

Education, Children and Young People Committee

11th Meeting, 2022 (Session 6), Wednesday 20 April

Legislative Consent Memorandum (LCM): British Sign Language (BSL) Bill

Background

On 15 March, the Committee was designated as the lead committee for the [BSL Bill LCM](#) (attached at Annexe A). The Bill is a Private Member's Bill introduced by Rosie Cooper MP. The Bill was introduced in the House of Commons on 16 June 2021. The text of the Bill can be found on the UK Parliament page: [British Sign Language Bill](#). The Bill is currently at third reading stage in the House of Lords (second house). The House of Commons Library briefing on the Bill can be found at this [link](#).

The Bill consists of four clauses:

- The first clause recognises BSL 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 BSL 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 BSL.
- The fourth clause relates to the extent of the clauses and commencement.

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.

The Scottish Government is recommending consent 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 BSL, this Bill will additionally recognise, in statute, BSL as a language of Scotland. Further, the Scottish Government states that 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.

The Scottish Government has indicated that the following motion will be lodged by the Cabinet Secretary for Education and Skills:

"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."

Approach

The role of the Committee is to scrutinise the LCM and then report to Parliament. The Committee considered its approach to scrutiny at its meeting on 30 March and agreed to write to the Scottish Government seeking an update on progress since the introduction of the British Sign Language (Scotland) Act 2015 ('the Act').

The response from the Minister for Children and Young People is attached at Annexe B. The Minister states that a significant part of the Act is delivered through the BSL National Plan 2017-2023. A new National Plan will be published and implemented following the conclusion of the current plan at the end of 2023, in line with section 1(6) of the Act. The Scottish Government published the [British Sign Language \(BSL\) Progress Report](#) on 27 October 2021, as an update on the implementation of the 2017-2023 BSL National Plan, setting out progress on a range of fronts, including education, BSL/English interpreting, and public life.

The Scottish Government does not consider that any change would be required to Scottish Ministers' work under the Act as a result of the UK Government's BSL Bill being enacted. The BSL Bill does not place any duties on the Scottish Ministers.

Action

The Committee is invited to consider the LCM and the response from the Scottish Government.

As the Committee is required to report by 22 April, the Committee is invited to agree that a short report will be compiled by the Clerks and signed off by the Convener and Deputy Convener setting out the Committee's consideration of the LCM. If so minded, the Committee could recommend in its report that the Parliament agree to a legislative consent motion in the terms outlined in the LCM.

Education, Children and Young People Committee Clerks

14 April 2022

Annexe A: BSL Bill LCM

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

Annexe B: Letter from the Minister for Children and Young People

Thank you for your letter of 31 March 2022 addressed to Shirley-Anne Somerville, Cabinet Secretary for Education and Skills, regarding the BSL Bill LCM and the British Sign Language (Scotland) Act 2015. I am replying as I have portfolio responsibility for this matter.

The British Sign Language (Scotland) Act 2015 (“the Act”) has been in force since October 2015. A significant part of the Act is delivered through the British Sign Language National Plan 2017 – 2023 with 70 actions across ten long-term ambitions. A new National Plan will be published and implemented following the conclusion of the current plan at the end of 2023, in line with section 1(6) of the Act.

The Scottish Government published the [British Sign Language \(BSL\) Progress Report](#) on 27 October 2021, as an update on the implementation of the 2017-2023 BSL National Plan. It shows progress on a range of fronts, including education, BSL/English interpreting, and public life. The report outlines how Scottish Government has funded BSL Partnership organisations to engage with and support public bodies in developing their BSL plans, and notes important developments such as the decision that Scotland’s 2022 census includes the question 'can you use BSL?' for the first time. We are providing £1.1 million in funding, through the Equality and Human Rights Fund, to third sector organisations to continue to support public bodies with implementing their BSL plans across Scotland.

We do not consider that any change would be required to Scottish Ministers’ work under the Act as a result of the UK Government’s BSL Bill being enacted. The BSL Bill does not place any duties on the Scottish Ministers.

The reporting duty in clause 2 of the BSL Bill only relates to action taken by relevant UK Government departments. The National Plan only relates to measures that are within devolved competence.

However, Scottish Ministers may wish to take guidance issued by the Secretary of State under clause 3 of the BSL Bill into account when developing their next National Plan.

I hope this reply is helpful.