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Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill

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A briefing on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill. The Bill seeks to improve outcomes for disabled children and young people by creating duties on Scottish Ministers to set out a national strategy. It also seeks to create duties on local authorities to prepare transition plans for every disabled child and young person in their local areas.



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Summary

The Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill ('the Bill') is a Member's Bill, introduced by Johann Lamont on 30 September 2020.

The Policy Memorandum accompanying the Bill sets out that the policy objectives of the Bill. It says:

“ The aim of the Bill is to improve outcomes for disabled children and young people in the transition to adulthood. It seeks to achieve this by requiring the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for disabled children and young people in the transition to adulthood; by requiring the Scottish Ministers to assign to a member of the Scottish Government, or to a junior Scottish Minister, special responsibility in relation to the exercise of their functions under the legislation; and to require local authorities to introduce a transitions plan for each disabled child and young person to ensure that each disabled child and young person receives appropriate care and support before, and during, the transition to adulthood.”

This briefing is in four parts:

- highlighting the main findings of a SPICe briefing on this topic published in 2019
- the current legislative and policy framework
- proposals in the Bill
- themes that arose during consultations on the Bill.

2019 SPICe Briefing: Transitions of Young People With Service and Care Needs Between Child and Adult Services in Scotland

In March 2019, SPICe published a briefing, [Transitions of Young People With Service and Care Needs Between Child and Adult Services in Scotland](#).

The briefing analysed a number of policy and research documents examining transitions. It looked at transitions from a broader viewpoint than the Bill. For example, the briefing examined evidence of the experiences of of looked after children.

The Executive Summary of the 2019 briefing stated:

“ Adolescence and young adulthood is a time of vast physiological, psychological, social and contextual changes. Young people with service and care needs during this period need to move from child to adult systems and those with complex needs may have to repeat this move across multiple services. This process is often referred to as "transitions." Transitions are not synonymous with the transfer between child and adult services, but is a multi-dimensional concept. Transitions have been defined as an ongoing process of psychological, social and educational adaptation, which occurs over time, due to changes in context, interpersonal relationships and identity. This process can be both exciting and worrying and requires ongoing support. Evidence suggests that this can be a difficult process for young people and their families. Barriers to successful transitions, reported in evidence, include lack of support from adult services, poor co-ordination between services, inadequate planning and confusion around who is responsible for planning, lack of information on available options, and young people's voices not being heard. Furthermore, support for transitions seems to vary considerably between local areas. Policy reviews and research studies offer various recommendations to improve the transition process for young people. Recurring themes include the following:

- Co-ordination and collaboration between services;”
- Person-centred focus, involving the young person and their parents in decision making;”
- Starting the transitions planning process early;”
- Young people and their parents having a single point of contact;”
- Increased information about available options;”
- More support for families;”
- Dedicated transitions staff; and”
- Appropriate training for staff.”

Policies and legislation in the areas of education, health and social care reflect the above recommendations to some extent. However, recent evidence suggests that there still remain gaps between policy and practice in transitions between child and adult services.”

Current policy

This section explores the current legislative and policy frameworks, as well as highlighting some recent policy developments and reviews.

Legislation

There are a number of pieces of legislation that are relevant to public bodies' support of individuals' transitions from child to adult services. A range of duties under legislation, as well as relevant policies, are set out in the Principles of Good Transitions 3 ("PGT3").¹ PGT3 (2nd ed.) was published in March 2019 and was compiled on behalf of the [Scottish Transitions Forum](#) by [ARC Scotland](#). A very brief summary is set out below.

- **Equality Act 2010** . This is an Act of the UK Parliament. PGT3 notes particularly the Public Sector Equality Duty under this Act and the need to make reasonable adjustments for those with a protected characteristic, including disabled people. The [Equality and Human Rights Commission has produced guidance on the Public Sector Equality Duty for Scottish public bodies](#).
- **Social Care (Self Directed Support) Act 2013** . This Act seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. It also places a duty on local authorities to have regard to the general principles of *involvement*, *informed choice*, and *collaboration* when carrying out their social welfare responsibilities to both adults and children. This includes assessing the needs of disabled children under [section 23 of the Children \(Scotland\) Act 1995](#).
- **The Education (Additional Support for Learning) Scotland Act 2004**. This Act created duties on education authorities (local authorities) to identify and meet additional support needs ("ASN") required for children and young people to access school education. The definition for ASN is very broad. This Act also provides that if a child for whose school education the education authority is responsible has complex needs which require the support of another public service (e.g. social work or health), then a Co-ordinated Support Plan must be prepared. Section 12 of this Act provides for duties on the education authority to engage with any such agency or agencies as the authority think appropriate 12 months prior to the young person finishing school education.

PGT3 noted that the National Institute for Clinical Excellence has produced [guidelines on the transition from children's to adults' services for young people using health or social care services \(NG43\)](#). PGT3 also noted that transitions planning should take place within the wider Getting It Right for Every Child ("GIRFEC") approach and through non-statutory plans, such as a Child's Plan.

Policy

The Bill's long title defines transition as simply the progression of a child into adulthood. The Policy Memorandum states:

“ This transition to adulthood is a crucial life transition for a young disabled person. Transition has been defined as follows: “Transition is an ongoing process of psychological, social and educational adaptation over time due to changes in context, interpersonal relationships and identity. Young people experience multiple transitions at the same time which they can be both excited and worried about, and require ongoing support from significant others. Further, their multiple transitions trigger transitions for significant others and vice versa, making their transition experiences dynamic and complex”. Transition in this context encompasses the move from school into the adult world of work, and/or further or higher education. However, the move between being a child at school and an adult participating in economic life, and associated transitions, simply never occur for far too many disabled children and young people. This Bill seeks to address that issue.”

Scottish Parliament, 2020²

Supporting young people through this process and ensuring that they continue to receive support has been a long-standing policy issue. ARC Scotland's submission to the consultation on the proposed draft Bill stated:

“ The challenges faced by young disabled people and families during this period are already very well evidenced and documented in research, policy and consultations. Briefly, young disabled people hope for the same things as other young people; to have a voice in what impacts them, a social life and to be involved as active, valued citizens. Unfortunately, many young people don't get the support they need to achieve these basic human rights, and so their path post-school falls short of their aspirations.”

ARC Scotland, 2020³

The Scottish Government supports the Scottish Transitions Forum. The Forum has around 950 members and aims to "improve the experiences of young people (14-25) who require additional support who are making the transition to young adult life."

The Forum, along with ARC Scotland, have produced Principles of Good Transitions. The latest version is the [Principles of Good Transitions 3](#) ("PGT3"). This comprises seven principles which are set out below:

- *Principle 1:* Planning and decision making should be carried out in a person-centred way.
- *Principle 2:* Support should be co-ordinated across all services.
- *Principle 3:* Planning should start early and continue at least to age 25.
- *Principle 4:* Young people should get the support they need.
- *Principle 5:* Young people and their families must have access to the information they need.
- *Principle 6:* Families need support.
- *Principle 7:* A continued focus on transitions across Scotland.

PGT3 is referred to in Scottish Government guidance and its foreword was written by Maree Todd MSP, Minister for Children & Young People. In it she said:

“ I welcome Principles of Good Transitions 3 as a basis to inform, structure and encourage the continual improvement of professional support for disabled young people between the ages of 14 and 25 who are making the transition into young adult life. I am confident that practitioners from across a range of services will find this framework an excellent tool to support disabled young people transitioning from school into adulthood and other lifelong transitions. I am pleased to say that The Principles of Good Transitions 3 has been endorsed by key organisations who have committed to putting these principles into practice. Scottish Ministers remain committed to working together to improve transitions for disabled young people across our portfolios. We are keen to make change happen that will ensure transitions are as straightforward as possible with young people at the heart of any change. The Young Disabled People's Forum – Youth Action Success have told us what matters to them and we will continue to work with them to address the difficulties in transition they have faced.”

Scottish Transitions Forum, 2019⁴

Following on from this work, ARC Scotland is leading the development and roll-out of [Principles Into Practice](#). Principles into Practice is a national framework which aims to provide "practical guidance and evaluation measures to improve the planning and delivery of support for young people (14-25) who require additional support as they make the transition to young adult life." Currently the framework is in draft and is being trialled in a small number of local authorities over a period of two years. This is intended to be followed by the wider implementation of a final framework across Scotland. ⁵

The Principles Into Practice draft framework reflects PGT3 and provides guidance on:

- assessing the current provision
- how to improve
- how organisations will know that they are delivering against each of the seven principles listed above.

There is good evidence that transitions and the planning for young people who require and will require support going into adulthood could be improved. This is explored in the [2019 SPICe briefing](#) and the [consultation on the proposed of the Bill](#).

Recent policy reviews

Concerns about transitions from childhood into adulthood relate to the additional support children and young people receive within the school system. In January 2019, the Scottish Government announced an independent review of the implementation of additional support for learning policy and practice in schools. The review report '[Support for Learning: All our children and All their Potential](#)' was published in June 2020. It places a great deal of focus on values and culture, particularly good communication, good relationships, and kindness in public service. The Scottish Government published an [Additional Support for Learning: Action Plan](#) on 21 October 2020.

Following this review, the Scottish Government has convened a short-life working group to examine how Co-ordinated Support Plans are operating. This will include consideration of the "planning mechanisms within a whole life perspective for children and young people with lifelong conditions including transitions between and beyond education settings."

Social Work Scotland's [Self-Directed Support Project](#) is developing a National Self-Directed Support Framework to help to reduce the inconsistency of the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013. The draft framework includes reference to PGT3.

On 1 September 2020, the First Minister announced that there would be an Independent Review of Adult Social Care in Scotland as part of the Programme for Government. The Independent Review reported in February 2021. This review argued that Self-Directed Support be "scaled-up to achieve its full potential across social care support, including at transition points from children's services." The review stated:

“ The story of adult social care support in Scotland is one of unrealised potential. There is a gap, sometimes a chasm, between the intent of that ground-breaking legislation and the lived experience of people who need support.”

Scottish Government, 2021⁶

The Bill

The [Disabled Children and Young People \(Transitions\) \(Scotland\) Bill](#) was introduced by Johann Lamont MSP. It is a Member's Bill, which means that it was introduced by an individual MSP.

Ms Lamont lodged a Draft proposal for the Bill on 9 October 2019. She undertook a consultation on the proposal which ran from 9 October 2019 to 22 January 2020, although it was extended to 31 January 2020.

The Member lodged the final proposal on 18 June 2020. The final proposal received support from a total of 53 supporters from across all parties represented in the Scottish Parliament. Ms Lamont introduced the Bill on 30 September 2020.

The Education and Skills Committee has been designated the lead Committee at Stage 1. That Committee launched its call for views on 16 November 2020 and it ran to 11 January 2021.

The Bill is in two substantial parts.

Part 1 would create a duty on Scottish Ministers to "prepare, publish and implement a strategy in relation to improving transitions to adulthood for children and young people with a disability". This "National Transitions Strategy" would be required to be reviewed every three years. The Bill also makes provision for Scottish Ministers and certain public bodies to "comply with the National Transitions Strategy" in exercising their functions under the Bill.

Part 2 would create a statutory duty on local authorities to prepare and implement a transition plan for every disabled child and young person "within the local authority". The Bill provides that each child's plan would normally need to be in place at least three months before the individual's 16th birthday and the transition plan would run up to the individual's 26th birthday unless it is ended sooner.

Taken as a whole, the Bill seeks to create greater coherence and consistency in supporting disabled children into adulthood.

The Education and Skills Committee is due to consider the Bill in February 2021. Current plans are for a pre-election recess period to begin on 25 March 2021. Completing all stages of legislative process before the 25 March would be very challenging.

Part 1: National Transitions Strategy

Part 1 of the Bill provides for a duty on Ministers to "prepare, publish and implement" a strategy "in relation to improving transitions to adulthood for children and young people with a disability" (section 1(1)). This strategy is to be called the National Transitions Strategy.

Content of the strategy

Section 1 of the Bill provides that a National Transitions Strategy ("NTS") must set out:

- aims and objectives of the NTS

- the actions Scottish Ministers will take to meet these aims and objectives
- outcomes that will be achieved through the NTS
- actions that bodies or individuals must undertake to meet the aims and objectives of the NTS
- details on the support and assistance that will be available children and young people.

Ministers would also be able to include other matters as they see fit.

Timescales, review, consultation and parliamentary oversight

The Bill provides for the first NTS to be published and laid before Parliament within a year of Royal Assent (see both sections 1 and 3). Thereafter the Scottish Government would be required to review the NTS before three years after the first NTS was published and then every three years thereafter (section 5). Following a review, the Scottish Government must prepare, publish and lay a report on the review process. Ministers may choose to revise the NTS following a review. In neither case is there a specific timescale set out for this in the Bill.

During each triennial review of the strategy, the Scottish Government would need to consult those persons specified in Section 2. It is not clear whether, should the Government revise the strategy, a consultation on the draft revised strategy would need to take place.

There is no formal parliamentary oversight of the NTS provided for in the Bill. The Bill does, however, provide for statutory consultees during the preparation of the initial NTS and during the triennial reviews. Section 4 provides for duties for certain public bodies to comply with the content of the NTS.

Part 2: Transitions Plans

Part 2 of the Bill provides for a duty on local authorities to "prepare and implement a transitions plan for each child and young person with a disability within the local area" (section 7(1)).

In the consultation on the draft proposed Bill, the accompanying documents, and in section 7(6)(b) of the Bill this duty is framed as a right for the child or young person. The Policy Memorandum states:

“ Under the proposed legislation disabled children and young people will have a right to be at the centre of developing their own transitions plans. This will help to ensure that these plans meet the aspirations of the individual disabled child or young person in their transition to adulthood. (Para 20)”

Scottish Parliament, 2020⁷

The Bill as currently drafted does not allow for a disabled child or young person, or their family, not to have a transitions plan prepared. However, the Financial Memorandum seems to imply that the policy intention is that transitions plans would only be prepared

when required. It says:

“ Some [disabled] children will leave school without a transitions plan with the need for ongoing transitions support being agreed, because, for example, they are going to university or another positive destination has been identified. (Para 20)”

Scottish Parliament, 2021⁸

Section 10 of the Bill provides for the content of the plan to include both a "statement of needs" and "details of the care and support which shall be put in place to address these needs". Transitions plans would be managed by an official of the local authority who would be required to review the plan. A review could result in:

- the plan being amended
- the plan being transferred to another authority
- the plan being ended.

During both the initial preparation of a plan and the review process, the Bill provides that the local authority must consult with the child or young person, their parent/carers and potentially others.

Transitions plans and supporting children and young people through transitions are likely to involve a number of organisations and the Bill makes provisions directed at "local authorities, Health Boards, Integration joint Boards" and any other bodies which the Scottish Government might wish to add through regulations. In relation to these bodies, the Bill provides that the Scottish Government:

- make regulations which provide for duties "in relation to a transitions plan" (section 8)
- issue guidance on transition plans to which the specified bodies must have regard (section 14)
- make directions placing duties on those specified bodies (section 15).

The Bill provides for Ministers to set up a dispute resolution mechanism through regulations (section 13). This mechanism would be between individuals and the local authority (or others) but it would not be to resolve disputes between public bodies.

Definitions and identification

The Bill defines a child as a person under the age of 18, and a young person as being under the age of 26, i.e. between the ages of 18 and 25.

Disability is defined in reference to [Section 6 of the Equality Act 2010 \("the 2010 Act"\)](#). Subsection 1 of section 6 of the 2010 Act states:

“ (1) A person (P) has a disability if— (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

Subsection 5 of section 6 of the 2010 Act provides for Ministers of the Crown to issue guidance on the definition of disability. The UK Government published statutory guidance in 2011. This stated:

“ In the vast majority of cases there is unlikely to be any doubt whether or not a person has or has had a disability, but this guidance should prove helpful in cases where the matter is not entirely clear.”

Equality Act 2010 Guidance, Guidance on matters to be taken into account in determining questions relating to the definition of disability, 2011⁹

The 2010 Act is largely concerned with discrimination and the promotion of equality. The definition and the guidance are directed at considerations of potential discrimination on the grounds of a disability and any reasonable adjustments that might be expected.

The guidance notes that a disability can arise from a wide range of mental or physical impairments. A substantial effect is considered to be one that is "more than minor or trivial". Long-term is defined as having been, or likely to be, a year or more, or the remainder of a person's life. In relation to day-to-day activities, the guidance states:

“ In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.”

Equality Act 2010 Guidance, Guidance on matters to be taken into account in determining questions relating to the definition of disability, 2011⁹

Sections 7(3) and 10(1)(a) of the Bill refer to disability being "diagnosed". It is not clear how this relates to the identification of a disability under the 2010 Act.

The Bill makes no provision for local authorities to identify disability. The Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") provides for a duty for local authorities to identify additional support needs where the local authority is responsible for the child's education (section 6 of the 2004 Act). There is also provision for local authorities to have the power (not a duty) to identify additional support needs for children for whose education the local authority is not responsible, e.g. attending an independent school (section 7 of the 2004 Act). The concept of an additional support need is not the same as a disability. It is not clear how a local authority would identify all of the disabled children and young people in their area, particularly if the local authority was not responsible for providing or securing the child's education.

In addition, the duty to prepare and implement a transitions plan under section 7 of the Bill applies to all disabled children and young people in the local authority area up to and including 25 year-olds. This duty does not rely on a request being made for a plan, nor is it qualified by considerations of reasonable practicality. It could be that the Bill intends plans to be initially prepared only as the child or young person is leaving school education, indeed subsections 7(2) and 7(3) hint at this, but the drafting is not clear in respect to disabled persons who are 18 and over and who do not have a transitions plan.

Finance

The Bill's Financial Memorandum ("FM") was prepared by Camphill Scotland and Inclusion Scotland. It set out the expected cost below:

Financial Memorandum: summary of costs

Item	Cost
Preparing and implementing the National Transitions Strategy [one-off cost]	£123,000
Reviewing the National Transitions Strategy every 3 years	£92,500 [£30,833 per year]
Publishing the National Transitions Strategy [one-off cost]	£2,000
Publishing copies of revised National Transitions strategies [every 3 years]	£2,000
Publishing copies of the report on the review of the National Transitions Strategy [every 3 years]	£2,000
Local authority costs of preparing, implementing and reviewing transitions plans	Approximately £783,200

For the National Transitions Strategy, the FM anticipates costs in the first iteration of around £125,000 followed by annualised costs of around £32,000.

In terms of the costs to fall on Local Authorities, the Scottish Government's submission to the Education and Skills Committee states:

“ The Financial Memorandum, estimates that transitions planning could affect over 4000 disabled school leavers each year, however, the total costs estimated for local authorities to introduce a transitions plan for each disabled child and young person within this Memorandum are only estimated as £783,200 per annum (£24,475 per local authority), and do also not appear to take into account any implementation costs, nor the cumulative cost implications to review each plan over of a span of up to 10 years (young people aged between 16 and 26). ... A number of stakeholders, including the Convention of Scottish Local Authorities (COSLA), have queried the proposed estimation of uptake and costs in their response to the consultation. We would welcome further evidence and analysis of the figures provided and the estimated uptake of transition plans, to help inform the Government's position regarding the financial implications of the Bill.”

Scottish Government, 2021¹⁰

The Presiding Officer has determined that a Financial Resolution is required for this Bill. The Scottish Parliament's guidance on public bills states:

“ Where a Bill contains particular provisions affecting payments into or out of the Scottish Consolidated Fund (the “SCF”), no proceedings can be taken on the Bill after Stage 1 unless the Parliament has, by resolution, agreed to the relevant provisions. That resolution is known as a “financial resolution”. Financial resolutions are governed by Rule 9.12 [of the Parliament's Standing Orders] ... The financial resolution procedure is a means of giving extra control to the Scottish Government over Bills with certain financial implications. Only a member of the Scottish Government or a junior Scottish Minister can lodge a motion for a financial resolution (Rule 9.12.7), and so the Government has a veto on whether any Bill that requires such a resolution makes progress. Unless a motion is lodged and the Parliament agrees to it, a Bill that requires a financial resolution falls.”

Scottish Parliament, 2018¹¹

Consultations

This section highlights some of the main themes in two consultations on the Bill.

The Member's consultation on the proposed bill ran from October 2019 to the end of January 2020. The Education and Skills Committee's consultation on the Bill ran from November 2020 to January 2021.

Consultation on the proposed Bill

The Member's consultation on the proposed Bill received 91 responses in total, of which 86 were published¹². An analysis of the consultation responses was produced by a team of academics from the University of Dundee.¹³

The consultation sought views on six substantive questions. The first of these asked *What challenges do you think children with a disability face in the transition to adulthood?* The analysis of the consultation responses identified 10 main challenges that came out through the responses.

- the transfer from children to adult services
- the transfer from children to adult healthcare
- resources and funding
- employment opportunities
- limited options for the future and lack of person centred approach
- poor planning and a lack of information
- voice and challenges communicating
- financial challenges
- social challenges and feelings of isolation
- impact of transitions on mental wellbeing.

There was not a corresponding question on what the current system does well or is improving.

Broadly speaking the analysis of the responses reported that there was support for the Bill, albeit the analysis noted "it is difficult to comment on who and how many supported the Bill unequivocally."¹³

The analysis summarised:

“ Those who appeared to support the Bill expressed dissatisfaction with the current treatment of children and young people with disabilities during their transition to adulthood. Many were concerned about the low employment rates of these children and young people.”

And:

“ Those who did not seem to support the Bill said that existing legislation and frameworks should be focussed on and developed, rather than the creation and implementation of new legislation. Some of these respondents, similar to those who seemed to support the Bill, specifically indicated support for the Principles into Practice framework (a non-mandatory framework to support the practical implementation of the ‘Principles of Good Transitions’ across Scotland). Many respondents had concerns regarding funding and some were not convinced that new transitions planning could be met within existing resources available to them.”

Proposed Disabled Children and Young People (Transitions) (Scotland) Bill – Johann Lamont MSP, Summary of Consultation Responses, 2020¹³

Education and Skills Committee call for views

The Committee issued its call for views on the Bill on 16 November 2020. The closing date for the call for views was 11 January 2021.

The Committee's call for views asked for submissions covering:

- the overall aims of the Bill
- whether legislation is required to meet these aims
- the proposed National Transitions Strategy
- transitions plans
- financial implications
- any other comments.

A similar range of views were expressed to the Committee as in the consultation on the Draft Proposal. Responses can be found on the [Committee's web pages](#).

The aim of the Bill, to "improve outcomes for disabled children and young people in the transition to adulthood" ¹⁴ was broadly supported in responses to the Committee's call for views. The intention that there are good planning processes for disabled children's transitions to adulthood was also not contentious.

There were more diverse views on whether legislation is required to meet this aim. Many of those that considered legislation necessary argued that non-legislative approaches don't support consistent approaches to transitions planning. Views were expressed that statutory duties would provide such consistency and allow the realisation of young people's rights. Some held the view that local authorities would not act unless impelled to do so, others that legislation would provide impetus to achieve better outcomes through the transitions processes. Some respondents noted that there is already legislation and non-legislative policy development taking place, e.g. pilots under the [Principles into Practice framework](#). Some respondents argued that the proposals could impede progress being made.

The development of a National Strategy for Transitions was well-supported in the

responses the Committee received. Although some were concerned that it should not detract from existing national strategic work in this area, such as the roll-out of [Principles Into Practice](#).

Some concerns were raised on the accuracy of the estimated costs in the Financial Memorandum.

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