensuring their interests are taken into account.

40. Others commented plans should contain accurate assessments of the number of BSL users, information on current provision and any identified gaps. For example, Inclusion Scotland wanted the plans to provide "an honest appraisal of where the gaps in provision exist and how these will be addressed during the period of the plan."

Consultation on plans

41. The Bill requires the Scottish Ministers and listed authorities to carry out consultations on their draft plans. Consultation is to encompass anyone likely to be directly affected by the plan or otherwise to have an interest in the plan, particularly BSL users and bodies that represent BSL users. The Policy Memorandum makes it clear that people are to be consulted regardless of their hearing status, i.e. whether or not they are Deaf, deafblind or hearing.

42. There was broad support for the requirement to consult the BSL community on draft plans. Engagement with BSL users was seen as crucial to the development of meaningful plans. For example, the Scottish Parliamentary Corporate Body said it would seek to build partnerships through the consultation process and work collaboratively with Deaf groups. This, it said, would have a positive impact both for the organisation in terms of improving its policies and infrastructure, and for the Deaf community in making sure its views are acted upon.

43. Some wanted the proposals to go further and highlighted the importance of involving the BSL community in the development of plans. It was suggested plans should be drawn up in co-production with BSL users to ensure they fully reflected the priorities and needs of the community.

44. There was strong support for adopting new methods of consultation, such as our BSL Facebook Group, which was said to be an excellent example of being open and outward-facing. It was suggested the initiative could form an effective and ongoing part of the consultation process in relation to the promotion of BSL.

45. Others, however, raised concerns about the practicalities of the consultation process. For example, public authorities commented the consultation process would be an additional burden on staff time, and have significant resource implications, including the cost of interpreters and holding consultation events. Others felt it could be a time-consuming process, and others questioned how meaningful the consultation would be if there was only a small number of BSL users who used or engaged with specific services. Some highlighted the potential for consultation fatigue among a small number of Deaf organisations in Scotland.
46. Many of those concerns were shared by the Scottish Government. In response, it suggested some possible alternatives. It suggested the creation of a BSL national advisory group that would advise on the development of the plans and carry out a collective consultation on behalf of the Scottish Ministers and listed authorities. This would remove the duty on individual listed authorities to consult on their draft plans. Another option could be for "locality-based listed" authorities to carry out joint consultations on their plans.

47. We asked BSL users who gave evidence for their views on the Scottish Government’s suggestions for collective consultation. While witnesses recognised local consultation could create the potential for people to be over-surveyed they saw value in retaining this form of consultation. It was suggested local consultations did not need to be onerous, and listed authorities could take advantage of existing networks such as those used by the British Deaf Association and the Scottish Council on Deafness in their outreach work with the Deaf community.

48. In relation to establishing a BSL national advisory group, there was general support for the proposal. COSLA was keen to participate in the group and supported the emphasis on joint-working between the BSL community and service providers. Others were mainly concerned that the membership of the group should include a majority of Deaf BSL users. In response, the Minister told us “a substantial proportion” of the members of the advisory group should be Deaf BSL users, including representation from the deafblind community.

Scottish Government amendments to reduce bureaucracy

49. While the Scottish Government supports the proposals for national and authority plans, it is concerned about the potential resource implications. In its Memorandum, it argued:

> 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.\(^{27}\)

50. To reduce the burden, the Scottish Government proposed two changes. Firstly, it suggested listed authorities should be required to publish BSL statements rather than plans. The Scottish Government has explained a statement would include information setting out how a listed authority would work towards agreed priorities set out in the national plan. This appears to correlate with the Bill’s intention for listed authorities to produce plans: “listed authorities will be required to produce their own plans, setting out action in relation to BSL, in doing so seeking to achieve consistency with the national plan”.\(^{28}\)

51. However, the Bill includes further detail about authority plans and it is not clear whether these requirements would also apply to a statement. In particular, the Bill requires authority plans:
to set out measures to be taken by the listed authority in relation to the use of BSL in connection with the exercise of the authority’s functions;

to set out timescales by reference to which any such measures are to be taken; and

where the listed authority has previously published at least one authority plan, to state how, when and to what extent measures to be taken by the authority by virtue of the most recently published such plan were taken.

52. We asked witnesses whether they would prefer the Bill to require publication of plans or statements. There was no preference about what the documents were called; the main concern was content and whether the result would be improved services for BSL users.

53. Witnesses told us they wanted to see listed authorities produce statements of intent. For example, the National Deaf Children’s Society (NDCS) said it is critical there “is a sense of intent and measurable action within the statement and that people can see a tangible improvement”\(^{29}\). NDCS also emphasised there needed to be accountability for the statements and a mechanism for reporting back - this is discussed in the section on performance review (paragraphs 72-87).

54. The second Scottish Government proposal to reduce bureaucracy is for the coverage of the national plan to be expanded to “include the actions to be taken by national listed authorities that are answerable to the Scottish Ministers”\(^{30}\). Therefore, those bodies would not be required to publish individual authority plans.\(^{31}\) The Scottish Government thinks this would allow it to “take a much more strategic and co-ordinated approach to the actions that need to happen at national level and will reduce the number of plans that need to be produced and consulted on and therefore the burden on the public sector”\(^{32}\).

55. We questioned the Minister, on what was a new proposal, as to whether it could potentially dilute authorities’ sense of ownership of the actions to be taken on BSL, perhaps because they would have had less to do with the development of the plan and would not have been required to carry out their own consultations. The Minister acknowledged that was a reasonable observation and indicated the national plan would be flexible enough to take account of the fact it might have to be interpreted differently by different bodies. Government officials added that the development of national priorities would, to an extent, determine what some of the actions would be for different national bodies and that would be reflected in the national plan.

56. The Scottish Government has not estimated how much would be saved as a result of the two suggested changes, and we understand detailed costings are being developed. The Member in Charge has indicated he supports the intention of the Scottish Government’s two proposals.
Implementation of plans

57. The Bill does not prescribe a minimum level of activity beyond the production of a plan. The Financial Memorandum stated “it will be a matter for public authorities to determine the scope of their activities in relation to BSL, taking account of needs assessment and budgetary considerations.”

58. The Finance Committee received a number of submissions that commented on the question of implementation costs and the public expectations that may arise as a consequence of the national and authority plans. For example, Colleges Scotland said “whilst the requirement is to produce a plan only, the publication of such a plan will almost certainly increase public expectation that would require additional funds in future years.” Other public authorities made similar points.

59. Such concerns were also raised with us. For example, COSLA asked whether additional funding would be provided in order to support local authorities in meeting their duty under the Bill. It referred to additional costs and said, “if there is no additional funding and there are additional responsibilities to comply with, that could divert resources from elsewhere.”

60. Others took a different view and suggested the measures in the Bill could lead to better and more efficient use of resources for BSL users. It was also suggested the promotion of BSL could lead to an increase in the contribution from BSL users by, for example, improving employment opportunities. Professor Graham Turner referred to the cost of supporting Gaelic and said that nobody asked “Can we support Gaelic?”

61. The Member in Charge explained why he had not estimated the potential cost of implementing the promotional activity on BSL by public authorities:

> That will be for public authorities. They will need to set their own priorities within their own budgets. The Financial Memorandum sets out the cost impact of the Bill itself. I am not in a position to put an estimate on what a local authority or health board might choose to do.

62. The Finance Committee recognised that while the Bill itself did not include the implementation of plans, it considered that attention should be paid to concerns about implementation costs. We agree with the view of the Finance Committee and recognise the plans could give rise to cost implications for public bodies. In doing so, we acknowledge the role the plans will play in supporting a linguistic minority.
63. We support the Bill’s proposal to establish a planning framework for action on BSL. The proposal for a national plan that will then be reflected in lower level authority plans seems sensible.

64. The most important thing, of course, is whether the plans deliver the improvements that the Bill aims to achieve: to heighten the profile of BSL and increase its use in the delivery of services. The quality of the national plan will be crucial in this respect, as it will set the tone for the authority plans.

65. While we welcome anything that will reduce the bureaucratic burden of producing plans, we look forward to further detail about the Scottish Government’s suggestion for statements to be produced rather than plans before we can comment on whether it will improve what is already in the Bill. Specifically, it is unclear whether the requirements set out in the Bill that apply to the content of plans will also apply to statements. Statements must include a clear sense of purpose, and details of the measures to be taken and timelines for their delivery. There must be enough in the way of detail to allow local BSL communities to be able to assess the content of the statements. Listed authorities must also be seen to have ownership and accountability for each statement.

66. We support the Scottish Government’s proposal to extend the scope of the national plan to include certain national public authorities. However, this must not in any way dilute public authorities’ accountability for delivering the actions included in the plan.

67. Effective engagement and consultation with BSL users is crucial to the development of meaningful plans. Therefore, we strongly agree that the Bill should require BSL plans to be made available in BSL, and note the Scottish Government suggestion that the additional cost would be met under existing equality duties.

68. We support the proposal to establish an advisory group to develop the national plan and provide advice on engagement with the BSL community. As the national plan will set the framework for action on BSL, the group will have a key responsibility in ensuring the Bill is implemented and it meets the needs of BSL users. We suggest the group’s expertise could also be of assistance to other bodies and we would be keen for it to act as a resource available to all listed authorities. We welcome the Scottish Government’s commitment to ensure BSL users, including deafblind BSL users, are represented on the group.

69. We consider it is important that people have an opportunity to contribute to the development of authority plans and to comment on local service provision. This would help to promote local accountability for the promotion of BSL.
70. Effective engagement with the BSL community will be important as the legislation takes effect and the advisory group may wish to reflect on the initiatives we adopted during the scrutiny of the Bill. For example, our BSL Facebook group was well-received by the Deaf community and proved to be an extremely useful engagement tool.

71. The performance review process and planning cycle will be critical in ensuring progress against BSL plans. These issues are discussed in the next sections.

Performance review

72. BSL plans are to be reviewed and reported on in the form of a performance review, which is to be produced by the Scottish Government and laid before the Scottish Parliament.

73. The Policy Memorandum states the “performance review will be informed by reports made to the Scottish Ministers by listed authorities within the review sections of their authority plans”\(^{39}\). In terms of content, the performance review will provide updates on progress against the national plan and authority plans and include examples of good practice and any examples of poor performance. Each review will inform the next cycle of BSL plans.

74. The performance review will provide a basis for the Scottish Parliament to hold the Scottish Ministers to account, and for Ministers to hold listed authorities to account. There will be no statutory sanctions for non-compliance with the legislation, instead the risk of being ‘named and shamed’ will act as an incentive for listed authorities.

75. From the submissions we received, there was a strong sense that the performance review process was a critical part of the Bill and central to its success. People warned the process should not simply be a tick-box exercise and must lead to progress against the Bill’s stated aims.

76. Of particular concern was that the review process should ensure local BSL users are involved, enabling them to hold listed authorities to account. Angus Council suggested the performance review could take the form of a co-production model, involving members of the Deaf community, their families and carers, as well as those organisations that support them. The Church of Scotland said “strong civil society monitoring and engagement should accompany the review process”\(^{40}\), and Signature, a UK charity for Deaf and deafblind people, believed such engagement would help authorities to develop their BSL plans and make sure they respond to local need\(^{41}\).

77. COSLA supported the need to ensure local accountability of BSL plans, but was concerned about the proposal for the Scottish Government to assess local authorities’ performance. This, it said, “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. As an alternative, it suggested the monitoring or scrutiny of local authority plans should be done at a local level by local community planning partnerships.

78. These considerations have been taken into account by the Scottish Government, and it has suggested altering the provision in the Bill. Rather than require a performance review, the Government would prefer the Bill to require a progress report. Scottish Government officials explained while “that might sound like just a change in language, it has important implications:"

First, it is very difficult to carry out a performance review in a situation for which there is no baseline and there are no performance indicators in place to measure performance.

Secondly … we have heard from COSLA, which is strongly of the view that it is inappropriate for the Scottish Ministers to assess local authorities’ performance and that, instead, local authorities are accountable to their communities. For those reasons, we suggested that ministers should publish a progress report that sets out the national picture and gives a flavour of some of the activities that are taking place. That would be different from a performance review, because we accept that it is not appropriate for the Scottish Ministers to judge local authorities’ performance.

79. There was general support for the Scottish Government’s proposal. BDA Scotland agreed the approach would work well in the absence of any existing benchmarks. It also suggested the approach “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, it said, provided a template to achieve this and had been shown to have been successful.

80. The Member in Charge also emphasised the importance of a national review element:

There are areas in the central belt where there is the critical mass of BSL users to challenge service providers, whereas in more rural areas where there is not the same density of users some people feel that they are not able to challenge collectively the services that are being provided. That is why a national review is needed.

81. We discussed with witnesses whether the lack of sanctions for non-compliance with the legislation could make it less likely to deliver improvements for BSL users. There was a general feeling that if the performance review process
ensured local accountability, involving BSL users and the wider Deaf community, then there would be little need for sanctions or penalties.

82. In addition, others suggested sanctions might not be an effective means of promoting BSL. For example, Frankie McLean, a social worker and Deaf BSL user, said “sanctioning could be counterproductive and lead to the creation of superfluous and light targets - authorities should be allowed to be ambitious without fear of sanctions if they fail”\(^{47}\).

83. The Member in Charge told us a Minister would be able to hold a public body, over which the Scottish Government has authority, to account in relation to a failure to meet the ambitions and aims of the national plan. He also hoped the prospect of reputational damage (by being named and shamed) would be enough to ensure listed authorities carried out the actions they had agreed and set for themselves in their BSL plans.

84. Two respondents supported a system of penalties and cited the Welsh Language (Wales) Measure 2011, which they said had been successful in developing standards\(^{48}\).

85. The performance review is critical to the success of the Bill. It provides the mechanism for ensuring progress is made in delivering tangible improvements for BSL users.

86. While we agree with the approach in the Bill not to include sanctions for non-compliance (and to rely instead on naming and shaming), we are keen to ensure listed authorities are held to account for their actions in relation to BSL. We believe consultation and engagement with the BSL community at national and local levels will be critical to achieving this.

87. Also, there needs to be a clear process for taking action if a listed authority plan is found to be unsatisfactory in any way. We note Scottish Government proposals for a progress report but remain unclear whether it would meet the aims of the Bill. It is also unclear how the naming and shaming approach would apply in the case of the proposed progress report. Further, it is unclear whether BSL statements – as proposed by the Scottish Government – would include a review element (as plans should) and how this would affect the progress report.

**Planning cycle**

88. The Bill proposes a regular cycle for the production of the national plan, authority plans and performance review. The cycle is based on parliamentary sessions and so would normally be a four or five-year period.

89. In each parliamentary session, a national plan is to be published no later than six months after the start of the session, with authority plans being published no later than six months after that, and a performance review published no later than six
months before the end of the session. For the first cycle, the relevant periods are 12 months, allowing a more generous period within which to produce the initial plans, and to reflect a greater priority on taking stock of progress at an earlier point in the session. In addition, special allowances are made for exceptional circumstances, such as the early dissolution of the Parliament.

90. The Policy Memorandum states linking the planning cycle to the parliamentary sessions is intended to reflect the fact “Scottish Ministers have a central role in the process and are accountable to the Parliament for their responsibilities under the Bill”\(^{49}\).

91. From the views we received there was a general feeling the planning cycle was overly complex and would benefit from simplification. For example, COSLA highlighted the added complication of fitting it in with local government terms, with their different timescales from parliamentary sessions.

92. Others called for a longer planning cycle. In relation to the first cycle, the Law Society of Scotland highlighted listed authorities would have less than one year to assess progress against their plans, and questioned whether this would be of sufficient duration to provide a meaningful progress update. A number of people said they were aware the five-year reporting cycle under the Gaelic Language (Scotland) Act 2005 was considered by Bòrd na Gàidhlig to be too restrictive, and suggested an extended timetable.

93. However, there were concerns that a longer planning cycle would simply delay the impact of the Bill. BDA Scotland wanted to see as much achieved in the first cycle as possible, and was concerned that a longer timescale could mean the loss of more educational opportunities for Deaf children.

94. The Scottish Government favours uncoupling the planning cycle from the parliamentary sessions and extending it to six or seven years. It believes this would be a more straightforward approach and would allow more time after publication of the national plan to gather information on performance. While the Scottish Government Memorandum suggests a seven-year cycle, the Minister subsequently indicated that this was perhaps too long and he could end up proposing a six-year period.

95. Scottish Government officials responded to the concern about a potential lack of progress in the early years of the first cycle. They emphasised the expectation that actions will be taken in that period and stated “we want to focus as much resource as possible on actions, rather than on the reporting process”\(^{50}\). In order to allow sufficient time for this activity, the Scottish Government would like to have a longer period in which to produce the first national plan, and suggests doubling the timeframe to two years. The additional time, it said, would allow for a fully participatory approach to developing the national plan, including engaging and consulting with the Deaf community, and setting up the advisory group.
96. We consider the planning cycle proposed in the Bill could be simplified by decoupling it from the parliamentary sessions, and setting a regular timeframe for publishing plans and reviewing progress against them.

97. We note the Scottish Government’s suggestion of moving to a six or seven-year cycle. The important issue for us, as it is for the BSL community, is that progress begins against the priorities in the national plan as quickly as possible. We will consider the merits of any proposed amendments at Stage 2.

98. We accept there would be benefits in allowing a longer lead-in time for the publication of the first national plan than provided for in the Bill. As we have already stated, the first national plan will be crucial in setting the framework for all subsequent action on BSL. Therefore, we consider it vital sufficient time is available to ensure extensive consultation and engagement can take place with the BSL community across Scotland to produce a comprehensive plan that includes detailed national priorities. An extended timetable would also allow for the BSL national advisory group to be established.

### Ministerial responsibility

99. The Bill requires the Scottish Ministers to assign a Minister with “special responsibility in relation to the exercise of their functions under the legislation”\(^51\).

100. The Scottish Government considered such a duty “does not accord with the collective responsibility of the Scottish Ministers”\(^52\), and has proposed the requirement be removed from the Bill. However, the Government has confirmed that BSL will be included in a ministerial portfolio - in evidence to us, the Minister said that “as minister for languages, I will lead on BSL, and I am sure that that will be the case in future Governments”\(^53\).

101. The principle of a Minister having lead responsibility for BSL included in their portfolio was broadly welcomed in the evidence we received. Many emphasised the importance of the Minister engaging with BSL users - perhaps through Facebook or other social media used by the Deaf community - and building an understanding of the issues affecting BSL users.

102. We welcome the Scottish Government’s assurance that direct responsibility for the promotion of BSL is included in a ministerial portfolio and would, therefore, be content should the existing requirement be removed from the Bill at Stage 2.

### Listed authorities

103. The Bill includes a list of public authorities that will be required to produce authority plans. The list of 117 authorities includes “public-facing, service-oriented
bodies in the key sectors of education, local government, health, justice and policing.  

104. In evidence to us, the Minister suggested a number of organisations should be added to the list, including Creative Scotland and Skills Development Scotland.

105. Professor Graham Turner provided an extensive list of other bodies he thought should be added to ensure fair and equitable access in all aspects of life, including social care, business and culture.

106. We recognise that a case could be made for adding more public authorities to the list of listed authorities in the Bill and recommend the list includes all public-facing, service-oriented bodies whose duties impact on BSL users.

Delegated powers provisions

107. The Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers provisions contained in the Bill and reported that it is content with them. We note the view of the DPLR Committee.

Overall conclusion

108. We support the general principles of the Bill and recommend the Scottish Parliament agrees to them.
This would be likely to reduce the number of authorities required to produce an authority plan by around half.

Colleges Scotland. Written submission to the Finance Committee.

Church of Scotland (Church and Society Council and the Ministries Council). Written submission.

Signature. Written submission.

COSLA. Written submission.

British Deaf Association Scotland. Written submission.

Bilingualism Matters Centre (University of Edinburgh) and Deaf Ex-Mainstreamers Group. Written submissions.

Policy Memorandum, paragraph 22


