

PE1787: The use of Makaton sign language in the legal system

Scottish Government, written submission

16 April 2024

1. On 25 March 2024 you contacted us to request a follow-up to our letter dated 13 February 2023 in relation to Petition PE1787 (use of Makaton sign language in the legal system).
2. In this reply, we explain the current position on recommendation 5.1 of the Scottish Mental Health Law Review (“the Scott Review”), as well as explaining some wider reforms which we think are potentially relevant to your consideration of this petition, and updating you on certain areas covered in our February letter.

The Scott Review

3. In general terms, you may wish to note the terms of our [response](#) to the Scott Review published on 28 June 2023, which set out a programme for reform, high level priorities for inclusion in a reform programme and proposed workstreams. The terms of this response reflects the extent of the review and the complexity and cross-cutting nature of its recommendation.

4. Recommendation 5.1 of the Scott Review stated:

“The Scottish Government should introduce intermediaries. This should be subject to review and assessment of an expanded use of the Appropriate Adult scheme and independent advocacy

- *The use of the existing Appropriate Adult Scheme should be expanded to increase the support for individuals throughout current justice processes.*
- *Work should be done to explore the possibility of using independent advocates to assist in providing support for individuals going through justice processes.*
- *Subject to the review of whether the expanded use of appropriate adults and independent advocates set out above proves sufficient to provide the necessary support, a scheme for the use of intermediaries should be introduced to provide support from start to finish in justice processes.”*

5. This recommendation, in essence, turns on initial review and assessment of Appropriate Adults (AAs) and independent advocacy.
6. On the AAs aspect, we are involved in ongoing discussions with partner organisations in the delivery of Appropriate Adults services to agree a data set to inform a review. These partners include the Convention of Scottish Local Authorities, the Crown Office and Procurator Fiscal Service, Police Scotland, and Appropriate Adults themselves. Collectively, we recognise the importance of robust data to inform an understanding of how the service is used and how critical it is to build a consensus on what that data set looks like. These points

were discussed at an Appropriate Adult national event in November 2023, and at an Appropriate Adults National Oversight Group meeting on 13 March this year. We anticipate developing the detail of our approach with partners in the coming months to underpin our work on this recommendation.

Other reforms & related areas

British Sign Language

7. We think it might be useful to clarify that there are clear distinctions between Makaton and British Sign Language (BSL). BSL is, in and of itself, a language, whereas Makaton is more akin to a tool for communication. In this context, we should explain that our policy on BSL does not encompass Makaton.
8. Otherwise, the Scottish Government is committed to ensuring that it continues to make an effort to improve the quality of life for British Sign Language (BSL) users, particularly deaf and deaf-blind BSL users. Our intention is to make long term changes which will lead to improved equality, opportunities and outcomes for BSL users, as evidenced by our [British Sign Language National Plan](#) for 2023 to 2029, published in November 2023. This replaces the BSL National Plan for 2017 to 2023 which we referred to in our February letter.
9. The Committee may wish to note that this National Plan includes a [chapter](#) on Access to Justice, which sets out our long term goal for BSL users within the civil, criminal and youth justice system, as well as specific actions that Government will pursue in collaboration with partners.
10. In light of this, the Committee may wish to consider approaching the British Deaf Association Scotland and Deaf Action in order to explore their views on the potential implications of this petition could mean for BSL users within the justice system, and potentially beyond.

Human Rights Bill

11. We are taking forward an ambitious Human Rights Bill for Scotland which will place further human rights increasingly at the heart of decision-making, following a [wide-ranging consultation](#) published in June 2023, and which closed in October 2023. We published the [analysis](#) of the consultation in January this year.
12. The model in the Bill will deliver a significant step-change for the protection of the rights of disabled people, women and those experiencing racism: our proposals would mean that for the first time in our domestic legal framework, duty bearers will have to actively consider the rights in the United Nations Convention on the Rights of Persons with Disabilities when making decisions and delivering public services in Scotland.
13. We are also aiming to ensure that rights holders can pursue an effective remedy where their rights under the Bill have not been respected. We want to give effect to a 'multi-institutional' system of rights protection, reflecting the shared responsibility of multiple actors (including public bodies, complaints bodies,

scrutiny bodies and courts) so that human rights are respected, protected, and fulfilled, and we are looking at how we can improve advocacy and advice services for rights holders in relation to the rights in the Bill.

Learning Disability, Autism and Neurodivergence Bill

14. The Committee may also be interested to know that the current [consultation](#) on the Learning Disabilities, Autism and Neurodivergence Bill (LDAN) Bill, which closes on 21 April, includes a [set of proposals around justice](#). Those proposals recognise the need for better identification of neurodivergence within the justice system so that appropriate processes and support can be provided. The proposals also reflect the need to provide training to staff. The need for inclusive and accessible communication is also set out in the consultation paper which we know is critical to ensure that neurodivergent people and people with learning disabilities can access the support they need.

Letter of rights

15. In our February 2023 letter, we explained that the Scottish Government introduced a non-statutory letter of rights for Scotland in 2013, which was updated in 2018 and consulted on in 2019. Following that consultation, a working group was established to deliver reform of the Letter of Rights, and when we wrote to you in February, a revised Letter was awaiting publication. That [Letter of Rights](#) was published on our website in April 2023.

Public Sector Equality Duty

16. The public sector equality duty (PSED, or general duty) in the Equality Act 2010 came into force in 2011. This duty requires Scottish public authorities must have 'due regard' to the need to:
 - eliminate unlawful discrimination
 - advance equality of opportunity
 - foster good relations
17. In 2012 Scottish Ministers made regulations that placed specific duties on Scottish public bodies to help them meet the general duty. These are also known as the [Scottish Specific Duties](#) (SSDs).
18. We are now taking forward a phased approach to improvement of PSED, which will include efforts to improve the regulatory regime in Scotland, within the limits of devolved competence. The first priorities include introducing a new duty on listed public bodies in relation to their use of inclusive communication, by May 2025.
19. We are introducing new SSDs to ensure inclusive communication is embedded proportionately across the work of listed authorities when they are communicating with the public.
20. This inclusive communications duty would sit alongside Scottish Government's other work to embed inclusive communication across the public sector, such as

developing national standards, best practice, and a monitoring system for the effectiveness of this.

General remarks

21. In our February 2023 letter, we also commented on Access to justice, the Victims Code for Scotland, and the Scottish Learners with Disabilities (SOLD) Network. Our thoughts on these areas remain as stated in this letter, although we wish to reiterate that we are committed to ensuring that everyone in Scotland benefits from a fair and effective justice system, with equity of access, as evidenced by the range of existing measures in place to support that as explained in our February letter.
22. This commitment is further demonstrated by the range of additional measures explained above; the Human Rights Bill and the LDAN Bill are particularly notable in the context of this petition, given that they aim, respectively, to enhance the human rights framework which applies to Scotland and to ensure that the need of particular people are better met within the justice system. These will build on existing law and practice to better ensure that support for those who require it within the justice system can be delivered in a flexible, effective, person-centred and rights-based way. We would be happy to provide further details on either Bill, or any of the measures explained in this letter, if that would be of assistance to the Committee.
23. By way of conclusion, we wish to confirm that we recognise the benefits of a person-centred approach in terms of meeting the communication needs of neurodivergent people or people with learning disabilities, but note that Makaton is only one of a range of methods for accessible communication. Our aim is to ensure that whatever the communication needs of an individual are, they are capable of being met by an appropriate measure in order to ensure their full and equitable participation in the legal system.
24. In that context, we wondered if the Committee had considered approaching Police Scotland to enquire about their experiences with people who have communication difficulties. We are aware of their [submission](#) dated 30 March 2020 to the then Equalities and Human Rights Committee, but note that this is more about the general availability of Makaton to people involved in police procedures. Given the nature of this petition, we wondered if there might be value in exploring experiences of people with communication difficulties at the time of reporting a crime to police in order to develop an understanding of what common outcomes are, why that is, and what the impact of the introduction of Makaton to the justice system would be in that context.