

MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Education, Children and Young People Committee of the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill which was introduced by Pam Duncan-Glancy MSP on 20 April 2022. It updates the memorandum provided by Maree Todd MSP to the Education and Skills Committee in respect of Johann Lamont's Bill of the same name, to take account of the changes between the two Bills, and policy developments since 2020, which the Committee may wish to be aware of in its consideration of this Bill.

Background

2. Ms Duncan- Glancy's Bill, as introduced, aims "to improve outcomes for disabled children and young people in the transition to adulthood" (Policy Memorandum, para 4). It contains three main elements, which require:
 - 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;
 - Scottish Ministers to assign a member of the Scottish Government, or to a junior Scottish Minister, special responsibility in relation to the exercise of their functions under this Act;
 - Local Authorities to introduce a transitions plan for each disabled child and young person to ensure that they receive appropriate care and support before, and during, the transition to adulthood.
3. The Bill is very similar to that of the same name introduced by Ms Lamont on 30 September 2020, which fell on dissolution of Session 5 and hereafter is referred to as the Session 5 Bill.

Consultation

4. Consultation in response to the Session 5 Bill suggested that most respondents were broadly supportive of the intentions of the Bill. Many of the comments made in support of the main elements of the Bill included that it would ensure all young people have a right to their support needs being met in their transition to adulthood; it had the potential to increase awareness of the issue and to change understanding; and it would facilitate consistency and accountability, particularly as current legislation and guidance were perceived as not having the needed effect.
5. Reasons given for not supporting the Bill included the recognition that there was already existing legislation in place which should be focussed on and developed, rather than the creation and implementation of new legislation. Some respondents had concerns regarding funding and resources. Others

expressed concern about the Bill's eligibility criteria for a transition plan, expressing a preference for a broader approach to transitions for all children and young people who require additional support.

6. These views were echoed during the Education and Skills Committee's call for views, which closed on 11 January 2021. Respondents broadly supported the aim of improving transitions for disabled young people. However, views differed on the need for additional legislation. Some respondents noted the risk that the Bill could duplicate existing legislation and non-legislative policy development taking place which already contribute to improving outcomes for disabled children and young people. Concerns were also previously raised on the accuracy of the estimated costs in the Financial Memorandum and whether Local Authorities have appropriate levels of resource to deliver the Bill's provisions.

Financial Impact

7. The Bill places a duty on Local Authorities to prepare and implement a transitions plan for each disabled child and young person within the local authority area. The Local Authority must start preparing the plan from the child's fourteenth birthday, and the plan must be in place no later than three months before the child's sixteenth birthday (or by their eighteenth birthday if their disability is diagnosed between the ages of 16 and 18). It also stipulates that the plan should remain in place until 'the child reaches their twenty sixth birthday, or such higher age as may be prescribed by regulations'. In addition to this, the Bill states that the Local Authority must appoint an officer of the local authority to manage the transitions plan and keep it under review.
8. The Financial Memorandum estimates that transitions planning could affect over 4000 disabled school leavers each year (up to 125 young people each year in each Local Authority). The Financial Memorandum recognises that the caseload for Local Authorities will be cumulative, and therefore requires a budget that will increase year on year from approximately £893,372 in Year 1 rising gradually to £4,467,360 in Year 10 or an average of £139,605 per year for each authority. This has been updated from the previous Financial Memorandum, which foresaw annual costs of £783,200 with no year on year increase.
9. These costs do not include the time for a guidance or other teacher to prepare a plan where a child is in school, where it is envisaged that those costs would fall within existing resources/staff responsibilities.
10. In addition to this, there are estimated costs for the Scottish Government to prepare, implement, review and publish the National Transitions Strategy which include a one-off initial cost of £123,000 and an ongoing cost of approximately £33,000 per annum.
11. In the revised Financial Memorandum (para 35) Ms Duncan-Glancy has clarified that the Bill seeks to improve transitions planning for disabled children

and young people in the transition to adulthood. The Bill would require Local Authorities to work with disabled children and young people and their families and significant others in their lives to identify positive destinations for the children and young people. In effect, the Bill seeks to improve the planning process, and to give young people an opportunity to identify, and to access existing resources and potential positive destinations, rather than for each transitions plan to require new funding for each destination identified by the transitions plans.

12. A number of stakeholders, including the Convention of Scottish Local Authorities (COSLA), queried the proposed estimation of uptake and costs in their response to the previous call for views. 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's Position

13. The Scottish Government recognises the importance of good transitions planning in preparing our children and young people for life beyond school, especially disabled young people making the transition into work, further and higher education, and adult services. We also recognise that disabled young people leaving school and transitioning into adult services is a complex area, requiring multi-agency collaboration and co-operation.
14. Since Ms Lamont's Bill fell on dissolution of Session 5, there have been a number of policy and legislative developments that the Committee may want to be aware of, to support its consideration of this Bill.
15. The Scottish Government has already taken forward a number of actions to improve transitions, and we are committed to doing more. This includes giving non-statutory effect to two of the main provisions in Ms Duncan-Glancy's Bill as introduced:
 - In our Programme for Government 2021/2022 we committed to beginning work on a new National Transitions to Adulthood Strategy to support disabled young people as they make the transition to adult life, and provide them, and those who look after them, with joined up guidance and support to unlock better educational and employment opportunities and health outcomes.
 - The Minister for Children and Young People and the Minister for Equalities have agreed joint responsibility to lead the work on transitions.
16. In addition, there have been many other developments that are or will positively contribute to improving transitions. These include:
 - The next phase of the Getting It Right for Every Child (GIRFEC) refresh will focus on revising guidance for planning for the child or young person, including effective planning for transitions for all children and young people. We are committed to streamlining the planning process to work towards a single-planning approach. In line with the first phase

of the GIRFEC refresh, this work will be undertaken through extensive engagement with a wide range of stakeholders.

- Building on GIRFEC, the Scottish Government is developing a 'Getting It Right for Everyone' (GIRFE) approach, to develop a joined-up, coherent and consistent multi-agency approach to support and services from young adulthood to end of life care. GIRFE is about providing a more personalised way to access help and support when it is needed and placing the person at the centred of all decision making that affects them to achieve the best outcomes. As part of this development, five place-based pathfinders will be identified, including one focused on families with multiple and/or complex needs; and young people in transition from GIRFEC to GIRFE.
- A National Care Service (NCS) will be established before the end of this parliamentary term, to deliver consistent, high quality adult social care support throughout Scotland under the accountability and responsibility of Scottish Ministers.
- Conducting research to consider whether children's services should be included in the NCS. The National Care Service (Scotland) Bill provides for the transfer of local authority functions for social work and social care by regulations and for Ministers to designate health functions to the NCS. Before a decision on children's services is made it is vital we understand whether transferring children's services into the NCS will support the improvement of outcomes and better meet the needs of children, young people and their families The Scottish Government will work across policy areas to ensure the co-design of services for the NCS include children, young people and their families, irrespective of the potential inclusion of children's services.
- Continuing to support ARC (Association for Real Change) Scotland's Scottish Transitions Forum to bring the 'Principles into Practice' trial programme to completion in 10 local authority areas by April 2023. The purpose of the trial is to identify, design and test changes that improve planning and delivery of support for young people who need additional support as they transition to young adult life.
- Implementing the Additional Support for Learning Review recommendations and developing an updated Supporting Learners' Code of Practice.
- Continuing our investment in the Independent Living Fund Scotland's Transition Fund to support young disabled people to make a smoother transition from childhood into adulthood by promoting independence, community participation, social inclusion and confidence.
- Committing over £59 million in employability services in 2022/23 to support delivery of the all age No One Left Behind approach. Supporting inclusion and equity of opportunity are central to this approach which aims to provide everyone with the holistic package of employability support that they need to move towards, into and to progress within fair and sustainable work. This includes support for young disabled people to help them to achieve their potential.
- Working with disabled people's organisations, their members, and other key partners to develop a refresh of the 2018 'A Fairer Scotland for

Disabled People: Employment Action Plan', which will be published later this year as part of a new, aligned Fair Work Action Plan.

- Incorporating the UN Convention on the Rights of the Child into Scots law. This would require all Scotland's public authorities to take proactive steps to ensure the protection of children's rights in their decision-making and service delivery and make it unlawful for public authorities to act incompatibly with the UNCRC requirements as set out in the Bill.
- The Scottish Government has committed to incorporate four additional international human rights treaties into Scots law, as far as possible within devolved competence, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Incorporation of the CRPD will place greater impetus on public bodies to remove barriers and support disabled people to fully participate in society.

17. However, we know that good transition planning is still not always the experience of disabled young people and their families, and the Scottish Government shares Ms Duncan-Glancy's ambition to improve that.
18. Transitions is a complex area, which requires a coordinated and holistic response to improve the culture, systems and practice. All partners and stakeholders need to work as one, collectively and creatively to address this crucial matter, placing the young person right at the centre of the process.
19. There are some points which we highlighted in 2020 that we suggest to the Committee are still important to explore and consider further, in order for these issues to be better understood. These include:
 - a) The duplication and overlap of key aspects of existing legislation - there was a recognition from many respondents to the previous consultation and call for views, both for and against the Bill, that existing legislation and policy was already in place to support transition planning for disabled young people. This includes the Education (Additional Support for Learning) (Scotland) Act 2004, and the Social Care (Self-Directed Support) (Scotland) Act 2013 and their associated guidance.
 - b) Whether the duties the Bill would impose on public bodies are appropriate, and how they would interact with existing functions of those bodies.
 - c) The eligibility criteria for the proposed statutory right to a transitions plan- the legislative focus of this Bill is on disabled children and young people between the ages of 14 and 26. Disability within this Bill relies on the definition given by Section 6 of the Equality Act 2010. The pupil census for 2021 records that 19,105 school pupils have assessed and/or declared as having a disability. Some respondents of the consultation argued that the Bill leaves out some young people with comparable needs to those who would be entitled to a transitions plan under the current proposals.
 - d) Resource implications - transitions are a continuous evolving process, which requires continuity of support, rather than an event that is sealed by a professional plan. ARC Scotland's definition of transitions is:

*'Transition is the period when young people develop from children to young adults. This is not a single event, such as leaving school, but a growing-up process that unfolds over several years and involves significant emotional, physical, intellectual and physiological changes. During this period young people progressively assume greater autonomy in many different areas of their lives and are required to adjust to different experiences, expectations, processes, places and routines. Transitions also impact on the family or on those who care for the child or young person.'*¹

There are also many further considerations that are important to young people and their parents and carers at this stage in their lives beyond achieving a single 'positive destination'. Further consideration is required to identify who would be responsible for planning post-school, how is it proposed to make sure that planning is an ongoing process, not a single event, and that plan becomes reality to ensure the needs, outcomes and dreams identified by the young person are met and achieved. It would also be helpful if the Committee could explore what engagement has taken place with the Information Commissioner's Office in relation to data sharing element of the Bill.

20. Alongside these points, there are significant legal issues raised by the Bill as introduced. As noted above, there is considerable duplication and overlap with existing legislation. There is also an issue of legislative competence in section 6 of the Bill, which would require the Scottish Ministers to assign to a member of the Scottish Government or a junior minister "special responsibility" in relation to Ministers' functions under the Bill, when the power to appoint members of the Scottish Government and junior ministers is vested in the First Minister alone in terms of sections 47(1) and 49(1) of the Scotland Act 1998. Moreover, paragraph 4(1) of schedule 4 of the Scotland Act 1998 states that an "Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, this Act", and sections 47(1) and 49(1) are not included in the exempt provisions listed in paragraph 4(2) of that schedule. In addition, section 6 of the Bill appears to modify the operation of section 52(3) of the 1998 Act, according to which "statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Government". Assuming the general principles of the Bill are agreed by the Parliament at Stage 1, these issues will need to be addressed through amendment of the Bill.

Conclusion

21. The Scottish Government is committed to, and fully support efforts towards, improving the lived experiences of disabled children and young people, to ensure that we are delivering for them throughout their lives, including during the challenging time of transitions. The Scottish Government therefore supports the intentions of the Bill in seeking to improve transitions for disabled children and young people.

¹ [Principles of Good Transitions 3; Scottish Transitions Forum; 2017, page 10](#)

22. The Scottish Government will consider the detail of the provisions and may seek amendment to address any issues that are identified with the Bill as introduced if it progresses to that stage. We particularly note the views of some stakeholders that this legislation may not, as drafted, achieve its intended aims. In addition, there are legal issues to consider related to the scope of duties for Ministers (and delegated powers) under the Bill; as well as potential legislative competence issues in requiring Ministers to assign a Minister with special responsibility in relation to the exercise of their functions under this Act. We will need to collectively consider the evidence and options carefully, to ensure that the Bill can be effectively implemented and can deliver on its important goals.

Scottish Government

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