

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

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill, introduced in the Scottish Parliament on 20 April 2022.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 14–FM);
 - a Policy Memorandum (SP Bill 14–PM);
 - a Delegated Powers Memorandum (SP Bill 14–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member who introduced the Bill (SP Bill 14–LC).
3. These Explanatory Notes have been prepared by Camphill Scotland and by Inclusion Scotland on behalf of Pam Duncan-Glancy MSP, the member who introduced the Bill. The Explanatory Notes have been prepared in order to assist the reader of the Bill, and to help inform debate on the Bill. They do not form part of the Bill, and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill: An Overview

5. 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

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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.

6. The Bill consists of 21 sections.

7. 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, Further Education Institutions, Higher Education Institutions 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, health boards, integration joint boards, Further Education Institutions, Higher Education Institutions and to such other bodies as may be prescribed by regulations about transitions plans;
- Enables the Scottish Ministers to give local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and such other bodies as may be prescribed by regulations, general or specific directions about transitions plans under this legislation; and
- 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.

Commentary On Sections

Section 1: National Transitions Strategy

8. Section 1 of the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill places a statutory duty on the Scottish Ministers to prepare, publish and implement a strategy in relation to improving outcomes for disabled children and young people in the transition to adulthood (“The National Transitions Strategy”).

9. 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.¹ Further, their multiple transitions trigger transitions for significant others and vice versa, making their transition experiences dynamic and complex”.² 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.

10. Section 1(2) of the Bill states that the National Transitions Strategy must set out the aims and objectives which the Scottish Ministers consider necessary to improve transitions to adulthood for disabled children and young people, the actions Scottish Ministers will take to meet these aims and objectives, and the outcomes which are to be achieved by the strategy. The National Transitions Strategy must also set out the actions and arrangements which local authorities, Health Boards, Integration Joint Boards and other bodies or persons must take to meet these aims and objectives. It must also set out information about the support and assistance which will be available to disabled children and young people in the transition to adulthood. The National Transitions Strategy must also set out such other matters as the Scottish Ministers consider relevant to the transitions to adulthood for disabled children and young people.

¹ 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.

² 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>

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Section 2: Consultation on strategy

11. The Scottish Ministers must publish a draft National Transitions Strategy, and have a duty under section 2(1) of the Bill to consult on the draft National Transitions Strategy.

12. The Scottish Ministers must also, when consulting on the National Transitions Strategy, under section 2(1) of the Bill, take into account any views and information received by them through the consultation.

13. Sections 2(2) and (3) specify the groups which the Scottish Ministers must consult about the draft strategy.

Section 3: Publication and laying of strategy

14. Section 3(1) of the Bill provides that the Scottish Ministers must publish the National Transitions Strategy, and lay a copy of it before the Scottish Parliament, within one year of Royal Assent.

15. Section 3(2)(a) states that the Scottish Ministers must, as soon as reasonably practicable after complying with section 3(1), publish a report setting out the consultation process taken in order to comply with section 2, and the ways in which views expressed during that process have been taken into account in preparing the National Transitions Strategy. Section 3(2)(b) provides that the Scottish Ministers must lay a copy of the report before the Scottish Parliament, while section 3(2)(c) states that the Scottish Ministers must make a statement to the Scottish Parliament in relation to the National Transitions Strategy.

Section 4: Duties to comply with the National Transitions Strategy

16. Sections 4(1) and 4(2) of the Bill place a duty on the Scottish Ministers, local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and on such other persons as the Scottish Ministers may prescribe by regulations to comply with the National Transitions Strategy in exercising their functions under this legislation.

17. Section 4(3) provides that the Scottish Ministers must, before making regulations under section 4(2)(g) placing duties on persons to comply with the National Transitions Strategy, consult representatives of the interests of persons likely to be affected by these regulations, and consult such other persons as they consider appropriate.

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Section 5: Review and publication of the National Transitions Strategy

18. Section 5(1) provides that the Scottish Ministers must review the National Transitions Strategy.

19. Section 5(2) states that the first National Transitions Strategy must be reviewed within 3 years of publication, and must subsequently be reviewed every 3 years.

20. Section 5(3)(a) provides that, following a review of the National Transitions Strategy, the Scottish Ministers must prepare a report on the review, including in particular their assessment of the extent to which the strategy has been complied with. Section 5(3)(b) gives the Scottish Ministers the power to revise the strategy following the conduct of a review.

21. Section 5(4) states that if, following a review, the Scottish Ministers decide not to revise the National Transitions Strategy, the report prepared under section 5(3)(a) must set out their reasons for not doing so.

22. Section 5(5) provides that the Scottish Ministers must, when reviewing the National Transitions Strategy, consult the persons specified in section 2(2) of the Bill.

23. Section 5(6) requires the Scottish Ministers to publish each revision of the National Transitions Strategy, and each report prepared under section 5(3)(a), and to lay before the Scottish Parliament copies of each revision of the National Transitions Strategy, and of each report prepared under section 5(3)(a).

Section 6: Special responsibility

24. Section 6 of the Bill 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.

25. The Minister or Cabinet Secretary assigned this responsibility would be responsible for improving transitions into adulthood for disabled children and young people, and for fulfilling the Scottish Ministers' functions under the legislation. These functions would include preparing, publishing, implementing and reviewing the National Transitions Strategy, publishing an annual report about the National Transitions Strategy, making regulations relating to transitions plans, issuing guidance about transitions plans and issuing directions in relation to transitions plans.

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Section 7: Duty to introduce a transitions plan

26. Section 7(1) of 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 to improve outcomes for each disabled child and young person within the local authority area in the transition to adulthood.

27. Section 7(2) provides that a local authority must, subject to section 7(3), start preparing the transitions plan under subsection (1) from the child's fourteenth birthday, and the transitions plan must be agreed by the local authority and by the child, and put in place, no later than 3 months before the child's sixteenth birthday.

28. Section 7(3) states that where a child's disability is diagnosed after their sixteenth birthday, and before their eighteenth birthday, a transitions plan under section 7(1) must be agreed by the local authority and by the child, and put in place, before the child's eighteenth birthday.

29. Section 7(4) states that a transitions plan agreed under section 7(2) or 7(3) must remain in place until the child reaches their twenty-sixth birthday or such higher age as may be prescribed by regulations, or until the transitions plan is ended under section 12(6)(c).

30. Section 7(5) provides that, where any child or young person lacks capacity to express a view, or to make a decision, for the purposes of agreeing a transitions plan under section 7(2) or 7(3), a local authority must, in so far as it is reasonably practicable, ascertain and have regard to the views of the child's or young person's parents, legally appointed guardian or other carers.

31. Local authorities have a duty under section 7(6) to take action to raise awareness of their duties to prepare and implement a transitions plan for each disabled child and young person within the local authority area, and of the rights of every disabled child and young person within the local authority area to have a transitions plan.

Section 8: Other duties

32. The Scottish Ministers have powers under section 8(1) of the Bill to place duties, through regulations, on local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and on such other persons as they consider appropriate in relation to a transitions plan.

33. Section 8(2) provides that the Scottish Ministers must, before making regulations placing duties on persons under section 8(1), consult representatives of the interests of persons likely to be affected by these regulations, and consult such other persons as they consider appropriate.

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Section 9: Delivery of a transitions plan

34. Section 9 of the Bill places a duty on local authorities to ensure that each disabled child and young person within the local authority area receives the care and support necessary to meet the needs identified in their transitions plan.

Section 10: Contents of a transitions plan

35. It is stated in section 10(1) that a transitions plan must contain a statement of the child's needs from before the child's sixteenth birthday, or a statement of the child's needs from when their disability is first diagnosed after their sixteenth birthday, until the child reaches their twenty-sixth birthday or such higher age as may be prescribed by regulations.

36. The reference to the child's twenty-sixth birthday is consistent with the age limit for the availability, under section 66 of the Children and Young People (Scotland) Act 2014, of aftercare to children who were at one stage looked after.

37. The transitions plan must, under section 10(1) of the Bill, also include details of the care and support which shall be put in place to address these needs.

38. The Scottish Ministers have the power to make provisions by regulations under section 10(2) relating to such other information which is, or is not, to be contained in a transitions plan, and to the form of a transitions plan.

Section 11: Preparation of a transitions plan

39. Section 11(1) of the Bill specifies those whose views must be taken into account when preparing a transitions plan.

40. The Scottish Ministers have the power under section 11(1)(e) to add, by regulations, to the list of those whose views must be taken into account when preparing a transitions plan.

41. Local authorities must, under section 11(2) of the Bill, when preparing the transitions plan, in having regard to the views of the child or young person with a disability, take account of the child's age and maturity.

42. Section 11(3) of the Bill states that, where any child or young person lacks capacity to express a view, or to make a decision, for the purposes of preparing a transitions plan under section 7(1), a local authority must, in so far as it is reasonably practicable, ascertain and have regard to the views of the child's or young person's parents, legally appointed guardian or other carers.

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43. Section 11(4) states that the local authority must, in preparing a transitions plan under section 7(1), have regard to the importance of communicating in an inclusive way.

44. Section 11(5) provides the following definition: “communicating in an inclusive way” means communicating in a way that ensures disabled children and young people who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual’s needs”. This definition of “communicating in an inclusive way” is consistent with the definitions used in the Social Security (Scotland) Act 2018, in the Consumer (Scotland) Act 2020 and in the Coronavirus (Scotland) (No.2) Act 2020.

Section 12: Management of a transitions plan

45. Section 12 of the Bill places statutory duties on local authorities in relation to the management of a transitions plan. Section 12(1) of the Bill requires a local authority, which has prepared and agreed a transitions plan for a child or young person under section 7(1), to appoint an officer of the local authority to manage and co-ordinate the transition plan.

46. Subject to subsection 12(6)(c), section 12(2) of the Bill places a duty on the local authority to keep the transitions plan under review. The local authority must, under section 12(2) keep under review whether or not:

- (a) the needs outlined in the transitions plan are still accurate;
- (b) the disabled child or young person is receiving the care and support necessary to meet their needs;
- (c) the outcomes of the transitions plan have been achieved, or will be achieved; and
- (d) the management of the transitions plan should transfer to another local authority.

47. The reviews under section 12(2) could identify different reasons for a transitions plan being transferred. One potential reason could be if the child or young person moves to another local authority once the transitions plan has been agreed. The review, might in these circumstances, reach the conclusion that it would be in the child’s or young person’s best interests to transfer the transitions plan to the new local authority in which the child or young person will be living.

48. Section 12(3) specifies those who must be consulted by the local authority as part of the process of reviewing a transitions plan, including children and young people. Section 12(3)(e) gives the Scottish Ministers the power to add by regulations to the list of those who must be consulted.

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49. Section 12(4) provides that the local authority must, in having regard to the views of the child or young person as part of a review under section 12(1), take into account the child's or young person's age and maturity.

50. Section 12(5) states that where any child or young person lacks capacity to express a view, or to make a decision, for the purposes of reviewing a transitions plan under section 12(1), a local authority must consult the views of the child's or young person's parents, legally appointed guardian or other carers

51. Section 12(6) specifies the actions which the local authority can take in consequence of a review of a transitions plan. These include amending the transitions plan to revise the needs of the child or young person, to revise the care and support to address these needs and to revise the outcomes which the plan is intended to achieve. The local authority could also, in consequence of a review, transfer the management of the plan to another relevant authority, or end the plan.

52. Section 12(7) enables the Scottish Ministers to make provision by regulations about the management of transitions plans. This includes when and how a transitions plan is to be reviewed, which local authority is to manage the plan, when and to whom the management of a transitions plan is to, or may, transfer and the keeping, disclosure and destruction of a child's or young person's transitions plan.

Section 13: Dispute resolution

53. The Scottish Ministers are given powers under section 13(1) of the Bill to introduce, by regulations, provisions about dispute resolution under the legislation. These regulations would set out the processes and procedures for resolving disputes relating to transitions plans between local authorities and such other bodies or persons as may be prescribed by regulations under section 13(2), and disabled children and young people, or their parents, legally appointed guardian or other carers. The disputes would include, for example, those relating to the preparation of, contents of, or the management or delivery of a transitions plan.

54. Section 13(3) provides that the Scottish Ministers must, before introducing regulations under section 13(1) making provision about the resolution of disputes relating to transitions plans, consult representatives of the interests of persons likely to be affected by these regulations, and consult such other persons as they consider appropriate.

55. Section 13(3) provides that the Scottish Ministers must, before introducing regulations under section 13(2), consult representatives of the interests of persons likely to be affected by these regulations, and consult such other persons as they consider appropriate. Regulations introduced under section 13(2) make provisions about the bodies and persons, in addition to local authorities, to whom the regulations in section 13(1) shall apply in resolving disputes relating to transitions plans.

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Section 14: Guidance

56. Section 14(1) of the Bill gives the Scottish Ministers the power to issue guidance to local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and to such other bodies as may be prescribed by regulations, about their duties under Part 2 of the Bill.

57. Section 14(2) states that guidance introduced under section 14(1) may include, in particular about the arrangements for the preparation and introduction of a transitions plan, the delivery of a transitions plan, the contents of a transitions plan, the management of a transitions plan, and any other matters relevant to a transitions plan.

58. Section 14(3) provides that the Scottish Ministers must, before introducing regulations under section 14(1) about additional bodies to which guidance may be issued, consult representatives of the interests of the persons likely to be affected by these regulations, and consult such other persons as they consider appropriate.

59. Section 14(4) provides that local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and such other bodies as may be prescribed by regulations, must have regard to any guidance issued to them under this section.

60. Section 14(5) places a duty on the Scottish Ministers, before issuing or varying guidance under this section, to consult such persons as they consider appropriate.

61. Section 14(6) places a duty on the Scottish Ministers to publish any guidance issued under this section.

62. Section 14(7) of the Bill provides that the Scottish Ministers may at any time vary or revoke any guidance issued under this section.

Section 15: Directions

63. The legislation gives the Scottish Ministers the powers, under section 15(1), to give directions to local authorities, Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and to such other bodies as may be prescribed by regulations, about transitions plans under the legislation.

64. Section 15(2) provides that the Scottish Ministers must, before introducing regulations under section 15(1) about additional bodies to which directions may be given, consult representatives of the interests of the persons likely to be affected by these regulations, and consult such other persons as they consider appropriate.

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65. Section 15(3) provides that these directions may 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 this legislation.

66. Section 15(4) states that those given directions under section 15(1) must comply with the directions.

67. Section 15(5) provides that directions must be in writing, and must be published. Section 15(5)(c) provides that the direction must set out the Scottish Ministers' reasons for making the direction.

68. Section 15(6) provides that the Scottish Ministers may vary or revoke a direction by introducing a subsequent direction under section 15(1).

69. Section 15(7) states that section 15(4) applies to the revision or revocation of a direction under section 15(1) as it applies to such a direction.

Section 16: Annual report

70. The Scottish Ministers have a duty under section 16(1) of the Bill to publish an annual report on the progress made by the National Transitions Strategy, and by the transitions plans, in improving transitions for children and young people with a disability in that year. This duty also requires the Scottish Ministers to lay the annual report before the Scottish Parliament, and to make the report publicly available.

71. Section 16(2) specifies the information which must be included in the annual report.

72. Section 16(3) requires the Scottish Ministers to ensure that the first annual report published under section 16(1) must include a plan setting out their intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are insufficient for the preparation of the annual report.

Section 17: Ancillary provisions

73. Section 17 provides the Scottish Ministers with powers to make any ancillary provisions which are appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it. The ancillary provisions could include, for example, consequential amendments and transitional arrangements. The Scottish Ministers may, for example, wish to use these powers to make provision for transitions plans for those disabled children and young people who are already 16 when the Bill receives Royal Assent, and have been diagnosed by the age of 16 as being disabled.

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Section 18: Subordinate legislation

74. Section 18(1) of the Bill provides that regulations made by the Scottish Ministers under sections 4(2)(g), 7(4), 8, 13, 14(1) and 15(1) of the Bill shall be subject to the affirmative procedure.

75. Section 18(2) of the Bill provides that all other regulations made under this legislation shall be subject to the negative procedure.

Section 19: Interpretation

76. Certain technical terms used in the Bill are defined in section 19 of the Bill.

Section 20: Commencement

77. Section 20 of the Bill provides that it will come into force the day after Royal Assent.

Section 21: Short title

78. Section 21 provides that the Bill, once enacted, will be referred to as the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Act 2022.

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