

## **Explanatory Memorandum: British Sign Language (BSL) (Wales) Bill**

### **The proposed title of the Bill (SO26.91A(i))**

1. The proposed title of the Bill is the British Sign Language (BSL) (Wales) Bill<sup>1</sup>.

### **The proposed policy objective(s) of the Bill (SO26.91A(ii))**

2. The purpose of the Bill is to make provision to promote and facilitate the use of BSL and its tactile forms in Wales; improve access to education, health and public services in BSL and, support the removal of barriers that exist for deaf people and their families in education, health, public services, support services and in the workplace.
3. The seven well-being goals of the [Well-being of Future Generations \(Wales\) Act 2015](#) as they relate to BSL, where public bodies take into account the long term needs of BSL users (the British Deaf Association (BDA) have requested users to be replaced with signers and this would be included in the consultation of the Bill) of all ages would be strengthened by the Bill. This would support existing commitments including the United Nations Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.
4. The Bill would also work towards ensuring that people who use BSL are not treated less favourably than those who speak Welsh or English, and will ensure that deaf communities have a voice in the design and delivery of services to ensure they meet their needs.

#### *Establishing a BSL Commissioner*

5. The Bill would establish a BSL Commissioner with the same powers as other minority language Commissioners such as in the [Welsh Language \(Wales\) Measure 2011](#); the [Gaelic Language \(Scotland\) Act 2005](#), and the [Identity and Language \(Northern Ireland\) Act 2022](#). This would show a significant message of support to the BSL using/signing communities in Wales.
6. It is expected that the BSL Commissioner will:
  - formulate BSL standards;
  - establish a BSL Advisory Panel;
  - produce reports every 5 years in BSL, Welsh and English on the position of BSL in that period;
  - provide guidance and a process for public bodies to promote and facilitate BSL in their respective domains;
  - establish a procedure for the investigation of complaints.

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<sup>1</sup> As required by Standing Order 26.91B, I consider this policy objective to be consistent with that stated in my pre-ballot information. The additional information under 'Policy Objectives of the Bill' (compared to that included in the pre-ballot information), has been provided so that Members have a greater level of clarity on my thinking as to how the policy objective may be achieved.

7. The nature and status of the Commissioner will be further developed in collaboration with stakeholders, including the Welsh Government, as the Bill progresses.

*Place a reporting duty on the Commissioner, public bodies and the Welsh Government*

8. The Bill will place a duty on public bodies to report on their progress in promoting and facilitating BSL through the [Well-being of Future Generations \(Wales\) Act 2015](#) (WFGA) reporting cycle.
9. It would also place a duty on the Welsh Government to prepare and publish an annual BSL report describing what Welsh Government departments have done to promote the use of BSL.
10. Ensuring that BSL is fed into the WFGA cycle would embed BSL into existing policy and legal frameworks within Wales. This would ensure cost-effective resource sharing by leveraging existing structures to create a more equitable society for Welsh BSL signers in the long term.

*The need for a BSL Commissioner*

- Formulate BSL Standards.
- Provide Guidance and a process for public bodies to promote and facilitate BSL in their respective domains.
- Monitoring implementation.

11. Deaf BSL users/signers and Deaf led organisations continue to report significant challenges in employment, healthcare, and education due to a lack of BSL access. The formulation of BSL standards would ensure that clear communication guidelines are distributed and complied with across Welsh public bodies and services, and impose an obligation to promote and facilitate BSL.
12. BSL standards have never been established. Deaf people and Deaf led organisations state that this is leading to fractured debates or individuals abusing their position for personal gain and profit at the expense of the deaf community, which leads to language professionals using a lower standard of BSL. A particular case in point is the use of unqualified/unregistered BSL translators for official communications. Poor BSL becomes a safeguarding issue, it hinders language development and in turn language deprivation. This results in cognitive and social-emotional development delays, as well as impacts educational achievement and causes mental health issues, all of which generate a higher cost burden.
13. In addition, after achieving professional registration with the National Registers of Communication Professionals working with Deaf and Deafblind People

(NRCPD), professionals are never assessed again to ensure their skills are of the required standard. Work needs to be done to ensure that language professionals in Wales are supported in keeping standards high. There is also a need to increase the number of language professionals in Wales, as there is currently a shortage, with 51<sup>2</sup> (hearing) registered Sign Language Interpreters (RSLIs) for an estimated Welsh BSL population of between 5,600 and 7,300<sup>3</sup>. Most RSLIs also live in the south east of Wales, making it difficult for deaf individuals in West Wales, Mid-Wales and North Wales to access their services.

- Establish a BSL Advisory Panel.

14. Deaf BSL signers in Wales are often overshadowed by hearing people and those outside Wales who dominate the BSL landscape. A BSL Advisory Panel would be made up of Welsh BSL signers who understand the issues faced by deaf BSL signers in Wales and in particular, the various regional variations that exist in Wales that must be preserved. The Panel will also be able to provide clear advice to the BSL Commissioner regarding policy, and to provide guidance for Welsh public services on how to engage with Welsh BSL signers and ensure they are involved in their design and delivery.

- Produce reports every 5 years in BSL, Welsh and English on the position of BSL in that period.

15. Currently there is no information about the status of BSL in Wales apart from the Census, which has its own shortcomings in terms of recording relevant data. There is therefore a need for evidence of what is happening around the country so the BSL Commissioner is able to set standards, policy and guidance for public services.

16. Reporting would allow progress to be tracked, benchmarking trends over a longer term which in turn can feed into a long-term strategy. It could inform policy decisions and ensure transparency and accountability, in turn fostering good relations with Welsh BSL signers.

- Establish a procedure for the investigation of complaints.

17. There are limited avenues for BSL signers to make complaints in Wales, particularly as complaints processes are usually in English or Welsh.

18. Currently, Welsh BSL signers encounter considerable administrative and legal

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<sup>2</sup> Foulkes, Helen. 'An Analysis of Extralinguistic Factors That Impact Deaf Translators' BSL Output for S4C Programmes'. Heriot-Watt University, 2023.

<sup>3</sup> Bowen, R. & Holtom, D. (2020). *Independent review of British Sign Language (BSL) provision for adults in Wales*. Cardiff: Welsh Government, GSR report number 4/2020.

obstacles in accessing public services. For example, they may attend medical appointments where a BSL/English/Welsh Interpreter has not been booked. This appears to be a frequent occurrence not just in health settings, but across the full range of public services, as highlighted by the [BDA's Audit of the Welsh Government for British Sign Language Charter 2022 report](#) commissioned by the Welsh Government.

19. Compounding this lack of access, the way in which services are delivered often go unchallenged as Welsh deaf signers are not able to access the enforcement and complaints mechanisms in place. Establishing a BSL complaints procedure should address issues in respect of BSL provision in public services. This will promote accountability and decrease the possibility of public bodies being sued for negligence. The ability to foster complaints processes in BSL will also ensure higher citizen satisfaction and the achievement of long term wellbeing objectives.

### **Work towards ensuring that deaf people who use BSL are not treated less favorably than those who speak Welsh or English**

#### *Sign languages*

20. Sign languages are full languages with their own communities, histories and cultures. The World Federation of the Deaf with a membership of 136 national deaf associations, emphasises the importance of fostering a positive linguistic and cultural environment so that deaf children can grow up with a profound sense of identity and pride in their deaf heritages.
21. BSL, which is the most common form of sign language in the UK, is a rich, visual-gestural language with a distinctive grammar using handshapes, facial expressions, gestures and body language to convey meaning. It helps to build a sense of community and belonging for Deaf people and highlights d/Deaf culture, identity, community and history, reflecting unique characteristics found amongst the population of Deaf people.
22. The BDA state that: 'BSL is not just a language; it is also a gateway to learning, and the means whereby Deaf people survive and flourish in a hearing world'.
23. Despite the Welsh Government recognising BSL as a language in its own right in 2004, there have long been calls to give BSL full legal status in Wales.

#### *Educational attainment*

24. Deafness is not a learning difficulty, but deaf children are being disadvantaged by the continuing inequity in outcome. The National Deaf Children's Society has noted that [The Additional Learning Needs Code](#) (ALN) states that deaf children and young people, alongside those who are blind or sight impaired, are "more

likely to have ALN by virtue of the fact the impairment is likely to prevent or hinder them from making use of educational or training facilities and is likely to call for Additional Learning Provision”.

25. D/deaf learners generally have a lower educational attainment compared to hearing children<sup>4</sup>. D/deaf children are around 26% less likely to achieve A\*-C grades in the core subjects of English, Welsh language, Maths and Science than their hearing peers.
26. Furthermore, the attainment gap between D/deaf (BDA have requested D/deaf to be replaced with Deaf and this would be included in the consultation of the Bill) children and their hearing peers at Key Stage 2 is approximately 6.9%. Statistics also show that 86% of D/deaf children are achieving the Foundation Phase Indicator compared with 96% of hearing children.
27. Evidence also suggests that children with inadequate access to any form of language access may experience language deprivation. This has serious life-long consequences for deaf children’s language, emotional and cognitive development and their wellbeing. Currently there is no national programme of early years BSL provision for deaf children in the UK.
28. Many Deaf BSL signers have a lower reading comprehension age than the general population as a result of linguistic exclusion, and can face social exclusion as a direct result of this, which can adversely affect employment, education, and healthcare.

### *Support for BSL users*

29. The Children’s Commissioner for Wales has previously identified that there is a lack of support available to ensure that family members can use BSL, with a lack of communication skills, placing an unnecessary and unfair barrier between BSL users and their families<sup>5</sup>. It has been estimated that 90% of D/deaf children are born to hearing parents with no previous experience of deafness, thus ‘learning that their child is D/deaf can be an emotional and confusing time for parents and carers of D/deaf children’<sup>6</sup>.

### **Current legislation**

30. Existing legislation does not meet the needs of BSL users, as well as the wider D/deaf community. The BDA Scotland, in evidence received by the Scottish Parliament’s Education and Culture Committee on the [British Sign Language \(Scotland\) Act 2015](#), stated that the Equality Act 2010 “accords rights to individuals to protect them from discrimination, but it does not protect or

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<sup>4</sup> National Deaf Children’s Society Cymru, Welsh government figures on educational attainment, accessed 23<sup>rd</sup> February 2021, [link](#)

<sup>5</sup> Children’s Commissioner for Wales, A Year of Change 2016-17: The Children’s Commissioner for Wales: Annual Report & Accounts, accessed 22<sup>nd</sup> February 2021, [link](#)

<sup>6</sup> Welsh Government, [Independent Review of BSL Provision for Adults in Wales, 1st January 2020, p.7, link](#)

promote BSL as a language”<sup>7</sup>.

31. In October 2018 calls were made at the North Wales 'Lend Me Your Hears 2018' conference for BSL legislation in Wales, that looked at the British Sign Language (Scotland) Act 2015 and their national British Sign Language (BSL): National Plan 2017 to 2023 published in October 2017, which established a National Advisory Group including up to 10 deaf people who use BSL as their preferred or first language.
32. A Private Member's Bill, 'British Sign Language Bill' was introduced into the House of Commons and received Royal Assent in 2022. The provisions relating to Wales are very limited, with reporting duties only falling on the Secretary of State for Wales. This Bill seeks to extend the duties to the Welsh Government on matters devolved to Wales.
33. On 20 February 2024, the [Communities Minister for the Northern Ireland Assembly](#) outlined his plans for the development of sign language in Northern Ireland, including bringing forward a Sign Language Bill.
34. Further details on the legislative background is set out in the Annex to this Explanatory Memorandum.

### **Details of any support received for the Bill, including details of any consultation carried out (SO26.91A(iii))**

#### *Members' Legislative Proposal (MLPs)*

35. During each of the Fifth and Sixth Senedd, I tabled MLPs to gauge the levels of support from Senedd Members for a Bill that would make provision to encourage the use of, and improve access to education and services in BSL. These were debated on [24 February 2021](#) and [7 December 2022](#). The Senedd voted in favour of my proposals on both occasions.
36. A number of organisations and individuals have shown their interest and support for the Bill's overall principles and policy objectives.
37. RNID Cymru have stated that the policy objectives of the proposed Bill are positive and going beyond the [UK British Sign Language Act 2022](#) by including a commitment to produce reports every 5 years, which will provide valuable insight into the progress of implementing the Bill.
38. Although, the Welsh Government commissioned the BDA to develop a new BSL Charter for Wales, the BDA told me that my "planned BSL Bill is an enormous step forward". Adding that a common theme emerging from the Welsh Deaf community is a desire:

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<sup>7</sup> Scottish Parliament, Education and Culture Committee, Stage 1 report on the British Sign Language (Scotland) Bill, 27<sup>th</sup> April 2015, p.6, [link](#)

- for more Welsh Deaf leadership in BSL service delivery;
- for BSL services to be delivered by deaf BSL signers themselves; and
- for support to enable Deaf-led professional planning and budget setting on BSL issues.

39. The BDA state “this seems to be because Welsh deaf BSL signers have seen the Welsh Government and Welsh Local Authorities – with the best will in the world – spend money earmarked for BSL services on paying non-signers to design and deliver these BSL services, with the understandable and inevitable consequences of a mismatch between service design and actual need, reducing efficiency and value for money”.

*Specific support received for the Bill*

40. Following the initial ballot result, to allow the process to progress to the stage of seeking the Senedd's consent to develop and introduce a Bill, initial consultation was sought, and support received from:

- British Deaf Association Cymru - 2021
- Sense - May 2024
- Deaf Film Club - May 2024
- Centre of Sign-Sight-Sound - May 2024
- Deaf Gathering 2024 - May 2024
- Our Visual World - May 2024
- Llanelli Deaf Club - May 2024
- Several Deaf Individuals - May 2024
- Several Registered Sign Language Interpreters - May 2024

41. A more detailed consultation exercise will be undertaken to inform further development of the Bill, should the Senedd give its consent to the proposal progressing to the next stage, which will include a wide range of stakeholders, not limited to those who have already indicated a desire for further consultation.

**An initial assessment of any costs and/or savings arising from the Bill (SO26.91A(iv))**

42. Under Standing Order 26.91A (iv) there is a requirement for an initial assessment of any costs and/or savings arising from the Bill. I have set out the main options that I will consider in terms of how this Bill will be developed, but my intention would be to minimise the cost impacts of the Bill while ensuring that it achieves its stated intentions, and to reduce cost pressures on Statutory Services through the

achievement of those stated intentions.

43. It will be important as part of developing this Bill to work with stakeholders to shape the development of this Bill and maximise the benefits while minimising resource impact. Therefore, I will work on researching the impacts in more detail to inform the impact assessment for introduction with this Bill if the leave to proceed vote is successful.

44. The main potential areas where costs and benefits will fall on the introduction of such a Bill are around:

- Establishing a British Sign Language Commissioner and advisory panel with supporting administration;
- Formulating British Sign Language standards;
- Producing guidance and a process for public bodies to promote and facilitate BSL;
- Additional costs for public bodies and Welsh Government to report on their BSL usage;
- Annual reporting by the Welsh Government;
- Establishing a procedure for the investigation of complaints; and
- Producing reports on the position of BSL every 5 years.

45. It is not possible to provide an overall summary of the estimated costs of the Bill, however it is possible in some cases to give an indication of some of the areas where costs may fall and an early estimate of some of the potential ranges of associated costs.

46. The development of the Draft Bill will look at options regarding the functions and support that would be required by the British Sign Language Commissioner. This may influence how such an office is set up and resourced. Rather than estimate the cost of a British Sign Language Commissioner's office, for this initial estimation of financial impacts we have considered the functions carried out and a rough cost estimate to fulfill these functions or tasks. It is difficult for the purpose of this early cost estimate to separate out staff costs from those of the Welsh Government. An example of an arms-length body set up by the Welsh Government that has a far wider remit and workload is the Children's Commissioner for Wales. The latest accounts, for [2022-23](#), set out spending of around £1.7 million for their office as a whole. However, costs for a British Sign Language Commissioner would be considerably less than this as the remit and functions would be narrower.

47. While the [Scottish Government British Sign Language \(SGBSL\) Bill](#) did not include proposals for a BSL Commissioner, this gives an initial best estimate of potential costs for this Bill. Amendments have been made to adjust the figures in the SGBSL



Bill from 2016-17 costs to 2024-25 costs using the GDP deflator whilst also taking into account the view that local government costs were identified as likely to be higher than in an initial SGBSL Bill estimate.

48. Using the SGBSL bill as a starting point, annual costs to the Welsh Government of Supporting a BSL National Advisory Group to support development of standards, guidance and implementation of the Bill could be in the region of £250,000 a year.
49. The costs of consulting on and translating the standards could be in the region of £150,000, assuming costs are similar to those estimated for equivalent work on the [SGBSL Bill National Plan](#). These costs would relate to the total costs over the first 5 years from introduction, not annual costs.
50. An overall estimate in relation to preparation of BSL plans and performance review for public bodies to report on their BSL usage based on the SGBSL Bill would be around £790,000 a year over the first 5 year period, with costs lower in subsequent years. For the Welsh Government associated costs would be estimated to be in the region of £25,000 to £45,000 a year. As part of development of the Bill work would be undertaken to see how reporting and assessment could be integrated into existing reporting requirements for public bodies.
51. It would be difficult to estimate the costs linked to implementing a procedure for the investigations of complaints, as the policy will need to be developed and comparisons made to how this will be different from current systems.
52. Implementation of the contents of the strategy and plans will be dependent on what is included in these compared to the cost of current Welsh Government proposals and strategies. As a starting point, costs which are already incurred by the Welsh Government could be used to fund the development of the new strategies proposed in this Explanatory Memorandum. We will work with the Welsh Government, public, voluntary and private sectors to ensure the development of the Bill minimises costs and maximises policy impact.
53. Research and consultation with key stakeholders would be also undertaken to identify and quantify the impact of other and any unforeseen consequences of the Bill as it is developed and will form part of a full Explanatory Memorandum to accompany a subsequent Draft Bill.
54. Cost benefits of the Bill are also not possible to estimate until the policy is developed.

## **Annex: Legal Background to the proposal**

### **Legislative competence**

Under the [Government of Wales Act 2006](#) (GoWA) “equal opportunities” is reserved to the UK Parliament. However, a BSL (Wales) Bill can fall within the legislative competence of the Senedd if it related to the relevant ‘exceptions’ listed within the Act. Further detail is provided below:

[Paragraph 187 of Schedule 7A to GoWA](#) provides that “equal opportunities” is reserved, subject to exceptions. “Equal opportunities” means 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 or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions, but not including language.

As provided by [section 6 of the Equality Act 2010](#), a person has a disability if the person has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities. People suffering from deafness or loss of hearing may be within this definition, and will be protected by the [Equality Act 2010](#).

Although equal opportunities is mainly reserved by the GoWA there are a number of exceptions which may enable the type of provisions outlined in this proposal. The exceptions to the reservation in paragraph 187 include:

- The encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements.
- Imposing duties on any devolved Welsh authority to make arrangements with a view to securing that its functions are carried out with due regard to the need to meet the equal opportunity requirements.
- Equal opportunities in relation to the functions of any devolved Welsh authority, other than a function that relates to the inclusion of persons in non-executive posts on boards of devolved Welsh authorities. The provision falling within this exception does not include any modification of the Equality Act 2010, or of any subordinate legislation made under that Act, but does include:
  - a) provision that supplements or is otherwise additional to provision made by that Act;
  - b) in particular, provision imposing a requirement to take action which that

- Act does not prohibit;
- c) provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.

Exceptions to reserved matters are within the legislative competence of the Senedd. Therefore, to the extent the Bill's proposals may relate to the reserved matter of equal opportunities, they would be drafted in a way that falls within the exceptions to ensure they are within competence.

### **The Equality Act 2010**

The [Equality Act 2010](#) prohibits discrimination (direct and indirect) on various grounds, including disability.

The Equality Act 2010 also imposes a duty to make reasonable adjustments for disabled persons across a wide range of sectors in England, Scotland and Wales. Public sector organisations may, therefore, be required to make use of British Sign Language in certain circumstances, including when the public sector complies with the public sector equality duty under that Act.

### **British Sign Language Act 2022**

The UK [British Sign Language Act 2022](#) recognises British Sign Language as a language of England, Wales and Scotland. It requires the Secretary of State to report on the promotion and facilitation of the use of British Sign Language by ministerial government departments. The BSL Act 2022 also requires guidance to be issued in relation to British Sign Language.

Although the UK Bill creates a duty for the UK Government to prepare and publish BSL reports describing what Government departments have done to promote the use of BSL in their communications with the public, the UK Bill specifically excludes reporting on matters devolved to Scotland and Wales. The Bill does not extend the reporting or guidance duty to the Governments of Wales and Scotland.

Therefore, this Bill regarding the need for a Welsh specific BSL Act seeks to address this.

## **British Sign Language (Scotland) Act 2015**

The aim of the [BSL \(Scotland\) Act 2015](#) is to promote the use and accessibility of BSL by requiring a national BSL plan to be prepared by the Scottish Government

For example, the [Scottish Government's National Plan 2017-2023](#) sets out ten long-term goals for BSL in Scotland – covering areas such as early years and education, health and mental health, justice and the arts – and describes over 70 actions that the Scottish Government will take to make progress on these goals. Actions include: removing the barriers that prevent BSL users from becoming teachers; developing qualifications in BSL; improving access to health care and mental health services in BSL; ensuring that government funded employment and training courses are accessible to BSL users.

Further provisions included in the Scotland Act are:

- Requiring the government to designate a Minister with the lead responsibility for BSL, enhancing accountability for the delivery of BSL Plans;
- Requiring public authorities to publish BSL statements, outlining how they will deliver on the actions included in the national plan and improve accessibility of services and information;
- Requiring the publication of a BSL Performance Review, which outlines progress on promoting the use of BSL. The review also requires public bodies to detail how accessible their services are to BSL users, as well as opportunities for developing the use of BSL;
- Establishing a BSL National Advisory Group (NAG) to help drive forward engagement with BSL users. However, the RNID<sup>8</sup> have suggested that any NAG established in Wales should engage with the wider D/deaf community, as well as people with hearing loss, as well as BSL users. Meanwhile, Professor Graham Turner at Heriot Watt University, has previously suggested establishing a 'Signing Parliament' as a type of 'Deaf Citizens' Assembly' to improve engagement.<sup>9</sup>

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<sup>8</sup> RNID, Correspondence received via email, 18th February 2021.

<sup>9</sup> Dr Steven Emery, Correspondence received via email, 19th Feb