

Delegated Powers and Regulatory Reform Committee
British Sign Language Bill
Memorandum prepared by the Cabinet Office
for the Department for Work and Pensions

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee. The Memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.
2. The British Sign Language Bill is a Private Member's Bill which is promoted by Rosie Cooper M.P. The Bill was brought from the House of Commons and introduced in the House of Lords on 21 March 2022.
3. The Bill is being supported by officials from the Disability Unit (a part of the Equality Hub within the Cabinet Office) and from the Department for Work and Pensions.

Overview of the Bill

4. The Bill recognises British Sign Language ('BSL') as a language of England, Wales and Scotland. In doing so, it imposes two duties on the Secretary of State. The first duty is to prepare and publish a British Sign Language Report ("BSL Report") describing what each relevant government department has done during the relevant reporting period to promote or facilitate the use of BSL in its communications with the public. The second duty requires the Secretary of State to issue guidance about the promotion and facilitation of BSL.
5. Clause 1(1) recognises British Sign Language as a language of England, Wales and Scotland. Clause 1(2) makes provision to ensure that the recognition of BSL does not affect the operation of any enactment or rule of law. Clause 1(3) makes a link between the recognition of BSL, and the imposition of new duties on the Secretary of State in clauses 2 and 3. Clause 1(4) ensures that the reference to 'enactment' in clause 1(2) includes enactments in or under an Act of the Scottish Parliament.
6. Clause 2(1) imposes a duty on the Secretary of State to prepare and publish a BSL Report. Clause 2(2) provides that a BSL report is a report describing

what each relevant government department has done to promote or facilitate the use of BSL in its communications with the public. Clause 2(3) sets out what communications are and are not included for this purpose. Clause 2(4) sets out the process for the Secretary of State to follow in preparing a BSL report. Clause 2(5) provides that the Secretary of State must not collect, or include in her report, any information about any communication made by a relevant government department that relates only to Scotland and does not relate to reserved matters, or relates only to Wales and does not relate to reserved matters. Clauses 2(6) to (7) set out detail about the 'reporting period', and the frequency with which the Secretary of State must report. Clause 2(8) sets out the meaning of 'relevant government department' for the purposes of the BSL report – it is a United Kingdom ministerial department listed in the Schedule to the Bill. The Schedule lists the relevant ministerial departments. Clause 2(9) gives the Secretary of State power to make regulations to amend the list of ministerial departments in the Schedule 1. The power is only exercisable in circumstances where there has been a change in a department's name or in the way in which ministerial government departments are organised. Such regulations are to be subject to the negative procedure (clause 2(10)).

7. Clause 3(1) puts the Secretary of State under a duty to issue guidance about the promotion and facilitation of BSL. It enables the Secretary of State to meet this duty by arranging for another person to issue the guidance. Clause 3(2) sets out matters that may be included in the guidance. There is no statutory requirement to have regard to the guidance. The guidance may include case studies and best practice advice. It will not impose any mandatory requirements. Clause 3(3) provides that the guidance must not include advice or other material that relates only to Scotland and does not relate to reserved matters; similarly, the guidance must not include advice or other material that relates only to Wales and does not relate to reserved matters. Clause 3(4) requires the Secretary of State to publish any guidance issued under this clause.
8. Clause 4(1) provides that the extent of the Bill is England and Wales and Scotland. Clause 4(2) to (4) make provision about commencement. Clauses 1, and 2, and the Schedule to the Bill are to come into force two months after Royal Assent. Clause 4(4) provides that Clause 3 (the duty to issue guidance) will come into force in accordance with commencement regulations (such regulations not to be subject to parliamentary procedure).

Territorial coverage and devolution

9. The Bill extends to England and Wales and Scotland. It does not extend to Northern Ireland.

10. Equal opportunities is reserved to the UK Parliament. But there are important exceptions to this reservation. In Scotland, paragraph L2 of Schedule 5 to the Scotland Act 1998 provides that the following matters are excepted from the reservation, and therefore devolved: “the encouragement (other than by prohibition or regulation) of equal opportunities”. Paragraph 187 of Schedule 7A to the Government of Wales Act 2006 makes very similar provision for Wales. Language, or the recognition of language, is not reserved to the UK Parliament.
11. For this reason, it is considered that legislative consent motions are required for clauses 1 to 3 of the Bill, which entail the encouragement (other than by prohibition) of equal opportunities.
12. Officials from the Department for Work and Pensions and the Disability Unit have been liaising with counterparts in the devolved administrations in Scotland and Wales. Legislative consent motions were lodged by both the Scottish Government and the Welsh Government on 9 March 2022.

Provisions which confer delegated powers

13. The Bill contains two delegated powers. One of the powers (in clause 2(9)) contains a Henry VIII power.
14. The provisions in the Bill which confer these powers are identified below. The purpose of the delegated powers taken, and an explanation as to why the matter is to be left to delegated legislation, and why DWP has chosen a particular procedure, are then set out in relation to each clause.

Clause 2(9): power to amend the Schedule so as to add, remove, or vary the list of United Kingdom ministerial departments

Power conferred on: the Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

15. The duty on the Secretary of State is to prepare and publish a BSL Report. A BSL report is report describing what each relevant government department

has done to promote or facilitate the use of BSL in its communications with the public.

16. Clause 2(8) sets out the meaning of 'relevant government department' for the purposes of the BSL report – it is a United Kingdom ministerial department listed in the Schedule to the Bill. The Schedule lists the relevant ministerial departments.
17. Clause 2(9) give the Secretary of State power to make regulations to add, remove, or vary the list of ministerial departments in the Schedule. As this is a power to amend primary legislation, it is a Henry VIII power. However, the power is only exercisable in tightly defined circumstances - where there has been a change in a department's name or in the way in which ministerial government departments are organised.

Justification for delegation

18. The Schedule sets out the ministerial departments in relation to which the Secretary of State must prepare and publish a BSL report. At the time of the preparation of the Bill, the list of relevant ministerial departments is considered to be appropriate, in order to ensure certainty regarding the departments on whom the duty falls. The purpose of the delegation is to ensure that the list of relevant ministerial departments can be kept up to date in the event of a change in the way in which the ministerial government departments are organised.
19. For example, if a ministerial department is abolished then it would no longer be appropriate for the Secretary of State to publish a report about its BSL communications. Conversely, if a new department is created or one that is not currently included in the Schedule were merged with another department that is listed in the Schedule, then the power could be used to rectify the position.
20. The power has been designed so that it could not be exercised to add a non-ministerial department or other public body to the list. Moreover, the power could not be used to remove a department from the list purely for policy reasons.
21. By virtue of clause 2(10), the power is subject to the negative resolution procedure. This is the most appropriate procedure in view of the uncontroversial nature, and relatively narrow, nature of the power.

Clause 4(4): power to commence section 3 on such day as the Secretary of State appoints

Power conferred on: the Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: None

Context and purpose

22. Clauses 1 and 2 and the Schedule to the Bill will come into force two months after Royal Assent.

23. Clause 3 imposes a duty on the Secretary of State to issue guidance about the promotion and facilitation of BSL. The guidance may include advice about best practice for communicating with BSL users, and case studies illustrating the value of providing BSL communication. It may also include guidance for the purposes of the duty imposed in clause 2. Preparing this advice is likely to involve engagement with stakeholders.

Justification for delegation

24. At the time that the Bill is being prepared, it is not known when the guidance will be ready for publication. For this reason, it has been decided that the duty in clause 3 should be brought into force by commencement regulations. This is provided for in clause 4(4).

25. It is usual that commencement regulations are not subject to parliamentary procedure. Parliament has already scrutinised and given its consent to the substance of the provisions by voting on the Bill. Commencement regulations enable the provisions to be brought into force at the appropriate time. It is therefore considered appropriate that clause 4(4) should similarly not be subject to parliamentary procedure.