

BRITISH SIGN LANGUAGE (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The structure of the Act

4. The Act has nine sections and one schedule. Sections 1 to 6, along with the schedule, comprise the main provisions of the Act. Section 7 deals with interpretation, section 8 deals with commencement and section 9 sets out the Act's short title.

Section 1 – Functions of the Scottish Ministers in relation to British Sign Language

5. **Section 1** requires the Scottish Ministers to promote, and to facilitate the promotion of, use and understanding of BSL (subsection (1)). As part of that, they are required to prepare National Plans to be laid before the Parliament and published (subsection (2)), setting out their strategy for doing so (subsection (3)(a)) and what the Scottish Ministers consider that relevant public authorities (as defined within section 7(1)) should or could do to promote the use and understanding of BSL within their areas of responsibility (subsection (3)(b)). Subsection (4) enables the Scottish Ministers to include in a National Plan other appropriate material. The first National Plan is to be laid before the Parliament within two years of the Act coming into force (subsection (5)) and subsequent Plans are to be laid at intervals of not more than six years thereafter (subsection (6)). A National Plan must be published as soon as is reasonably practicable after it is laid before the Parliament (subsection (7)) and must be made publicly available in BSL (subsection (8)). Subsection (9)(a) requires the Scottish Ministers, in preparing the National Plan, to have regard to the most recently published progress report (the requirements of which are set out in section 4). This does not apply to the first National Plan where there will not yet be a progress report to refer to (subsection (10)). Paragraphs (b) and (c) of subsection (9) require the Scottish Ministers to publish a National Plan in draft, consult on it, and take account of any representations they receive in finalising the National Plan.
6. The consultation is to be with those who the Scottish Ministers consider are likely to be directly affected by the National Plan or otherwise to have an interest in it (subsection (11)). They must, in particular, consult users of BSL and those who represent such users (subsection (11)(a) and (b)). Subsection (12) requires that the form and manner of the consultation on the draft plan is to be determined having regard to accessibility to deaf and deafblind (when a person has a combination of both impaired vision and hearing) BSL users.

Section 2 – Listed authorities' British Sign Language plans

7. **Section 2** sets out listed authorities' responsibilities in relation to the preparation and publication of British Sign Language Plans, to be known as "Authority Plans". Listed authorities are further referred to in section 6, and the schedule sets out all the authorities which will be required to publish their own plans.

8. Subsection (2) sets out the information that is to be included in each Authority Plan. This requires the authority to set out measures to be taken by it in relation to the use of BSL, timescales for doing so, and (where appropriate) how, when, and to what extent any measures to be taken in terms of the most recently published such plan were taken (paragraphs (a) to (c)). Subsection (2)(d) enables the Scottish Ministers to specify by order any additional information to be included in an Authority Plan.
9. Subsection (3)(a) obliges a listed authority, in preparing an Authority Plan, to try to achieve consistency between that plan and the most recently published National Plan. In addition, there are also a number of other matters which an authority is to take into account in preparing a Plan, these being set out at subsection (3)(b). One of these matters, the requirement to have regard to the most recently published progress report under section 4, does not apply for the first Authority Plan when there will not yet be a progress report to refer to (subsection (4)).
10. Subsections (5) and (6) specify the nature of the consultation that listed authorities are obliged to undertake in the production of their plans. The consultation requirement is similar to that for a National Plan. Listed authorities must consult those the authority considers likely to be directly affected or who have an interest in an Authority Plan, and take account of any representations they receive in finalising the Plan. They must, in particular, consult users of BSL, and those who represent such users. Subsection (7) requires that the form and manner of the consultation on draft Authority Plans is to be determined having regard to accessibility to deaf and deafblind BSL users.
11. Subsections (8) and (9) enable an authority to revise its Plan at any time as long as, in doing so, it observes the same requirements (i.e. as set out at subsection (3)) as it did when the Plan was first prepared.
12. Subsection (10) states that an order under subsection (2)(d) is subject to the negative procedure (i.e. is subject to annulment by resolution of the Parliament).

Section 3 – Publication by listed authority

13. This section sets out deadlines for the publication of Authority Plans, and how these relate to the timing of the publication of National Plans. Subsection (1) provides that each listed authority must publish its first Authority Plan as soon as is reasonably practicable after the first National Plan is published, and in any case no later than 12 months after that National Plan is published.
14. Subsection (2) provides that a listed authority must publish subsequent Authority Plans as soon as is reasonably practicable after each National Plan is published and in any case no later than six months after publication of a National Plan. If an authority becomes listed after the first National Plan is published, it will normally be required to publish its first Authority Plan within 12 months of the publication of the most recent National Plan (subsection 3(b)). This is subject to the Scottish Ministers providing, in the order (made under section 6) by which the authority became listed, that the first Authority Plan is to be published by reference to a different National Plan (subsection (4)). Under subsection (5) listed authorities are required to publish any revised plans as soon as is reasonably practicable after the revisions are made. Revised plans must clearly indicate the changes made.
15. Subsection (7) stipulates that all Authority Plans are to take account of any guidance issued by the Scottish Ministers on the publication of plans. That apart, the manner of publication is left to the discretion of each authority (subsection (6)).
16. Subsections (8) and (9) require that Authority Plans and revised Authority Plans are made available in BSL. In the case of a revised version, an explanation of the changes is also to be made available.

Section 4 – Progress reports

17. This section sets out the requirements for the preparation by the Scottish Ministers of regular BSL “progress reports”, which subsection (1) specifies must be laid before the Parliament and then published.
18. Subsection (2) specifies that a progress report should set out the Scottish Ministers’ views on their own progress in promoting BSL, and that of relevant public authorities, generally, in promoting BSL within their own particular areas of responsibility.
19. Subsections (3) and (4) relate to timing, with subsection (3)(a) requiring the first progress report to be laid before the Parliament within three years of the first National Plan being published and to report on the progress made in those three years (subsection (3)(b)). Subsequent progress reports are to be published at intervals of not more than six years (subsection (4)(a)) and are to relate to the progress since the last report (subsection (4)(b)).
20. Subsection (5) sets out the contents of the progress report, which is to document measures taken and outcomes attained in relation to the relevant National Plan and Authority Plans, and include examples of best practice and any examples of poor performance.
21. In assessing progress, the Scottish Ministers are to take account of “relevant” National Plans and Authority Plans. What these are in relation to a given plan is provided for in subsection (6). The Scottish Ministers must publish a progress report as soon as reasonably practicable after laying it before the Parliament (subsection (7)). Subsection (8) requires that the content of the progress report be made available in BSL as is the case for the National Plans and Authority Plans.

Section 5 – Forms of British Sign Language

22. Subsection (1) provides that references to BSL in the Act are to both the visual form and the tactile form of BSL (used by some deafblind BSL users). An exception is made where the Act deals with the publication of National and Authority Plans as it is not possible to produce a tactile BSL version of a document (subsection (2)).

Section 6 – “Listed authorities”

23. Subsection (1) defines the term “listed authority” for the purposes of the Act. This means any public authority listed or described, for the time being, in the schedule. Subsection (2) enables the Scottish Ministers, by order, to amend the schedule. This can be done to add to that list, to remove an authority or description of authority from it, or to modify an existing entry. An authority can be added only if it is a “relevant public authority” within the definition of that expression in section 7. Subsection (3) allows the Scottish Ministers, in making an order that lists an authority for the first time, to specify a different National Plan as the one by reference to which that authority is first to prepare its own Plan.
24. Any order made under this section is subject to the affirmative procedure (i.e. it requires approval by resolution of the Parliament) (subsection (4)).

Section 7 – Interpretation

25. This section defines as a “relevant public authority” any body or office-holder (other than the Scottish Ministers themselves) which is “a Scottish public authority with mixed functions or no reserved functions”. This term has the same meaning as in paragraphs 1(4) and 2 of Part 3 of Schedule 5 to the Scotland Act 1998.