

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

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill introduced in the Scottish Parliament on 30 September 2020.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 83–EN)
  - a Financial Memorandum (SP Bill 83–FM)
  - statements on legislative competence by the Presiding Officer and the Member who introduced the Bill (SP 83–LC)
3. This Policy Memorandum has been prepared by Camphill Scotland and Inclusion Scotland on behalf of Johann Lamont MSP, the member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Policy Objectives of the Bill

4. 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

This document relates to the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill (SP Bill 83) as introduced in the Scottish Parliament on 30 September 2020

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.

## Details of the Bill

5. The Bill consists of 21 sections.

6. The Bill:

- places a duty on the Scottish Ministers to introduce a National Transitions Strategy
- requires the Scottish Ministers, local authorities, Health Boards, Integration Joint Boards and such other persons as may be prescribed by regulations, to comply with the aims and objectives of the National Transitions Strategy in exercising their functions under this legislation
- places a duty on the Scottish Ministers to review the National Transitions Strategy
- places a duty on 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 this Act
- 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 to improve outcomes for each disabled child or young person within the local authority area in the transition to adulthood
- enables the Scottish Ministers to issue guidance to local authorities about transitions plans
- enables the Scottish Ministers to give local authorities, Health Boards, Integration Joint Boards and such other bodies as may be prescribed by regulations, general or specific directions about transitions plans under this legislation
- requires the Scottish Ministers to submit an annual report to the Scottish Parliament on the progress made by the National Transitions Strategy, and by the transitions plans, in improving transitions to adulthood for disabled children and young people. By way of further background, the National Transitions Strategy will provide an overarching framework in which local authorities, Health Boards, the Integration Joint Boards and other agencies can take action,

including joint-action, to deliver improved outcomes for disabled children and young people in the transition to adulthood, and into their adult lives

7. This strategy will afford a clear reference point to these agencies in terms of the aims and objectives which the Scottish Ministers consider necessary to improve transitions for disabled children and young people. The National Transitions Strategy will also set out the outcomes in relation to improving transitions to adulthood for disabled children and young people, which are to be achieved by the National Transitions Strategy. The strategy will help to shape and inform how these agencies can best work, including joint working, to significantly increase the life opportunities of disabled children and young people, and to support them in accessing their rights, fulfilling their potential and in making the most of their lives.
8. The Bill also places a duty on 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 this legislation.
9. Having a National Transitions Strategy, and a bespoke Scottish Government Minister leading on transitions for disabled children and young people, are vital components of the framework which the Member believes is necessary to deliver significant improvements in the outcomes achieved by these children and young people. The National Transitions Strategy, and appointing a Cabinet Secretary or Minister with responsibility for transitions, will also underline the priority being given by the Scottish Government to supporting disabled children and young people.
10. With reference to transitions plans, the local authority must, under section 12(1) of the Bill, appoint an officer to prepare and manage the transitions plan, and to keep it under review. While the child remains at school this would be the child's guidance teacher, or another member of the child's school's staff with pastoral care duties for the child. A member of the local authority's education department would fulfil this role where the local authority is funding an educational placement for the child at a private, specialist school within the local authority area or through an out of area placement outside the local authority area. A social worker (officer level) would be responsible for the management and review of the transitions plan after the child has left school.

11. By way of further explanation, section 12(1) of the Bill requires the local authority to appoint an officer of the local authority in relation to transitions plans. This gives the local authority flexibility about who should be appointed. While the young person is at school, however, it is expected that this would be the young person's guidance teacher or another member of the school's pastoral care staff, given that they already have pastoral care duties and responsibilities for children at the school. Similarly, it is expected that a social worker would be appointed after the young person has left school, as they are most likely to provide support to the disabled young person once the disabled young person has left school.

12. Against this background, a guidance teacher or another member of the young person's school's pastoral care staff, would be the best fit for the role of officer while the young person remains at school, as the former will already have a pastoral involvement in the young person's life. After the young person leaves school, the best fit for the role of officer would be a social worker, particularly as some disabled young people may already be in receipt of support from social work while they are attending school.

13. An alternative approach would be for the local authority to appoint an officer from other council services, which many might be reluctant to do if the child already has pastoral involvement with, and support from, their guidance teacher or with another member of the school's pastoral care staff, and in many cases with a social worker. That existing relationship, and providing continuity, would in many cases help to ensure the young person's transition is a positive one.

## Background

### **Why is the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill necessary?**

14. A young person who leaves school only to experience long-term unemployment is also more likely to have poorer physical and mental health, and a shorter life expectancy. Furthermore, the hiring of a young person who has no work experience by age 25 is unlikely to be an attractive option for an employer, and thus temporary unemployment can become permanent worklessness.

15. Evidence from a range of sources underlines the poor outcomes for many disabled children and young people in the transition to adulthood. This transition often presents issues for large numbers of children and young people. The evidence suggests, however, that the issues faced by disabled children and young people are particularly challenging. This includes the lack of positive destinations in employment, training and in education for many disabled children and young people when they reach adulthood.

16. 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.<sup>1</sup> Further, their multiple transitions trigger transitions for significant others and vice versa, making their transition experiences dynamic and complex”.<sup>2</sup> 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.

17. Currently there is no statutory requirement to ensure that disabled children and young people are fully supported in their transition to adulthood. This has a major negative impact upon the lives of many of these children and young people. For example, one of the impairment groups least likely to make a successful transition to adult life are young

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<sup>1</sup> Jindal-Snape, D. (2016). A-Z of transitions. Palgrave Macmillan; Jindal-Snape, D. (2018). Transitions from Early Years to Primary and Primary to Secondary Schools in Scotland. In T. Bryce, W. Humes, D. Gillies, & A. Kennedy (Eds.), *Scottish Education* (5 ed.). Edinburgh University Press.

<sup>2</sup> Jindal-Snape, D. (2016). A-Z of transitions. Palgrave Macmillan; Jindal-Snape, D. (2018). Transitions from Early Years to Primary and Primary to Secondary Schools in Scotland. In T. Bryce, W. Humes, D. Gillies, & A. Kennedy (Eds.), *Scottish Education* (5 ed.). Edinburgh University Press; Jindal-Snape, D., Johnston, B., Pringle, J., Kelly, T., Scott, R., Gold, L., & Dempsey, R. (2019). Multiple and Multidimensional life transitions in the context of life-limiting health conditions: Longitudinal study focussing on perspectives of Young Adults, Families and Professionals. *BMC Palliative Care*, 18, 1-12. [30]. <https://doi.org/10.1186/s12904-019-0414-9>

learning disabled people. Women with a learning disability have an 18-year lower life expectancy than the general population, whilst men with a learning disability have a 14-year lower life expectancy<sup>3</sup>. They are also eight times more likely to develop a severe mental illness and five times more likely to develop dementia<sup>4</sup>.

18. Without ongoing and fully supported transitions plans large numbers of disabled children and young people are being deprived of opportunities to fulfil their potential, and to make the most of their lives. It is not only these children and young people, however, who are being robbed of their potential, but we as a society who are being robbed of the contribution that they desperately want to make.

19. Introducing transitions plans through this legislation will help to ensure that the opportunities available to disabled children and young people to access, for example, opportunities in employment, training and in education are significantly increased. These plans will provide that appropriate planning is put in place to ensure that each disabled child and young person is able to identify, and to access, such opportunities, and to achieve a positive destination.

20. 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. Such transitions can present many issues for disabled children and young people and their families. Getting the planning right will increase the chances that disabled children and young people will be able to secure positive outcomes throughout this transition, and into their adult lives.

21. Where the child or young person lacks capacity for the purpose of developing their own transitions plans, the local authority must have regard to the views of the child's or young person's parents, legally appointed guardian or other carers.

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<sup>3</sup> 'Health and Care of People with Learning Disabilities, Experimental Statistics: 2018 to 2019', NHS England, Jan 2020. <https://www.gov.uk/government/statistics/health-and-care-of-people-with-learning-disabilities-experimental-statistics-2018-to-2019>– Although these are figures for England there is unlikely to be a substantial difference in Scotland.

<sup>4</sup> Ibid.

## Current Legislative Framework: Coordinated Support Plans and Child's Plans

22. Some of those responding to the consultation on the draft proposal for the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill queried the need for further legislation, given the existence of Co-ordinated Support Plans (CSPs) under the Education (Additional Support for Learning) (Scotland) Act 2004 (As Amended) (“the ASL Act”), and Child’s Plans under Part 5 of the Children and Young People (Scotland) Act 2014. While it is correct that the ASL Act<sup>5</sup> creates an obligation on education authorities to prepare and review a Co-ordinated Support Plan (CSP), where a child meets the criteria outlined in section 2 of the ASL Act, the submissions raising this issue ignored the fact that, while many children meet the criteria for a CSP very few CSPs are actually put in place. These submissions also ignored the Scottish Government’s recent parliamentary statement that the Child’s Plans provisions in Part 5 of the Children and Young People (Scotland) Act 2014 have not come into force, and are to be repealed. These issues are dealt with in more detail below.

23. In addition, some of the respondents who argued against the need for further information referred to Chapter 6 of the Additional Support for Learning: statutory guidance 2017<sup>6</sup>, in which the Scottish Government outlines its expectations of education authorities when planning for a disabled child’s transition to adulthood. Those respondents, however, ignored the fact that the statutory guidance locates the planning process for this within the Child’s Plan (a planning process introduced in Part 5 of the Children and Young People (Scotland) Act 2014, but never commenced and which the Scottish Government now intends to repeal<sup>7</sup>), rather than in a CSP.

24. Furthermore, in responding to the consultation on the Bill proposal, the Children and Young People’s Commissioner Scotland pointed out that few disabled children are able to secure a CSP: “ when a child’s transition is being planned, they are likely to meet the criteria for a CSP set out in s2

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<sup>5</sup> <https://www.legislation.gov.uk/asp/2004/4/contents>

<sup>6</sup> <https://www.gov.scot/publications/supporting-childrens-learning-statutory-guidance-education-additional-support-learning-scotland/>

<sup>7</sup> John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills in speech to the Parliament 19/9/2019, <https://news.gov.scot/speeches-and-briefings/getting-it-right-for-every-child>

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of the ASL Act due to the number of agencies involved and the resultant complexity of support. However, the proportion of children with disabilities for whom a CSP is prepared is extremely low, amounting to only 1% of children with ASN”<sup>8</sup>.

25. The Children’s Commissioner highlighted the lack of an integrated approach by education and other bodies to support disabled children and young people in the transition to adulthood: “The provisions of the ASL Act relate only to children aged under 16, or aged 16 or over if the education authority is still responsible for their school education (our emphasis) and the legal duties contained within it relate only to education authorities and not to other service providers (or even the local authority in its other roles) involved in disabled children’s transition to adulthood”.

26. The Commissioner also expressed the view that because the ASL Act, relates solely to education, it “..does not address the social care (particularly if parents have been providing this care), employment support, or health supports required to ensure that disabled children and young people transition to adulthood in a way which enable them to fully realise the rights contained in the UNCRPD, for example in relation to independent living and freely chosen employment. There is limited scope for ongoing planning of transitions from further, higher or vocational education. In particular, the social care support required for young disabled people transitioning to studying or living away from home is often dislocated from educational transition planning. Eleven years ago, we documented the experiences of one young disabled person attempting to study at university<sup>9</sup>, but having to drop out due to a lack of social care support”.

27. The Children’s Commissioner concluded that because of these gaps in statutory duties fresh legislation was needed along the lines of the Member’s draft proposal to allow children and young people to attain the rights enshrined in the United Nations Convention on the Rights of the Child: “As a result, as the bill proposal identifies, disabled young people do not currently have a clearly defined right in domestic law to ongoing,

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<sup>8</sup> Additional Support Needs and the use of Coordinated Support Plans in Scotland”, Professor Sheila Riddell, January 2019 <https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children/project-blogs/riddell-blog-csp>

<sup>9</sup> Ritchie, L. (2008). The Paper Hydra, My Transition Quest, Edinburgh, Scotland’s Commissioner for Children & Young People.

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multidisciplinary transition planning and support once they leave school, resulting in a failure to realise the human rights of many disabled children”.

## **How Many Young Disabled People Would Benefit from a Transitions Plan**

28. Approximately 60,000 Scots children and young people (aged 0 – 18<sup>10</sup>) have a long term limiting health condition or impairment. However, these are not evenly distributed across age groups<sup>11</sup> and a higher proportion of older children and young people are disabled. Against this background, it is estimated that poor transition planning could affect up to approximately 4,000 disabled school leavers each year. Evidence highlighting the poor transitions into adulthood which many disabled children and young people experience is outlined below.

29. The Member is aware that many disabled children and young people face major challenges in the transition to adulthood, including the withdrawal of key services once disabled young people reach adulthood. This theme was highlighted by young people attending Inclusion Scotland’s Activate Summit, who spoke of facing ‘an abyss’ when leaving school, and/or when moving from children’s to adult services<sup>12</sup>.

30. Other challenges faced by disabled children and young people in the transition to adulthood include an inconsistent approach to planning before, and during, this transition by education, social work and by other agencies. As a result, many disabled children and young people face going into adulthood without the levels of support which they will require to help them to fulfil their potential, and to make the most of their lives. Poor planning at this stage can often have devastating long-term consequences for the young person’s adulthood, limiting their access to opportunities in employment, education and training, as well as adversely impacting upon their life skills and social networks.

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<sup>10</sup> Based on figures derived from – “Scotland’s Census 2011 - National Records of Scotland Table DC3101SC - Long-term health problem or disability by sex by age”, <https://www.nrscotland.gov.uk/news/2014/census-release-3f>

<sup>11</sup> Ibid.

<sup>12</sup> Inclusion Scotland, “Activate: A report about the issues faced by young disabled people in Scotland and about their activism for change” September 2019, <https://inclusionScotland.org/activate/>

31. It is deeply concerning that large numbers of children and young people continue to experience poor transitions, which directly affects their adult lives, and prevents them from fulfilling their potential. The Member's proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill offers Scotland the best opportunity in years to significantly improve outcomes for disabled children and young people in the transition to adulthood. The Member is concerned that, without the provisions in this Bill, the transitions for large numbers of disabled children and young people into adulthood will remain poor, and that our society will continue to fail these young people by depriving them of opportunities to achieve positive destinations throughout their adulthood, and to make the most of their lives.

32. The Member's proposed standalone legislation, focusing explicitly on the transitions of disabled children and young people into adulthood, is therefore vital if the outcomes for these children and young people are to be significantly improved, and if greater numbers of disabled children and young people are to achieve positive destinations in adulthood. The Bill potentially offers major benefits in all of these areas.

33. The National Transitions Strategy will, for example, provide a framework that will assist agencies to work together to maximise the life opportunities for disabled children and young people, and to support greater numbers of disabled children and young people to achieve their potential. It will enable a more strategic, targeted and integrated approach in these areas to emerge over time across Scotland. Having a National Transitions Strategy in place will help to promote a more consistent approach to transitions planning for disabled children and young people in the transition to adulthood. It will also help to ensure that the individual transitions plans for disabled children and young people will deliver positive outcomes for disabled children and young people throughout this transition, and into their adult lives.

34. Assigning to a Cabinet Secretary or Minister in the Scottish Government special responsibility for ensuring that disabled children and young people receive appropriate levels of care and support in the transition to adulthood will also have many benefits. Having a Scottish Government Cabinet Secretary or Minister leading on transitions for disabled children and young people, and a National Transitions Strategy, are vital components of the framework which the Member believes is necessary to deliver major improvements in the outcomes achieved by disabled children and young people. These provisions in the proposed

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Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill, will underline the priority being given by the Scottish Government to supporting disabled children and young people.

35. Assigning to a Cabinet Secretary or Minister special responsibility for transitions would also ensure that the Scottish Parliament has an ongoing focus on the effectiveness of the National Transitions Strategy, and on the implementation of the transitions plans across Scotland. This focus would be strengthened by the statutory duty on the Scottish Ministers outlined in section 16 of the proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill to publish an annual report on the progress made by the National Transitions Strategy, and by transitions plans, in improving transitions for children and young people with a disability. This would include providing information about the numbers of transition plans put in place by each local authority for disabled children and young people.

36. The assigning to a Cabinet Secretary or Minister of special responsibility for transitions would also help to support the effective implementation of the National Transitions Strategy, and of the transitions plans for disabled children and young people, through the exercise of their powers under the legislation. Section 15 of the proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill gives the Scottish Ministers' powers to issue directions to local authorities, NHS Health Boards, Integration Joint Boards and to other bodies about transitions plans. This would include directions about the need to co-operate with each other in relation to the efficient and effective use of their resources to provide, and to deliver, transitions plans under the proposed legislation. Such bodies would be required to comply with these directions. Assigning a Cabinet Secretary or Minister special responsibility for transitions, and their capacity to use these powers, could make a major contribution to ensure that the legislation is implemented effectively, and to significantly improve outcomes for disabled children and young people in the transition to adulthood.

37. The Member is aware that many challenging issues can arise for children and young people during the transition to adulthood, and for their families. The Member is also aware that the current absence of specific statutory transitions plans providing support into adulthood for all disabled children and young people, and the inconsistent approach being taken across Scotland to transitions planning by education, social work and other

agencies, are having a significant adverse impact upon the lives of many disabled children and young people. The Bill's provisions relating to a statutory transitions plan are, therefore, vital for each disabled child or young person if we are to ensure that disabled children and young people can access the support they require in the transition to adulthood, and to access such support earlier.

38. Getting the transitions planning right earlier, and before the children and young people reach adulthood, will increase the chances that disabled children and young people will be able to secure positive outcomes throughout this transition, and into their adult lives. The transitions plans will act as a key document allowing transitions to take place in a more consistent and positive way than is experienced by many disabled young people at present.

39. The Bill also takes a person centred approach taken in the Bill, and the provisions in section 11 and 12 will ensure that the views of disabled children and young people will be at the centre of the processes for preparing, and managing, their own transitions plans. This statutory right will help rebalance some of the power towards children and young people at this crucial time in their lives.

40. The difficulties faced by disabled children and young people and their families during their transition to adulthood, and the potential benefits of the Bill, were highlighted by a parent whose son attends Camphill School Aberdeen:

“The families of disabled children and young people, are perpetually exhausted, stressed and depleted. The additional anxiety experienced transitioning from Children's to Adult services, in reality is too often caused by an isolated, challenging battle for services with their own Local Authority. An undesirable but apparently inevitable fight they have to undertake, without any support, alone in an opaque process that appears beyond scrutiny or accountability.

Therefore, the establishing of a transparent, inclusive, legal process, to include all stakeholders and aid navigation through the difficulties of transition will bring relief and improvement to families' experiences; offering reassurance and an opportunity to build trust-based,

collaborative support structures and keep a positive focus on the needs of the young person.

The resultant reduction in stress from the benefits of being properly included in decision-making, will help a positive, collaborative person-centred team, which respectfully includes the family, create a Transition Plan that ensures no disabled young person is left unsupported.

In the event of the lived experiences of families continuing to be that of a problematic or inadequate Transition that does not establish or adhere to a plan, the existence of a Scottish Government Minister, as champion, to turn to, will be a most welcome transformational change”.

41. Against this background, the Member is concerned that, without the statutory transitions plans proposed in the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill, many young people will continue to experience unnecessarily difficult and damaging experiences as they enter adulthood.

## **Hopes and Aspirations of Young Disabled People**

42. At age 16, the aspirations of disabled and non-disabled young people are broadly the same. By age 26, however, disabled people are more likely to be out of work than their non-disabled peers, and are three times more likely to feel hopeless and to agree that “Whatever I do has no real effect on what happens to me”<sup>13</sup>

43. What happens in the intervening years that acts to destroy young disabled people’s hopes and dreams? According to the many young disabled people Inclusion Scotland have spoken to about these issues over the years, the loss of support from Children’s Services which occurs when they leave school hinders their chances of getting work or improving their employability.

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<sup>13</sup> Tania Burchardt, “The Education and Employment of young disabled people: Frustrated ambition”, JRF, November 2005, <https://www.jrf.org.uk/report/education-and-employment-disabled-young-people>

44. Most recently, in December 2018, Inclusion Scotland organised a summit for young disabled people called “Activate”<sup>14</sup>. Many issues of concern to young disabled people were discussed, but all the young people involved had concerns about transitions from school to adult life. Young people at the Activate Summit talked about facing ‘an abyss’ when leaving school, and/or when moving from child to adult services. Some talked about difficult and stressful transitions with little support for future planning, a climate of low expectations particularly in relation to gaining employment, and a feeling of ‘falling off a cliff’ when more rigid eligibility criteria for adult services led to a sudden reduction in support. To quote some of the young disabled people involved –

- “Leaving school was really hard. It just felt like jumping off a cliff. Everything just stopped in terms of support and I have really struggled to find employment. I’ve had lots of interviews, but then the inevitable rejections. .... I never felt I was supported to make any kind of plan for my future.”
- “I don’t think my careers adviser really expected me to find a job. I want to work in policy but there was no advice or encouragement, it has been really hard to find my way since I left school.”
- “I want to be a teacher but because I am deaf and a BSL user, I’ve had so many negative reactions since leaving University and just can’t get the communication support I need to start a PGSE at college. It’s so frustrating.”

45. The young disabled people at the Activate Summit called for: “...a new statutory duty on local authorities across Scotland to adequately plan for and monitor outcomes for young disabled people...”<sup>15</sup>. This call for action is reflected in the Member’s proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill, which seeks to improve outcomes for disabled children and young people in the transition to

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<sup>14</sup> Inclusion Scotland, “Activate: A report about the issues faced by young disabled people in Scotland and about their activism for change” September 2019, <https://inclusionScotland.org/activate/>

<sup>15</sup> Inclusion Scotland, “Activate: A report about the issues faced by young disabled people in Scotland and about their activism for change” September 2019, <https://inclusionScotland.org/activate/>

adulthood, and to provide them with a plan with which to realise their hopes and aspirations.

## **Disabled People and Worklessness**

46. The challenges facing young disabled people in securing work or improving their employability are significant. To put this in perspective, before the beginning of the recession in 2008 the proportion of working age disabled people in employment in Scotland was 47% whilst the average employment rate of non-disabled people was 80% - an employment gap of 33%.<sup>16</sup>

47. By 2018 the employment rate of non-disabled people in Scotland had risen to 81% whilst the employment rate of disabled people was 45% - that is the employment gap had increased to 36%. In contrast the employment rate of disabled people in England had increased from 47% in 2008 to 54% in 2019/20 and the employment gap had narrowed to 28%. In fact, in 2019/20 the only two areas of the UK which had lower rates of employment for disabled people were the North East of England and Northern Ireland. This suggests that, in comparison to England, Scotland is failing to support disabled people who wish to secure and retain employment.

48. At an UK level the unemployment rate for disabled people was 6.5% in April – June 2020<sup>17</sup>. This compared to an unemployment rate of 3.6% for non-disabled people. However, many disabled people have become so discouraged by worklessness that they no longer even register as unemployed. Thus, disabled people were considerably more likely than non-disabled people to be economically inactive (not in work and not looking for employment). The economic inactivity figure for non-disabled people was 15.3%, the corresponding rate for disabled people was 42.6%, nearly three times higher<sup>18</sup>.

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<sup>16</sup> JRF, “Employment Among Disabled People”, 2020, <https://www.jrf.org.uk/data/employment-among-disabled-people> This is based on Labour Force Survey averages.

<sup>17</sup> House of Commons Library, “People with Disabilities in Employment”, Research Briefing, No.7540, August 2020, <https://researchbriefings.files.parliament.uk/documents/CBP-7540/CBP-7540.pdf>

<sup>18</sup> House of Commons Library, “People with Disabilities in Employment”, Research Briefing, No.7540, August 2020, <https://researchbriefings.files.parliament.uk/documents/CBP-7540/CBP-7540.pdf>

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49. People who are workless are more likely to have poorer health and lower life expectancy than those with meaningful and fulfilling work. On the other hand, according to the National Audit Office<sup>19</sup>, supporting a young disabled person into work can increase their income by between 55% to 95%, thus reducing the risk of poverty and poor health.

## Youth Unemployment in Scotland

50. Since peaking at around 23% in 2012, the Scottish youth unemployment rate fell to a record low level of around 9% by late 2019. This is one of the lowest rates in Europe.

51. The average youth unemployment rate in Europe is 16%. The Scottish rate was also lower than the UK average rate of 12%.

52. However, Scotland's relatively good performance in terms of youth employment does not hold good for young disabled people. Six months after leaving school young disabled people are twice as likely to be Not in Education, Employment or Training (NEET) than their non-disabled peers<sup>20</sup>. By age 19 young Scots disabled people are three times as likely to be NEET<sup>21</sup>. Young disabled people aged between 16 and 24 were the age group of disabled people least likely to be in employment in 2019/20, just 37% were in work<sup>22</sup>.

53. People who are workless are more likely to be living in poverty, have poorer health and lower life expectancy than those with meaningful and fulfilling work. In 2018 forty-four percent (44%) of young Scots disabled

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<sup>19</sup> National Audit Office report, 'Oversight of special education for young people aged 16-25', November 2011, <https://www.nao.org.uk/wp-content/uploads/2012/01/841303f2-e9b3-4916-b217-583edffe633a1.pdf>

<sup>20</sup> Scottish Government, "Consequences, risk factors, and geography of young people not in education, employment or training (NEET): Scottish Longitudinal NEET study", Research Findings, 1/2015, <https://www.gov.scot/publications/consequences-risk-factors-geography-young-people-education-employment-training-neet-research-findings/>

<sup>21</sup> Ibid

<sup>22</sup> House of Commons Library, "People with Disabilities in Employment", Research Briefing, No.7540, , August 2020, <https://researchbriefings.files.parliament.uk/documents/CBP-7540/CBP-7540.pdf>

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people (16-24) were living in poverty<sup>23</sup>. On the other hand, as mentioned above, according to the National Audit Office<sup>24</sup>, supporting a young disabled person into work can increase their income by between 55% to 95%, thus reducing the risk of poverty and poor health.

## **The Potential Impact of Covid-19 On Young Disabled People**

54. The Resolution Foundation have predicted a rise in youth unemployment, as a result of the “economic fallout from the coronavirus”, of around 600,000 across the UK in the coming year<sup>25</sup>. In 2019 Scottish “youth” (16-24 year old) unemployment represented around 6% of the UK total – this would suggest, by applying this share to the Resolution Foundation’s forecast, an increase in youth unemployment in Scotland of over 37,000<sup>26</sup>.

55. Young disabled people leaving school with no work experience will, therefore, be in competition for scarce jobs, and places on the new Jobs Guarantee Scheme, with young non-disabled people with perhaps several years’ work experience. It is, therefore, imperative that the disproportionate impact this is likely to have on young disabled people’s employment prospects is recognised now, and addressed by providing them with access to early and ongoing support during the transition to adulthood.

## **Attainment**

56. One of the key barriers that young disabled people seeking employment have to overcome is that the current education system tends to fail them. Children with Additional Support Needs (ASN) are six times

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<sup>23</sup> Scottish Government, “Scotland’s Wellbeing – Measuring the National Outcomes for Disabled People”, July 2019, <https://www.gov.scot/publications/scotlands-wellbeing-measuring-national-outcomes-disabled-people/>

<sup>24</sup>. National Audit Office report, ‘Oversight of special education for young people aged 16-25’, November 2011, <https://www.nao.org.uk/wp-content/uploads/2012/01/841303f2-e9b3-4916-b217-583edffe633a1.pdf>

<sup>25</sup> Resolution Foundation briefing, ‘Class of 2020 Education leavers in the current crisis’, May 2020, <https://www.resolutionfoundation.org/app/uploads/2020/05/Class-of-2020.pdf>

<sup>26</sup> Fraser of Allander Institute, ‘What next for youth unemployment in Scotland?’, July 2020, <https://fraserofallander.org/covid/what-next-for-youth-unemployment-in-scotland/>

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(12%) as likely to leave school with no qualifications as children with no ASN (2%)<sup>27</sup> .

57. Although the attainment gap between ASN and non-ASN pupils has narrowed recently it still remains the case that under 40% of young people with an ASN leaves school with one or more SCQFs at Level 6, compared to over 70% of those with no ASN<sup>28</sup>.

58. Having no, or far fewer, qualifications than their non-disabled peers puts young disabled people at a significant disadvantage in the modern labour market.

59. There is no reasonable explanation as to why an individual with only sensory or physical impairment should not be attaining qualifications on an equal basis with their non-disabled classmates. However, the very fact that disabled people are less likely to end up in employment means that many teachers fail to see the relevance of their gaining qualifications leading to a failure of expectations.

60. One year after leaving school those with impairment related Additional Support Needs (ASN) are more than twice as likely to be unemployed/workless (18%), as those with no ASN (8%). Yet by age 19 things have not improved, but actually get worse as young people with impairments are three times as likely to be NEET (Not in Employment, Education or Training) than their non-disabled peers<sup>29</sup>. By comparison, vulnerable young care leavers are twice as likely to be NEET at age 19.

61. The problem this creates is that those disabled young people with little or no work experience that they can put on a CV or job application are

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<sup>27</sup> Tania Burchardt, "The Education and Employment of young disabled people: Frustrated ambition", JRF, November 2005, <https://www.jrf.org.uk/report/education-and-employment-disabled-young-people>

<sup>28</sup> Scottish Government, "Summary Statistics for Attainment and Initial Leaver Destinations, No. 2, 2020 edition, page 6, Feb 2020, <https://www.gov.scot/publications/summary-statistics-attainment-initial-leaver-destinations-no-2-2020-edition/>

<sup>29</sup> Scottish Government, "Consequences, risk factors, and geography of young people not in education, employment or training (NEET): Scottish Longitudinal NEET study", Research Findings, 1/2015, <https://www.gov.scot/publications/consequences-risk-factors-geography-young-people-education-employment-training-neet-research-findings/>

at a considerable disadvantage when applying for employment. Thus, early worklessness on leaving school that lasts for several years can all too easily become a permanent situation lasting throughout a disabled person's working life.

## Conditionality and Sanctions

62. Young disabled people are also more at risk of incurring sanctions under the UK social security system. By way of further background, in 2012 a harsher conditionality regime was introduced under the Welfare Reform Act 2012<sup>30</sup> for those claiming Job Seekers Allowance (JSA) whilst unemployed. The harsher conditionality resulted in more people being sanctioned (resulting in the loss of some or all of their benefit entitlement) for longer periods.

63. The situation has not improved much under Universal Credit (UC). Amongst unemployed UC claimants, young men aged 16-24 are treated the most harshly, with one in seven (14%) under sanction in 2017/18<sup>31</sup>. Young women do not fare much better with 8% of 16-24 year old women under sanction. In comparison less than 3% of UC claimants aged over 50 are under a sanction. Research also shows that claimants with a disability are 26% to 53% more likely to be sanctioned than non-disabled claimants.<sup>32</sup>

64. Before the introduction of harsher conditionality from 2010 with the Welfare Reform Act 2009 receiving Royal Assent<sup>33</sup>, 70% of young people

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<sup>30</sup> Welfare Reform Act 2012,

<https://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>

The Welfare Reform Act 2012 brought in this harsher regime. There were a number of changes in the scope, severity and escalation of conditionality, and sanctions arising from the 2012 Act. The maximum length of a sanction was, for example, increased from 26 weeks to 156 weeks, and claimants had to provide proof of worksearch activities at compulsory interviews. The bulk of sanctions were imposed for failure to attend these interviews at the prescribed time.

<sup>31</sup> Dr David Webster, Briefing on Benefits Sanctions, July 2018, <https://cpag.org.uk/policy-and-campaigns/briefing/david-webster-university-glasgow-briefings-benefit-sanctions>

<sup>32</sup> Dr Ben Baumberg Geiger, "Benefits conditionality for disabled people: stylised facts from a review of international evidence and practice", Journal of Poverty and Social Justice, vol 25(2), June 2017, pp 107–128,

[benbgeiger.co.uk/files/Benefits%20conditionality%20for%20disabled%20people%202017%2002%2007.pdf](http://benbgeiger.co.uk/files/Benefits%20conditionality%20for%20disabled%20people%202017%2002%2007.pdf)

<sup>33</sup> Welfare Reform Act 2009, <https://www.legislation.gov.uk/ukpga/2009/24/contents>

entitled to JSA were claiming it. By 2016 this had fallen to 48%. Young people who are not registered as unemployed and claiming benefits are not in contact with, and cannot be contacted by, the Job Centre about training and work opportunities (such as the Job Start Guarantee scheme). Nor can they be assisted with advice on job-search, career planning, etc.

65. If employability support for young disabled people is not being, or cannot be, provided through Job Centres then it is imperative that some other agency provides it. The proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill is vital to ensure that more young disabled people can secure positive destinations after leaving school.

## **Modern Apprenticeships and the Importance of Support**

66. Modern Apprenticeships are important in providing young people with new skills and work experience. Ninety percent of Modern Apprentices are retained in employment. Yet young disabled people, despite the barriers they face in finding work, were initially shut out of the Modern Apprenticeship programme rather than being the targets of additional support<sup>34</sup>.

67. In 2012/13 of 25,691 Modern Apprenticeship starts only 63 (0.4%) were taken up by young people with a declared disability when they made up 12.5% of all young people aged 16 - 24. By Quarter 1 of 2017/18 this had improved to 9.2% of Modern Apprenticeship starts self-identifying as having an impairment, health condition or learning difficulty.

68. This improvement in Modern Apprenticeship take-up demonstrates what can be done to increase the labour market participation of young disabled people if a concerted effort is made to provide information and

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<sup>34</sup> It changes in 2016 after the adoption of an Equality Action Plan for Modern Apprenticeships which sought to increase the proportion of young disabled people entering apprenticeships. There has been a steady improvement since then. Before that date less than 0.5% of all Modern Apprenticeship placements were taken by someone with a declared disability, although round 8% of the target population (16-24) is disabled, <https://www.equalityhumanrights.com/en/our-work-scotland/our-work-scotland/research-scotland/modern-apprenticeships>

support. A key part of this support should be that proposed in the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill.

## Alternative Approaches

69. One other legislative route which the Member considered was amending the Children and Young People (Scotland) Act 2014, particularly in the light of the Scottish Government's commitment to repeal Part 5 of the legislation which relates to the Child's Plans. While this would have had the advantage of placing the Member's proposals relating to transitions into key children and young people's legislation, the Member took the view that the significant challenges faced by disabled children and young people in the transition to adulthood would be given greater prominence, and would be more likely to be addressed effectively, through a standalone Bill.

70. The Member also considered whether there were approaches other than legislation which might meet her policy objectives such as guidance, but concluded that, while other measures might complement the impact of legislation, they were not sufficient on their own to achieve the aims of the proposal. The Member was also aware of the real risks that guidance was more likely to be ignored than the statutory duties outlined in her proposed Bill.

## Consultation

71. The Member's draft proposal, lodged on 9 October 2019, was for a Bill to:

Require the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for children and young people with a disability in the transition to adulthood, and to require local authorities to introduce a transitions plan to ensure each child and young person with a disability receives appropriate care and support before, and during, the transition to adulthood; and for connected purposes.

72. The proposal was accompanied by a consultation document. This document was published on the Parliament's website, from where it remains accessible.<sup>35</sup>

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<sup>35</sup> [www.parliament.scot/parliamentarybusiness/Bills/113161.aspx](http://www.parliament.scot/parliamentarybusiness/Bills/113161.aspx)

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73. The consultation period initially ran from 9 October 2019 to 22 January 2020. The Member extended the deadline to 31 January 2020 in response to requests from a small group of respondents for extensions.

74. The Member hosted a launch event for her consultation on 9 October 2019 in the Scottish Parliament. Other speakers at this event included parents and a young person affected by issues around transitions. The Member also hosted a consultation event in Glasgow on 11 November 2019.

75. The consultation exercise was run by the Member's parliamentary office. Support in raising awareness about the consultation was also provided by Camphill Scotland, and by Inclusion Scotland.

76. Other organisations arranged consultation events or meetings to discuss the Member's proposals, including those hosted by the Scottish Commission for People with Learning Disabilities (SCLD), and the Edinburgh Voluntary Organisations Council (EVOC). Meetings were also held with a group of East Renfrewshire Carers, and by a group of young people with learning disabilities and other support needs.

77. Updates about the consultation on the Member's proposed Bill were provided by the Member, or by Camphill Scotland or by Inclusion Scotland at meetings of the Scottish Parliament's Cross Party Groups on Carers, on Children and Young People, on Disability and on Learning Disability.

78. A wide range of organisations, individuals and groups were sent details of the consultation. The consultation was also widely publicised through the media, including social media.

79. In total, 91 responses were received. The responses can be categorised as follows:

- 11 responses (12.0%) from public sector organisations [e.g. Scottish Government body or agency, local authority, Health Board or Health Board body or organisation, or Non-Departmental Public Body]
- 12 responses (13.1%) from representative organisations [e.g. business association, trade union, third sector organisation, political party or other body with a role representing its members or supporters' views collectively]

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- 39 responses (42.8%) from third sector organisations [e.g. charitable, campaigning, social enterprise, voluntary, not for profit organisation]
- 4 responses (4.3%) from others [e.g. clubs, local groups, groups of individuals, etc.]
- 25 responses (27.4%) from individuals; these can be categorised as follows:
  - 8 (9.6%) from professionals with experience in a relevant area
  - 3 (3.2%) from children or young persons with a disability
  - 13 (14.2%) from parents or other carers of a child or young person with a disability
  - 1 (1.0%) from members of the public
- 9 (9.8%) of respondents requested that their responses should be considered on an anonymous basis
- 5 (5.4%) of respondents requested that their responses should be treated in confidence, and should not be published
- 1 (1.0%) late response was accepted

80. Most respondents were broadly supportive of the Bill. Respondents were asked for their views on the key components of the Bill – the need for a National Transitions Strategy, for a Scottish Government Minister to be appointed with specific responsibility for transitions, and for statutory transitions plans. However, because respondents were not asked to (a) show their agreement/disagreement, (b) use a scale, or (c) use yes/no responses specifically about the Bill per se, it is difficult to comment on who and how many supported the Bill unequivocally.

81. Those who supported 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.

82. Those who did not 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 the inadequate level of funding available to support disabled children and young people to access positive destinations, and to fund such destinations. Some respondents were not convinced that new transitions

planning could be met within existing resources available to them, but the Member believes such concerns were largely based on a misinterpretation of the Bill. The Member's proposed Bill will strengthen transitions planning by ensuring that a strategic, more consistent, approach is taken by local authorities across Scotland to improve transitions planning for disabled children and young people in the transition to adulthood. It is anticipated that each transitions plan will improve transitions planning, and can largely be delivered within existing resources and by some modest Scottish Government funding. It is not, however, intended that each transitions plan will be accompanied by new monies to help disabled children and young people to access and secure positive destinations by funding such destinations. The transitions plans will improve transitions planning and increase disabled children's and young people's ability to access and secure positive destinations.

83. Most respondents supported the proposal that children and young people with a disability should have a statutory right to a transitions plan, with some indicating conditional support. Reflecting this a total of 66 respondents (72.5%) supported or seemed to support the proposal that children and young people with a disability should have a statutory right to a transitions plan; 18 respondents (19.7%) did not support or seemed not to support the proposal; 6 respondents (6.5%) seemed to conditionally support the proposal, and 1 respondent (1.0%) stated that they were not decided on whether they supported the proposal.

84. Around a quarter of respondents stated that a National Transitions Strategy would assist young people with a disability to achieve independent living. A further quarter were of the opinion that a National Transitions Strategy would assist disabled young people to achieve independent living, but this was subject to conditions. Several respondents questioned what definition of 'independent living' was being adopted by the proposal, stating that this would have impact on its achievability. Some also questioned the contradiction between the definition of transitions presented in the consultation document as an ongoing process and the single assessment point.

85. The majority of respondents said that it is necessary to have a Minister in the Scottish Government with special responsibility for ensuring that children and young people with a disability receive appropriate levels of care and support in transitions to adulthood. However, some stated that this responsibility should be embedded in an existing Minister's portfolio.

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86. Reflecting the high level of support for the appointment of a Minister for Transitions: a total of Fifty Four of the respondents (59.3%) confirmed they think that it is necessary for there to be a Minister in the Scottish Government with a special responsibility for ensuring that children and young people with a disability receive appropriate levels of care and support in the transition to adulthood (a total of eight of these respondents stated that they think ministerial oversight is necessary but that the responsibility should be embedded in an existing minister's portfolio); six of the respondents (6.5%) confirmed they supported such an appointment, but subject to conditions; while 13 respondents (14.2%) confirmed they were against the appointment of a Minister for Transitions; and 18 respondents 19.7% did not express an opinion on this issue.

87. A final proposal for a Bill was lodged on 18 June 2020 to require the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for children and young people with a disability in the transition to adulthood, and to require local authorities to introduce a transitions plan to ensure each child and young person with a disability receives appropriate care and support before, and during, the transition to adulthood; and for connected purposes.

88. The proposal for a Bill secured support from 53 MSPs, as follows:

- 22 Scottish Labour
- 13 Scottish Conservative and Unionist Party
- 7 Scottish National Party
- 5 Scottish Liberal Democrats
- 5 Scottish Green Party
- 1 Independent

89. On 18 August 2020 the Parliamentary Bureau confirmed the Member has the right to introduce a Member's Bill to give effect to the proposal until 30 September 2020).

## Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc.

### Equal Opportunities

90. The Bill will help to strengthen the rights of disabled children and young people by ensuring they have a statutory right to a transitions plan. This will help to empower disabled children and young people, and increase their equality of opportunity in the transition to adulthood and into their adult lives.

91. This was highlighted by the Glasgow Centre for Inclusive Living in its response to the Member's consultation on her proposal: "[the Bill could] play a significant role in ensuring that disabled people are able to face the future with confidence, have the opportunity to reach their full potential as adults, and ultimately assert their rights as equal citizens."<sup>36</sup>

92. The transition to adulthood is crucial in determining the futures of disabled children and young people. The proposed Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill would give additional rights and support by placing a statutory duty on local councils to prepare, and to implement, a transitions plan for each disabled child and young person to improve outcomes in their transition to adulthood. Many of the families who responded to the Member's consultation emphasised the difficulties they face on a daily basis, and the Member welcomes their overwhelming support for the aims and objectives of the Bill. The Member believes that these challenging testimonies should be the spur for change.

### Human Rights

93. The Member is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights (ECHR), with the UN Convention on the Rights of Persons with Disabilities (CRPD) and with the United Nations Convention on the Rights of the Child (UNCRC).

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<sup>36</sup> Scottish Parliament, Consultation Summary, [https://www.parliament.scot/S5MembersBills/Johann\\_Lamont\\_MSP\\_Proposed\\_Members\\_Bill\\_16\\_June\\_2020\\_final\\_version.pdf](https://www.parliament.scot/S5MembersBills/Johann_Lamont_MSP_Proposed_Members_Bill_16_June_2020_final_version.pdf)

94. The positive impact which the Member's proposed Bill could have on strengthening the rights of, and encouraging better protection of the rights of, disabled children and young people was highlighted by respondents to the consultation on her proposal. The Law Society of Scotland reported that a National Transitions Strategy would "contribute to achieving all of the rights accorded by the UN Convention on the Rights of Persons with Disabilities by ensuring that all relevant policies and planning - as well as individual planning- achieves that purpose." Kiana Kalantar-Hormozi, a young person with a disability, also agreed that a National Transitions Strategy could bring a well overdue end to the violating of the rights of young disabled people<sup>37</sup>. The Children and Young People's Commissioner Scotland also welcomed the proposal's focus on "improving individual transition planning", referring to the "fragmentation of current planning processes negatively impacts disabled children's rights"<sup>38</sup>.

95. The Member's proposed Bill will strengthen the human rights of disabled children and young people by improving planning in the transition to adulthood. This will help to empower disabled children and young people, and increase their equality of opportunity.

## **Island Communities**

96. The Bill will not have any adverse impact on island communities. It is anticipated that the measures in the Bill should benefit all children and young people with a disability, including those living in island communities.

## **Local Government**

97. Local authorities will have an important role in implementing the provisions of the Bill and, as such, there will be a certain impact on them. Local authorities will have a statutory duty to introduce and implement a transitions plan for each disabled and young person within the local authority area in the transition to adulthood.

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<sup>37</sup> Scottish Parliament, Consultation Summary, [https://www.parliament.scot/S5MembersBills/Johann\\_Lamont\\_MSP\\_Proposed\\_Members\\_Bill\\_16\\_June\\_2020\\_final\\_version.pdf](https://www.parliament.scot/S5MembersBills/Johann_Lamont_MSP_Proposed_Members_Bill_16_June_2020_final_version.pdf)

<sup>38</sup> Scottish Parliament, Consultation Summary, [https://www.parliament.scot/S5MembersBills/Johann\\_Lamont\\_MSP\\_Proposed\\_Members\\_Bill\\_16\\_June\\_2020\\_final\\_version.pdf](https://www.parliament.scot/S5MembersBills/Johann_Lamont_MSP_Proposed_Members_Bill_16_June_2020_final_version.pdf)

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98. Any impact on the business of local authorities has been captured in the Financial Memorandum, which has been published on the Scottish Parliament's website.

## **Sustainable Development**

99. The Bill should support sustainable development issues by increasing wellbeing and equity, and strengthening the rights of disabled children and young people.

100. There is no impact – positive or negative – on environmental protection as the Bill does not cover that type of area.

101. The Bill has no direct impact – positive or negative – on economic viability as the Bill is concerned with social policy rather than with economic policy.



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

## Policy Memorandum

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