

# Equality, anti-discrimination law and deaf people

DR ROB WILKS

CARDIFF  
UNIVERSITY

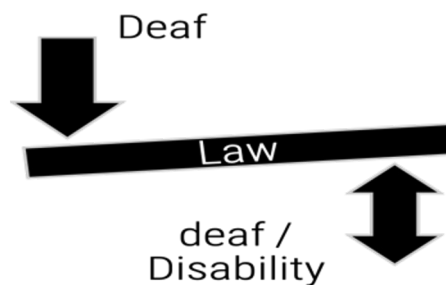
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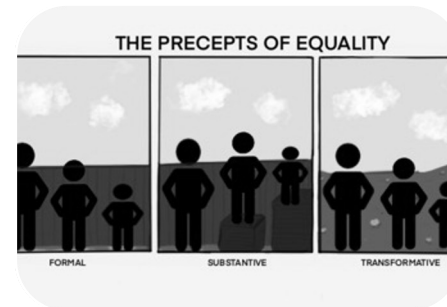
# Overview



Introduction



The Deaf Legal Dilemma



The Deaf Equality Concepts



Deaf-disabled rights



Language-minority rights



Conclusions

# What's the problem?

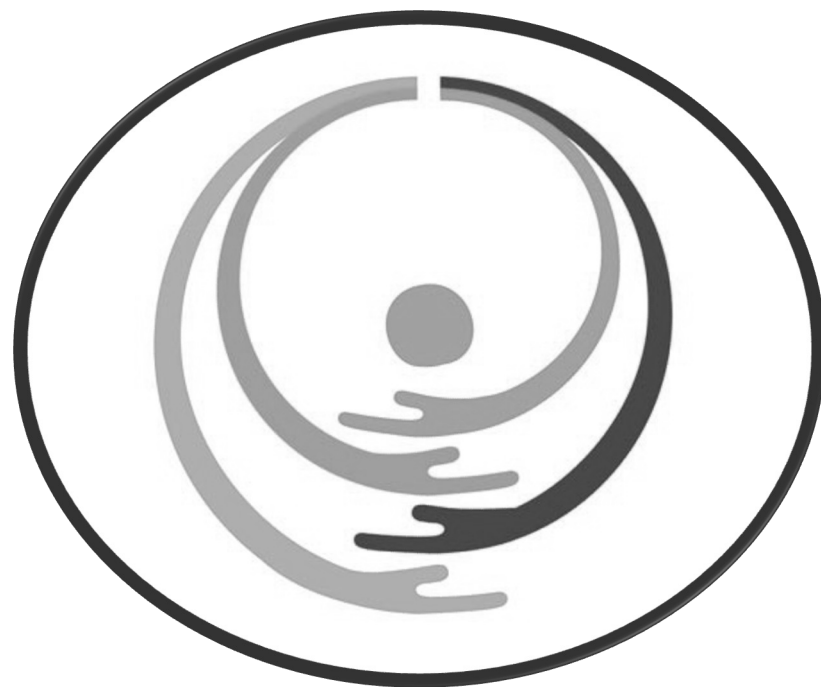


- Number of Deaf people in employment is lower than national average
- Deaf people typically leave compulsory education with a reading age of 8 and less likely to achieve GCSEs (age 15-16) compared to national average due to Government's mainstreaming policy (Milan 1880)
- Deaf people do not have equal access to justice or access to legal advice
- Deaf prisoners experience a "double sentence"
- Deaf people generally have poorer health due to lack of access to health care

## Hearing-World



## Disabled-World



- Medical or individual model
- Social model of disability
- Minority group model
- Cultural model

## Deaf-World



- A culturo-linguistic group
- Sign Language Peoples
- An ethnic group

# Protecting identities



## protected

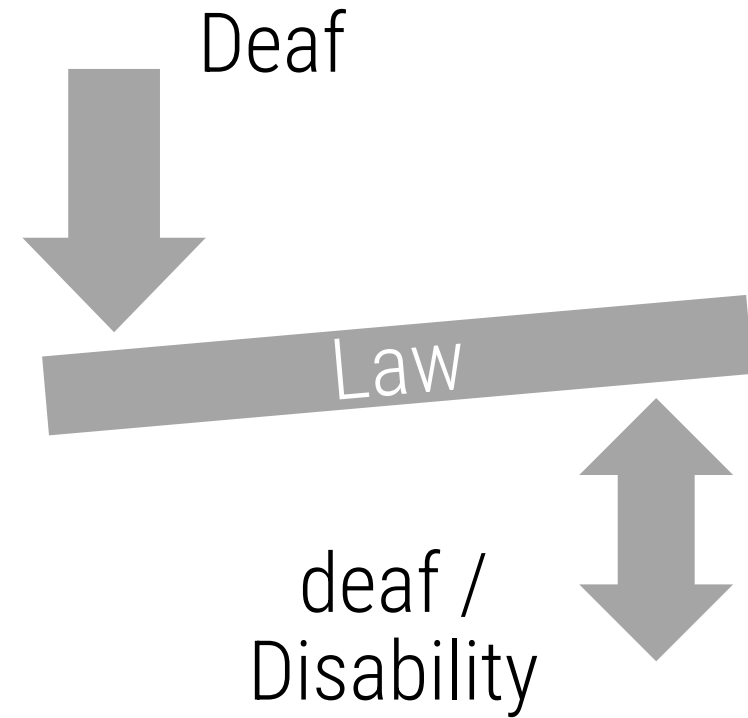
deaf	equality (disability)
disabled	equality (disability)
white	equality (race)
British	equality (race)
Welsh	equality (race)
husband	equality (marital)
father	employment (paternity, social welfare)
lawyer	employment
lecturer	employment
academic	employment

## not protected

Deaf

# The Deaf Legal Dilemma

- Most identities are covered, except Deaf identity.
- The law tends to regard Deaf people as 'disabled' and enact laws to 'protect' or 'provide for' them as such
- Deaf people can only challenge inequality or receive 'help' if they accept the disability label
- Disability label doesn't recognise Deaf people's language, culture, heritage, not wanting to be cured
- Deaf identity often at odds with laws that define them
- ***Is that why Deaf people continue to experience inequality?***



**'The Deaf dilemma: retain some important rights as members of their society at the expense of being mischaracterised by that society and government or surrender some of those rights in the hope of gradually undermining that misconception'**

**Harlan (2005, p. 297)**

# *Deaf-disabled v language-minority rights*

<i>Deaf-disabled rights</i>	<i>Language-minority rights</i>
Enshrined in equality and anti-discrimination law in national disability legislation	Enshrined in legislation that recognises a minority language Implicit (disability) v explicit (language) recognition (De Meulder & Murray, 2017)
Anti-discrimination legislation that ensures fundamental human right of freedom from discrimination can be enforced	Language referred to in various international laws and treaties Sign language recognition law
Require changes in behaviour of individuals and systems and structures of society (Hurst, 2004)	Often tokenistic and no rights Not enforceable
Equality Act 2010 Social Security (Personal Independence Payment) Regulations 2013 European Convention on Human Rights 1950 Convention on the Rights of Persons with Disabilities 2007	European Charter of Regional and Minority Languages 2001 Convention on the Rights of Persons with Disabilities 2007 British Sign Language (Scotland) Act 2015 British Sign Language Act 2022

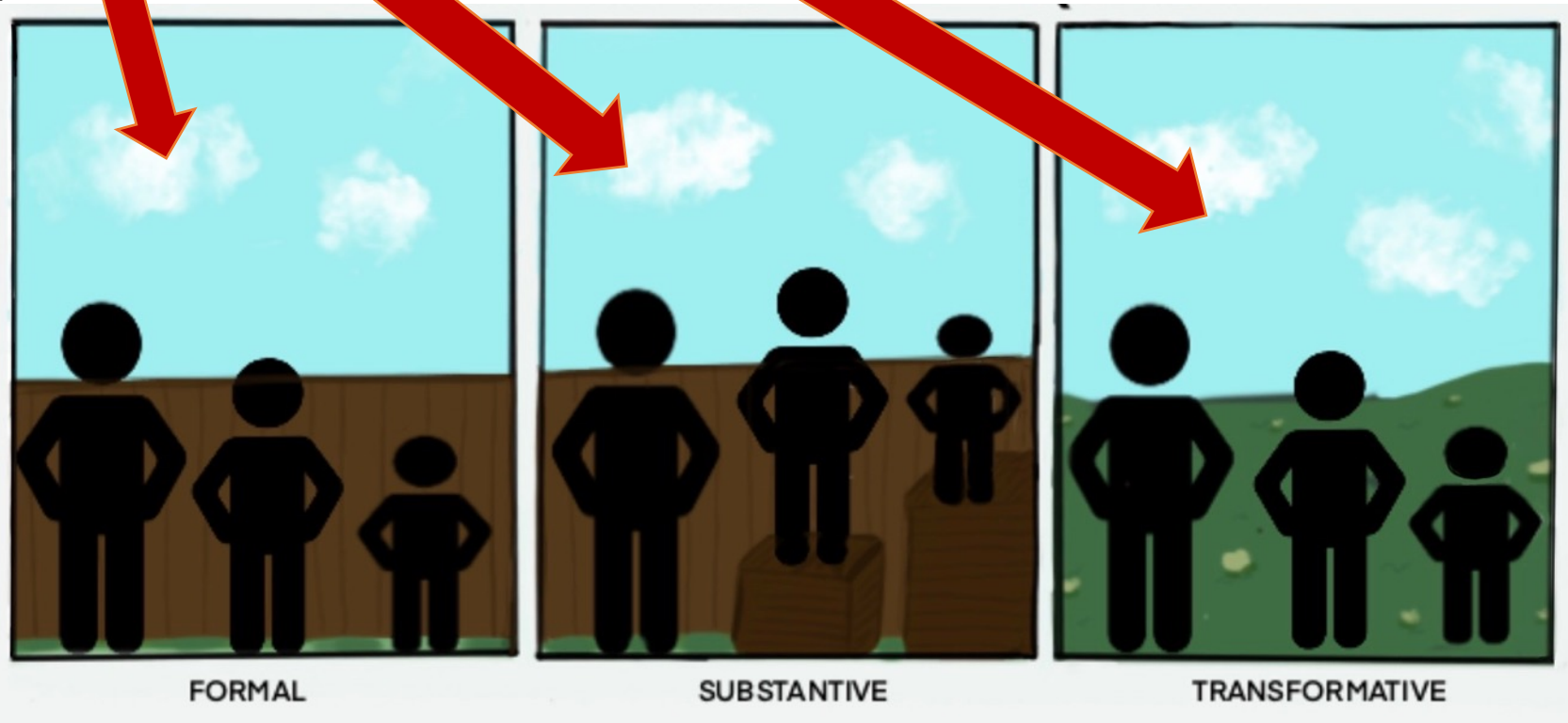
# What is equality?

- Equality “lacks precise definition” (McIntyre J, Andrews v Law Society of British Columbia [1989])
- Law v Canada (Minster of Employment and Immigration) [1999]
  - Abstract nature of the word and abstract nature of the words used to describe them
  - Has an exalted status
- Why?
  - Equality language is general resulting in concepts not quite comprehensive enough . . . open to interpretation = subjective
  - Depends on conceptualiser’s view of society and what it should be (McLachlin)
- No initial agreement among scholars as to what the important questions are (Hellman and Moreau)
- Different analyses of equality may be suited to different protected grounds (Vickers)
  - Fraser suggests that “class inequality is best understood in terms of redistribution, and sexual orientation inequality best understood in terms of recognition“
- Thus question must be: which equality analyses lend themselves more closely to the Deaf-World?





Precepts of equality (Westen) or "emerging rocks of certainty" (McLachlin)

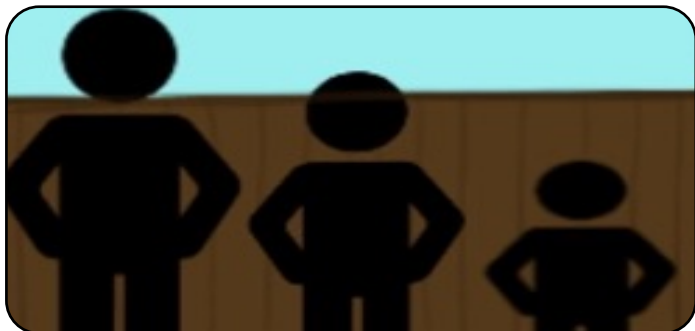


## Which equality concepts lend themselves to the Deaf-World?

- Readings in field of Deaf Studies focus on:
  - dignity (Lane, Hoffmeister and Bahan)
  - social inclusion (Batterbury Magill)
  - challenge to oppression (audism) (Bauman).
- Equality of opportunity considered to be popular among academics (Schaar)
- Therefore, following concepts of equality are relevant:
  - equal worth and dignity
  - equality of opportunity
  - social inclusion
  - challenge to oppression

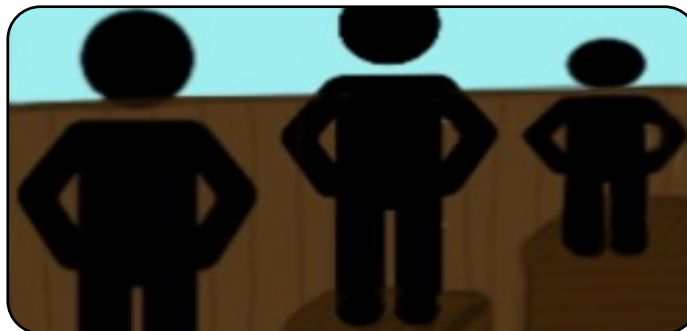


# The Deaf Equality Concepts



## Formal

- Equal treatment
- Equality of opportunity



## Substantive equality

- Respect of equal worth, dignity and identity
- Equality of results and equality of outcomes



## Transformative equality

- Social inclusion
- Challenging oppression
- Full participation

# Deaf-disabled rights

MIXTURE OF FORMAL,  
SUBSTANTIVE AND  
TRANSFORMATIVE  
(EQUALITY OF  
OPPORTUNITY AND SOCIAL  
INCLUSION)

POTENTIALLY  
TRANSFORMATIVE  
(DIGNITY AND EQUAL  
WORTH)

FORMAL  
(DIGNITY AND  
EQUAL WORTH)



## European Convention on Human Rights

Extremely relevant as gives Deaf people various rights, e.g. right to life, right to fair trial, expression

4 cases involving Deaf people

Article 14: protection from discrimination

Limited right, means that only enforceable when other rights are breached

Enforcement difficulties (individual enforcement model)

INCLUSION)



## Equality Act 2010

Reasonable adjustments

Single, one-off adjustments more likely to be reasonable than recurrent ones

Deaf people tend to need recurrent adjustments

Public sector equality duty

Can effect positive change



## UN Convention on the Rights of Persons with Disabilities

Refers to national sign languages

Have to exhaust domestic means of redress (individual enforcement model)

Only 34 complaints received to date, 4 related to Deaf people

# Language-minority rights



## European Union

- Resolution on Sign Languages for the Deaf (1988, 1999)
- EUD, Dr Adam Kosa MEP, European Disability Strategy 2010-2020
- Resolution on Sign Languages and Professional Sign Language Interpreters 2016
- Grounded in soft law, i.e. no legal force but is persuasive



## Council of Europe

- European Charter of Regional and Minority Languages 2001
- Special obligations and positive measures to protect and promote languages
- Focuses on language not groups who speak them (Bultrini)
- Up to states to decide which languages to include
- Regular implementation reports to Committee of Experts
- Committee of Members considered Resolution 2247 in May 2019, and setting up working group to draft standards for protection of sign languages

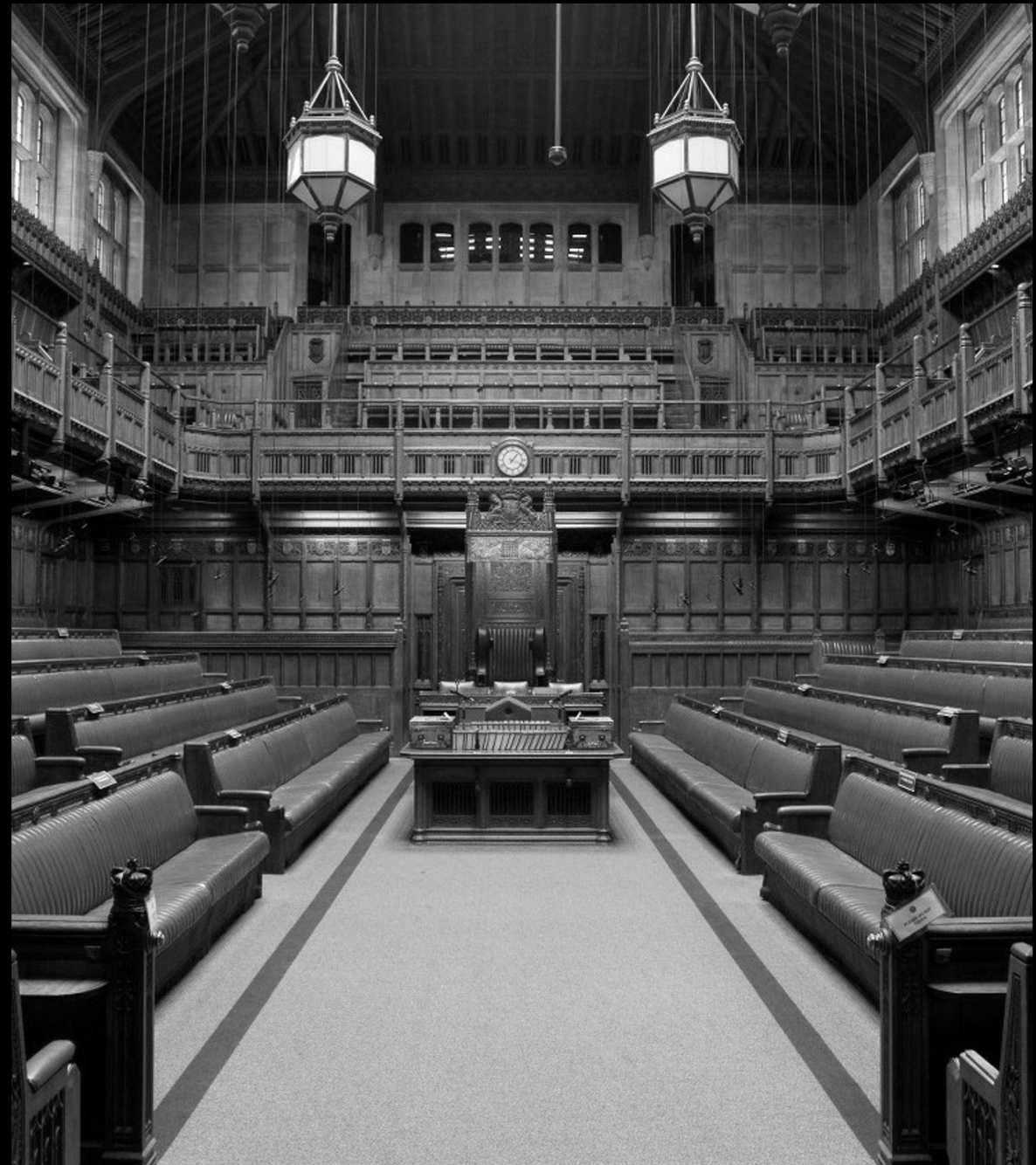


## United Nations

- Standard Rules for the Equalisation of Opportunities for Persons with Disabilities 1993
  - Rule 5 – appropriate technologies
  - Rule 6 – educational access in special residential or mainstream schools
- Salamanca Statement 1994 – importance of sign language should be recognised and access to education
- CRPD

# BSL Act 2022

- Came into force 28 June 2022
- Recognises BSL as language of England, Wales and Scotland (s1(1))
- Northern Ireland expressly not covered as language is devolved matter and Irish Sign Language is also used in Northern Ireland but not covered in Act
- Requires SoS for DWP to prepare and publish a BSL report by 30 April 2023 (ss2(1), 2(7)(a)) and subsequently every 3 years (s2(7)(b))
- SoS has duties to promote and facilitate use of BSL (s1(3)), with each government department also required to do so in communications with public (s2(2))
- Guidance must be issued with regard to that promotion or facilitation (s3(1))
- DWP intends to establish non-statutory board, now known as BSL Advisory Board (House of Commons, 2022)



## Critique of the BSL Act 2022



### British Sign Language Act 2022

CHAPTER 34

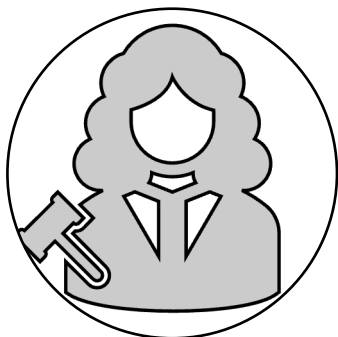
#### Positive

- Recognises BSL as a language of the UK (at last!)
- Establishes a BSL Advisory Board that will oversee implementation – how much power will it have?

#### Negative

- Not an ‘official’ language
- Doesn’t mention deaf people or tactile BSL
- Doesn’t confer any new rights and instead points to existing legislation e.g. Equality Act 2010
- Does not impose obligations on public authorities
- No enforcement mechanisms
- No consultation with deaf community so may not reflect what they want

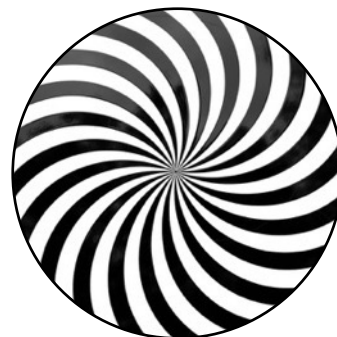
# Initial thoughts on BSL Act 2022



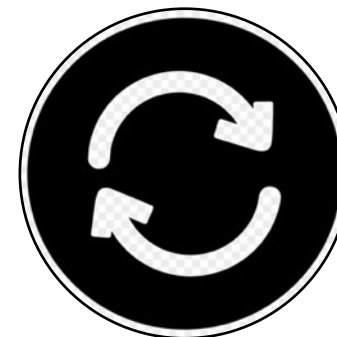
Recognition of BSL as a language may make reasonable adjustment argument more convincing



No funds allocated to Act as it was Private Members Bill = little impact?



May help society reframe deaf as *language minority* instead or as well as *deaf-disabled*



Change unlikely on a large scale; won't change status quo, e.g. deaf education, access to services and employment



Work of new BSL Council may be important/influential



# Sign language recognition - comparisons



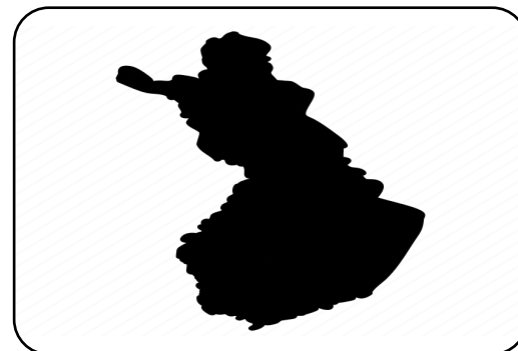
## Scotland

- Received Royal Assent 22 October 2015
- National plans
- 10 long term goals
- Local plans
- Public sector equality duty
- Early stages



## New Zealand

- Received Royal Assent 10 April 2006
- Official language of NZ
- Use of NZSL in legal proceedings
- State departments to promote and use NZSL
- Reviewed September 2011
- Deaf community has more pride and confidence
- Increased interest
- Sporadic inclusion at official events
- Negligible information provided by Government departments



## Finland

- Leader in sign language rights
- First European country to mention sign language in constitution
- Legislation
- Confers rights of individuals in education, health care, social care, the judiciary and broadcasting
- Primary legislation focuses on authorities' duties



## Ireland

- 2017
- 11 sections including right to use it, ISL users' statutory rights to access public services, the setting up of an accreditation and registration scheme for ISL interpreters and children's rights in education
- ISL in legal proceedings
- Review of Act within three years and every five years

# Conclusions

- Deaf people have to identify as disabled in order to access their rights = Deaf Legal Dilemma
- The relevant equality analyses to the Deaf-World have been identified
- Precepts of equality are used to identify the effectiveness of equality law
- Formal and substantive equality have shortcomings
- Transformative equality is needed to achieve equality for Deaf people
- There has been an in-depth exposé of equality law through a *Deaf Legal Theory* lens
- Sign language recognition has potential to achieve transformative equality
- Need more empirical research on impact of sign language recognition to prove thesis further

# Contact



**Dr Rob Wilks**

[WilksR2@cardiff.ac.uk](mailto:WilksR2@cardiff.ac.uk)