

Legislative Consent Memorandum

British Sign Language Bill

Background

1. This memorandum has been lodged by Shirley-Anne Somerville MSP, Cabinet Secretary for Education and Skills, under Rule 9.B.3.1(a) of the Parliament's Standing Orders, and is supported by Clare Haughey MSP, Minister for Children and Young People. The British Sign Language Bill was introduced in the House of Commons on 16th June 2021. The Bill can be found at [British Sign Language Bill - Parliamentary Bills - UK Parliament](#).

Content of the British Sign Language Bill

2. The Bill is a Private Members' Bill introduced by Rosie Cooper MP. The Bill consists of four clauses. The first clause recognises British Sign Language as a language of England, Wales and Scotland. The second clause places a duty on the Secretary of State to report on the promotion and facilitation of the use of British Sign Language by ministerial government departments. The third clause places a duty on the Secretary of State to issue guidance on the general promotion and facilitation of British Sign Language. The fourth clause relates to the extent of the clauses and commencement.

Provisions which relate to Scotland

3. The entirety of the Bill extends to Scotland. Clauses 1, 2 and 3 all relate to the reserved matter of equal opportunities but fall within one of the exceptions to that reservation. As such, each of these provisions relate to matters which the Scottish Parliament and Scottish Ministers have competence for.

Reasons for seeking a legislative consent motion

4. Clause 1(1) of the Bill recognises British Sign Language as a language of the United Kingdom. The subject matter of clause 1 falls within the reservation of equal opportunities, reserved to the UK Parliament by paragraph L2 of schedule 5 of the Scotland Act 1998. The remit of the equal opportunities reservation is wide, being defined as "the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other person attributes, including beliefs or opinions, such as religious beliefs or political opinions".

5. However, clause 1 is considered to fall into one of the exceptions to the equal opportunities reservation by virtue of its purpose being the "encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements". The clause is therefore

considered to be legislating for a devolved purpose and the consent of the Scottish Parliament is required. The extent of this exception is relatively untested but the Scottish Government thinks that recognition of British Sign Language (BSL) as a language alone does not constitute the regulation of the prevention etc of discrimination on the grounds of language. The purpose of the clause is to enhance the status of and promote the use of BSL in the United Kingdom. Further the prevention etc of discrimination is not the legal effect of clause 1. The recognition of BSL as a language has no legal effect in relation to the regulation of discrimination. The clause does nothing to change the provisions in the Equality Act 2010 relevant to those with the protected characteristic of disability and their use of BSL and the prevention, elimination and regulation of discrimination between such persons. Indeed, clause 1(2) provides that subsection (1) affects no other enactments or rules of law ensuring that the existing discrimination legislation continues unaffected by clause 1. The purpose and effect of clause 1 (being the test relevant to whether a provision relates to a reserved matter as per section 29(3) of the Scotland Act 1998) is considered to be the encouragement of equal opportunities other than by prohibition or regulation. The consent of the Scottish Parliament is required for clause 1 given it has a devolved purpose. This is supported by the enactment by the Scottish Parliament of the British Sign Language (Scotland) Act 2015.

6. Clause 2 places a duty on the Secretary of State to report on the promotion and facilitation of British Sign Language. The reporting duty is limited by reference to action taken by “relevant government departments” in its communications with the public. “Relevant government department” is defined as a United Kingdom ministerial government department listed in the Schedule. The only “relevant government departments” listed are UK Government departments. The delegated powers in the Bill would not allow any Scottish Minister or Scottish public authority to be added. Further, by virtue of subsection (5), the Secretary of State cannot report on anything which relates only to Scotland and does not relate to reserved matters within the meaning of the Scotland Act 1998. One example given by UK Government officials was reporting on communications in relation to benefits, including devolved benefits, currently being administered by the Department of Work and Pensions. However, clause 2 does allow the Secretary of State to report on communications to the public which relate to the United Kingdom as a whole or to Scotland and Wales and to a devolved matter. The Secretary of State could for example report on relevant action taken by a relevant UK Government department relating to health and social care in the United Kingdom. For the reasons set out in relation to the L2 reservation in relation to clause 1 above, it is within the legislative competence of the Scottish Parliament to legislate as regards reporting on the use of British Sign Language in respect of devolved matters in Scotland. Clause 2 is also therefore considered to trigger the Sewel Convention and require the Scottish Parliament’s consent.

7. For the same reasons, clause 3 is considered to have a devolved purpose. Clause 3 requires the Secretary of State to issue guidance about the use of BSL. The guidance cannot include advice or other material which relates to Scotland and does not relate to reserved matters. However, the guidance can include advice or other material which relates to the United Kingdom as a whole or to Scotland and Wales and relates to a devolved matter. This means that the guidance can cover matters devolved to the Scottish Parliament. Given the purpose of the Bill as a whole is considered to have a devolved purpose of the encouragement of the use of British

Sign Language, a clause relating to the issuing of guidance on a devolved subject area is considered to be within the legislative competence of the Scottish Parliament, even if that guidance will not be binding on Scottish Ministers and therefore does not affect their executive competence or affect their powers within the British Sign Language (Scotland) Act 2015.

8. The UK Government has indicated its position is also that clauses 1, 2 and 3 relate to the encouragement of equal opportunities (otherwise than by prohibition or regulation) and so fall within the exception to the L2 reservation, and are within the competence of the Scottish Parliament and so engage the LCM process. The Scottish Government agrees, as set out above, and is recommending the Parliament grants legislative consent.

9. Consent is recommended because whilst the Scottish Parliament has passed the British Sign Language (Scotland) Act 2015 and has established a precedent of support for the promotion of British Sign Language (BSL), this Bill will additionally recognise, in statute, BSL as a language of Scotland. Further, the Bill will be beneficial to Scotland's BSL communities, as it will promote the use of BSL in Scotland, particularly in relation to reserved functions. There are no reasons for consent to not be given; to withhold consent would be counterproductive to the Scottish Government's work in promoting the use of BSL, since it may limit the impact of the Bill by restricting where the use of BSL can be promoted by the UK Government, as well as restricting the potential improvement in the lives of BSL signers in Scotland. In a scenario where consent was refused, this would be viewed as a regressive step by stakeholders in the third sector; the implications of the Scottish Government not recommending consent, or the Scottish Parliament refusing it, attaches significant reputational risks for either body.

Consultation

10. The Bill was introduced by Rosie Cooper MP. The Scottish Government has not conducted any consultation in relation to the Bill.

Financial implications

11. There are no financial implications of the Parliament agreeing, or not agreeing, to a legislative consent motion.

Conclusion

Draft Legislative Consent Motion

12. The draft motion, which will be lodged by the Cabinet Secretary for Education and Skills, is:

"That the Parliament agrees that the relevant provisions of the British Sign Language Bill, introduced in the House of Commons on 16th June 2021, relating to the encouragement of the use of British Sign Language, so far as they fall within the

legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
March 2022

This Legislative Consent Memorandum relates to the British Sign Language Bill (UK legislation) and was lodged with the Scottish Parliament on 9 March 2022

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