



SPICe Briefing

Pàipear-ullachaidh SPICe

Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill (Session 6)

Ned Sharratt

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

Contents

Summary	3
Transitions of Young People With Service and Care Needs Between Child and Adult Services in Scotland	5
Current policy	7
Legislation	7
Policy	8
Recent policy reviews and developments	11
The Bill	13
Part 1: National Transitions Strategy	13
Timescales, review, consultation and parliamentary oversight	14
Minister with special responsibility	14
Part 2: Transitions Plans	15
Definitions and identification	15
Content of a plan	17
Implementation of a plan	17
Previous Consultations	19
Consultation on the proposed Bill	19
Session 5 Education and Skills Committee call for views	20
Data on Disabled Young People	22
2011 Census	22
Education	23
Employment	26
Social Security	26
Financial Memorandum	28
Bibliography	30

Summary

The Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill ('the Bill') is a Member's Bill, introduced by Pam Duncan-Glancy MSP. This is very similar to a Bill of the same name introduced by Johann Lamont MSP in the previous session of Parliament. Updates have been made to the Bill's accompanying documents.

A SPICe briefing was published on Johann Lamont's Bill. This is an updated version of that briefing.

The Policy Memorandum accompanying the Bill sets out that the policy objectives of the Bill. It says that the "aim of the Bill is to improve outcomes for disabled children and young people in the transition to adulthood" (para 4).

Broadly speaking the Bill seeks to achieve this by providing for the following two mechanisms:

- a National Transitions Strategy
- a transitions plan for each disabled child or young person.

These are provided for in Parts 1 and 2 of the Bill respectively. Part 1 of the Bill also provides for a Minister of the Scottish Government to be given "special responsibility" in relation to the functions within the Bill.

Issues with supporting disabled children and young people through the transition from children's to adult services and the workplace are well-documented. The submission by the Children and Young People's Commissioner Scotland to the Education and Skills Committee in 2021 stated:

“ Young people often report experiencing abrupt loss of support at the point they leave school or formal education, a concern which has been raised with our office by young people and their parents ... The fragmentation of current planning processes negatively impacts disabled children's rights.”

Children and Young People's Commissioner Scotland, 2021¹

This is an area of active policy work, for example through the work of the [Scottish Transitions Forum](#). The contention of Pam Duncan-Glancy MSP is that this policy development will not achieve better outcomes without clearer statutory duties.

This briefing is in six parts:

- highlighting the main findings of a SPICe briefing on this topic published in 2019
- the current legislative and policy framework
- proposals in the Bill
- themes that arose during consultations on the Bill and consideration of Johann Lamont's Bill in 2021
- data on disabled children and young people

- commentary on the Financial Memorandum.

Transitions of Young People With Service and Care Needs Between Child and Adult Services in Scotland

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

The briefing analysed a number of policy and research documents examining transitions. It looked at transitions from a broader viewpoint than the Bill. For example, the briefing examined evidence of the experiences of looked after children. Some of the findings of that briefing are set out below. This 2019 briefing provides very useful context on the challenges that the Bill is seeking to address.

Adolescence and young adulthood is a time of vast physiological, psychological, social and contextual changes. Young people with service and care needs during this period need to move from child to adult systems and those with complex needs may have to repeat this move across multiple services. This process is referred to as "transitions."

Transitions are not synonymous with the transfer between child and adult services. Transitions have been defined as an ongoing process of psychological, social and educational adaptation, which occurs over time, due to changes in context, interpersonal relationships and identity. This process can be both exciting and worrying and requires ongoing support.²

Evidence explored in the 2019 briefing suggested that this can be a difficult process for young people and their families and that barriers to successful transitions include:

- lack of support from adult services
- poor co-ordination between services
- inadequate planning and confusion around who is responsible for planning
- lack of information on available options
- young people's voices not being heard.

Furthermore, support for transitions seems to vary considerably among local areas.

Policy reviews and research studies offer various recommendations to improve the transition process for young people. Recurring themes include the following:

- co-ordination and collaboration between services
- person-centred focus, involving the young person and their parents in decision making
- starting the transitions planning process early
- young people and their parents having a single point of contact
- increased information about available options

- more support for families
- dedicated transitions staff
- appropriate training for staff.

Policies and legislation in the areas of education, health and social care reflect the above recommendations to some extent. However, the 2019 briefing found evidence that gaps remain between policy and practice in transitions between child and adult services, and that transitions and the planning for young people who require and will require support going into adulthood could be improved.

Current policy

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

This is an active area of policy, with relevant legislation governing aspects of support for disabled children and young people. Pam Duncan-Glancy's view is that the well-evidenced and long-standing gap between policy and practice "highlights the need for a statutory approach to address these gaps and to improve outcomes for disabled children and young people in the transition to adulthood."³

Legislation

There are a number of pieces of legislation that are relevant to public bodies' support of individuals' transitions from child to adult services. A range of duties under legislation, as well as relevant policies, are set out in the Principles of Good Transitions 3 ("PGT3").⁴ PGT3 (2nd ed.) was published in March 2019 and was compiled on behalf of the [Scottish Transitions Forum](#) by [ARC Scotland](#).

Some relevant Acts and associated guidance are set out below.

- **Equality Act 2010** . This is an Act of the UK Parliament. PGT3 notes particularly the Public Sector Equality Duty under this Act and the need to make reasonable adjustments for those with a protected characteristic, including disabled people. The [Equality and Human Rights Commission has produced guidance on the Public Sector Equality Duty for Scottish public bodies](#). These duties apply across the public sector and includes all schools, which, for example, must ensure (with some exceptions) that policies and the way in which the curriculum is delivered do not discriminate against a pupil with a protected characteristic.
- **Social Care (Self-Directed Support) Act 2013** . This Act seeks to ensure adults and children (including carers and young carers) are given more choice and control over how their social care needs are met. It also places a duty on local authorities to have regard to the general principles of *involvement*, *informed choice*, and *collaboration* when carrying out their social welfare responsibilities to both adults and children. This includes assessing the needs of disabled children under [section 23 of the Children \(Scotland\) Act 1995](#).
- **The Education (Additional Support for Learning) Scotland Act 2004** . This Act created duties on education authorities (local authorities) to identify and meet additional support needs ("ASN") required for children and young people to access school education. The definition of ASN is very broad. This Act also provides that if a child for whose school education the education authority is responsible has complex needs which require the support of another public service (e.g. social work or health service), then a Co-ordinated Support Plan must be prepared. Section 12 of this Act provides for duties on the education authority to engage with any such agency or agencies as the authority think appropriate 12 months prior to the young person with additional support needs finishing school education.

PGT3 noted that the National Institute for Clinical Excellence has produced [guidelines on the transition from children's to adults' services for young people using health or social](#)

[care services \(NG43\)](#). PGT3 also noted that transitions planning should take place within the wider Getting It Right for Every Child ("GIRFEC") approach and through non-statutory plans, such as a Child's Plan.

Social work more broadly is underpinned by a number of pieces of legislation. The Social Work (Scotland) Act 1968 laid the groundwork for current social work services, placing the responsibility for these services with local authorities. The Children (Scotland) Act 1995 provides for powers and duties on local authorities to promote children's welfare. The 1995 Act also provides that local authorities support the welfare of children in need and, in particular, support disabled children. As noted above, there is also a duty for the local authority to assess the needs of a child "attributable to his [or her] disability" when requested to do so by the child's parent or guardian. [A separate SPICe briefing on social work includes a more detailed list](#) of the legislation relating to social work.

Policy

The Bill's long title defines transition as the progression of a child into adulthood.

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

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

ARC Scotland, 2020⁵

Scottish Transitions Forum

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

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

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

- *Principle 6:* Families need support.
- *Principle 7:* A continued focus on transitions across Scotland.

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

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

Scottish Transitions Forum, 2019⁶

Following on from this work, ARC Scotland is leading the development and roll-out of [Principles Into Practice](#). Principles into Practice is a national framework which aims to provide "practical guidance and evaluation measures to improve the planning and delivery of support for young people (14-25) who require additional support as they make the transition to young adult life." Currently the framework is in draft and is being trialled in a number of local authorities over a period of two years. This pilot is expected to finish shortly and is intended to be implemented across Scotland in 2023. ⁷

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

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

National Transitions Strategy

A key development since the consideration of the Bill in 2021 has been a commitment of the Scottish Government to developing a National Transitions to Adulthood Strategy. The Programme for Government 2021-22 stated:

“ We will also begin work on a new National Transitions to Adulthood Strategy to support disabled young people as they make the transition to adult life, and provide them and those who look after them with joined-up guidance and support to unlock better educational and employment opportunities and health outcomes.”

Scottish Government, 2021⁸

Youth employment

The Scottish Government's Young Person's Guarantee is intended to provide every young person who wants it the opportunity of a job, place in education or training, or formal volunteering. In July 2022, the Scottish Government reported that "more than 16,000 young people across Scotland have been offered workplace opportunities through the Young Person's Guarantee".⁹

A progress report published in July 2021 stated that the investment to support the Guarantee will, among other things, create:

" 1,152 opportunities for disabled young people through expanded provision of Enable Works, to provide specialist support to disabled young people as they transition into the labour market."

Scottish Government, 2021¹⁰

Learning Disability, Autism and Neurodiversity Bill

The 2021 Programme for Government also committed to a Learning Disability, Autism and Neurodiversity Bill. It said:

" To uphold and protect the rights of people with autism or learning/intellectual disabilities, we will take forward a Learning Disability, Autism and Neurodiversity Bill, with scoping work carried out in 2021-22. We will also provide an independent advocate for people to secure the protections of such a law, through a Learning Disabilities, Autism and Neurodiversity Commissioner."

Scottish Government, 2021⁸

National Care Service (Scotland) Bill

The National Care Service (Scotland) Bill provides for a power to include children's services within the National Care Service (NCS).

The Government has not decided whether it intends to include children's services in the NCS. The Policy Memorandum for that Bill argues that doing so would be an opportunity to "improve transitions between children's and adult services."¹¹

Proposed Disability Commissioner (Scotland) Bill

Jeremy Balfour MSP lodged a final proposal for a Disability Commissioner (Scotland) Bill on 6 December 2022. The intention is that the commissioner would "promote and safeguard the rights of all disabled people, advocate on behalf of disabled people at a national level and if necessary carry out investigations on specific devolved cases, both general and individual, to ensure the rights of disabled people are respected and upheld".¹²

United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC sets out specific rights that all children have to help fulfil their potential, including rights relating to health and education, leisure and play, fair and equal treatment, protection from exploitation and the right to be heard.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill aimed to incorporate the UNCRC into Scots law. However, the Supreme Court ruled that certain provisions were outwith the competence of the Scottish Parliament. The Scottish

Government is "committed to the incorporation of the UNCRC to the maximum extent possible and will bring the Bill back to Parliament via Reconsideration Stage as soon as practicable".¹³

Regardless of the incorporation of the convention, the UNCRC is considered to underpin policy and practice in this area.

United Nations Convention on the Rights of Persons with Disabilities

The [United Nations Convention on the Rights of Persons with Disabilities](#) (UN CRPD) was adopted by the UN General Assembly in December 2006.

[The UK ratified the Convention in 2009](#) and this committed the UK to protect and promote the human rights of disabled people, including:

- eliminating disability discrimination
- enabling disabled people to live independently in the community
- ensuring an inclusive education system
- ensuring disabled people are protected from all forms of exploitation, violence and abuse.

Recent policy reviews and developments

Morgan Review of Additional Support Needs

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

In response to this report, the Scottish Government published an [Additional Support for Learning: Action Plan](#) on 21 October 2020.

Short Life Working Group on Co-ordinated Support Plans

Co-ordinated Support Plans (CSPs) are statutory plans education authorities must put in place if a child has additional support needs arising from one or more complex factors or multiple factors which are likely to continue for more than a year and require significant additional support from the education authority as well as another service (e.g. social work or the health service).

Duties to put in place CSPs apply when the education authority is responsible for the school education of the child. A CSP must include a statement of why additional support is required, the intended educational outcomes, how the individual's needs will be met to achieve these outcomes, and who will be responsible for meeting the identified needs. In 2021, around 0.6% of children with identified additional support needs had a CSP. Around

2% of pupils who had additional support needs and received some support from either (or both) social work or the health service had a CSP. ¹⁴

Following the Morgan review, the Scottish Government convened a short-life working group (SLWG) to examine how CSPs were operating. This included consideration of the "planning mechanisms within a whole life perspective for children and young people with lifelong conditions including transitions between and beyond education settings."

The [SLWG reported in November 2021](#). It made recommendations that there should be better and more consistent understanding of when CSPs are required, more time and resources should be made available to develop more relational approaches, and the planning process should be streamlined to avoid duplication.

Reviews and guidance relating to Self-directed Support

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

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

Scottish Government, 2021¹⁵

Social Work Scotland's [Self-directed Support Project](#) has developed a [National Self-directed Support Framework](#) intending to reduce the inconsistency of the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013. This included a section on transitions with the intention that "people are given the help and support they need to plan for, and adjust to, new phases of their lives". ¹⁶

New [statutory guidance on the 2013 Act was issued in November 2022](#). This stated:

" The intended goal of the 2013 Act is to shift the balance of power from people who provide services towards those who access them. This will ensure a full and collaborative exploration of all SDS options, which does not start from the basis of available funding or services. Supported people may have a range of identified needs which can be met in a variety of ways, including attending college, going to work, participating in leisure pursuits or taking short breaks."

Scottish Government, 2022¹⁷

The Bill

The Bill is in two substantial parts.

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

Part 1 would also require the Scottish Ministers to assign a Minister to carry out the functions contained in the Bill.

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

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

Part 1: National Transitions Strategy

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

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

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

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

The National Transitions Strategy is a key aspect of Pam Duncan Glancy's approach to improving outcomes for disabled children and young people. The Policy Memorandum stated:

“ 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.”

Scottish Parliament, 2022¹⁸

One of the critiques of the approach of Part 2 of the Bill has been that planning in itself will not create the opportunities and support required for disabled young people to flourish. The NTS could potentially be a policy vehicle that improves those opportunities and support.

Timescales, review, consultation and parliamentary oversight

The Bill provides for the first NTS to be published and laid before Parliament within a year of Royal Assent (see both sections 1 and 3). Thereafter the Scottish Government would be required to review the NTS within three years from the first NTS being published and then every three years.

The Bill provides for statutory consultees during the preparation of the initial NTS and during the triennial reviews. Following a review, the Scottish Government must prepare, publish and lay a report on the review process in Parliament. Ministers may choose to revise the NTS following a review. Ministers would also be required to make a statement in Parliament.

Section 4 provides for duties for certain public bodies to comply with the content of the NTS, but those duties are not subject to approval under any parliamentary process. The NTS could therefore be a de facto Direction - that is, through the publication of the NTS, the Government could create legal duties on a range of bodies, including local authorities and Higher Education Institutions.

Section 16 would require Ministers to lay an annual report on progress of the aims of the NTS.

Minister with special responsibility

One of the challenges for transitions is that it, as a policy issue, it crosses many policy boundaries. In the current Session, questions in Parliament on transitions are answered by a number of Ministers depending on the specific subject matter.

Section 6 provides that special responsibility be assigned to to a minister to carry out the functions contained in the Bill.

The Policy Memorandum describes this as "vital ... to deliver major improvements in the outcomes achieved by disabled children and young people".¹⁹ The intention is to increase and maintain policy attention on transitions and successful delivery of the policy.

On one level, the suggestion is non-controversial. Any strategy normally comes under the auspices of a single (sometimes more than one) Minister or Cabinet Secretary. However, it may be read as directing the Government on its distribution of ministerial responsibilities. The Scottish Government's submission to the Education, Children and Young People Committee argued that this section is beyond the legislative competence of the Scottish Parliament. It said:

“ The power to appoint members of the Scottish Government and junior ministers is vested in the First Minister alone in terms of sections 47(1) and 49(1) of the Scotland Act 1998. Moreover, paragraph 4(1) of schedule 4 of the Scotland Act 1998 states that an “Act of the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, this Act”, and sections 47(1) and 49(1) are not included in the exempt provisions listed in paragraph 4(2) of that schedule. In addition, section 6 of the Bill appears to modify the operation of section 52(3) of the 1998 Act, according to which “statutory functions of the Scottish Ministers shall be exercisable by any member of the Scottish Government”. Assuming the general principles of the Bill are agreed by the Parliament at Stage 1, these issues will need to be addressed through amendment of the Bill.”

Scottish Government, 2022²⁰

The Presiding Officer's view is that the provisions of the Bill would be within the competence of the Scottish Parliament.²¹ Whether a Bill is competent or not is ultimately a matter for the courts to determine.

Part 2: Transitions Plans

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

The intention is that the local authority will be the body responsible for developing, reviewing and delivering the plan.

Definitions and identification

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

One key issue for the Parliament will be to determine who the Bill is intended to cover and how to ensure that those individuals will be able to receive the support intended. The breadth of the definition will also be a key driver of the costs of the policy.

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

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

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

in 2011. This stated:

“ The definition of disability for the purposes of the Act is a legal definition and it is only adjudicating bodies which can determine whether a person meets that definition. However, the guidance is also likely to be of value to a range of people and organisations as an explanation of how the definition operates. In the vast majority of cases there is unlikely to be any doubt whether or not a person has or has had a disability, but this guidance should prove helpful in cases where the matter is not entirely clear.”

Equality Act 2010 Guidance, Guidance on matters to be taken into account in determining questions relating to the definition of disability, 2011²²

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

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

Equality Act 2010 Guidance, Guidance on matters to be taken into account in determining questions relating to the definition of disability, 2011²²

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

The [WHO's World Report on Disability 2011](#) described the concept of disability as complex and contested. It discussed the conceptual move from a "medical model" to a "social model". The medical model focuses on the impairments as the limitations the individual faces related to any conditions they may have. The social model focuses on the barriers created by society, such as lack of access to buildings, transport and communication, and negative attitudes towards disabled people.

The [preamble to the United Nations Convention on the Rights of Persons with Disabilities](#) states that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".

The Bill does not seek to make provision for local authorities to identify disabled children and young people. Under the Education (Additional Support for Learning) (Scotland) Act 2004, there is a duty to identify all pupils, for whose education the local authority is responsible, who have additional support needs in relation to education. The concept of an additional support need is not the same as a disability, however, and pupils do not require a formal diagnosis before being provided with support for a range of conditions. An additional support need might not be either substantial nor long-lasting. It is not obvious that a local authority would routinely identify all of the children and young people falling under the definition of the 2010 Act for whose education they are responsible, particularly

in cases where the matter is not entirely clear.

How a local authority would identify disabled pupils that live in their area and attend mainstream independent schools or otherwise have little contact with the local authority is also not addressed in the Bill. Under the Bill, local authorities would be required to raise awareness of the transitions planning process in their areas, and this would suggest a more demand-led approach to plans is envisaged in certain circumstances.

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

In the consultation on the draft proposed Bill, the accompanying documents, and in section 7(6)(b) of the Bill, this duty is framed as a right for the child or young person. The Bill as currently drafted does not provide for a disabled child or young person, or their family, **not** to have a transitions plan prepared.

Content of a plan

Section 10 of the Bill provides for the content of the plan to include both a "statement of needs" and "details of the care and support which shall be put in place to address these needs".

One of the criticisms of the plans is that Section 10 has a focus on needs, rather than outcomes (i.e. what the child or young person wants to do/achieve.) Outcomes are referenced in Section 12 which is concerned with the ongoing management and review of the plans. Section 12(2) would require local authorities to keep under review the needs of the individual, the support to meet these needs and whether the outcomes of the transitions plan are being achieved.

During both the initial preparation of a plan and the review process, the Bill provides that the local authority must consult with the child or young person, their parent/carers and potentially others. In doing so the local authority must have regard to the importance of communicating in an inclusive way.

Implementation of a plan

Under section 7, local authorities are expected to implement transitions plans. Further, section 9 says:

“ A local authority must ensure each disabled child or young person within the local authority area receives the care and support necessary to meet the needs identified in the child’s or young person’s transitions plan.”

Exactly what this would mean in practice is unclear, particularly if the plan relies on, for example, a college or specialist medical support to support the young person to achieve

their goals. The Financial Memorandum envisages on average around 1 hour after every meeting in relation to Transition Plans would be required for follow-up action.

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

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

The Bill would require local authorities to keep individual's transition plans under review. The Bill provides that Ministers may make regulations on how and when reviews take place, but the Financial Memorandum envisages between two and four meetings each year. As noted in a previous section the review would examine the needs of the individual, the support to meet these needs and whether the outcomes of the transitions plan are being achieved. The review could result in the plan being amended, transfer management of the plan to another "relevant authority", or ended.

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

Previous Consultations

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

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

No attempt is made in this briefing to undertake or report on quantitative analysis of these consultations. The approach here is to provide an overview of the some of the main issues raised.

However, Pam Duncan-Glancy MSP has included a quantitative analysis of both consultations in her policy memorandum, see paragraphs 81 and 93.

Consultation on the proposed Bill

The Member's consultation on the proposed Bill received 91 responses in total, of which 86 were published²³. An analysis of the consultation responses was produced by a team of academics from the University of Dundee.²⁴

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

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

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

Broadly speaking the analysis of the responses reported that there was support for the Bill, albeit the analysis noted "it is difficult to comment on who and how many supported the Bill unequivocally."²⁴

The analysis summarised:

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

And:

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

Proposed Disabled Children and Young People (Transitions) (Scotland) Bill – Johann Lamont MSP, Summary of Consultation Responses, 2020²⁴

Session 5 Education and Skills Committee call for views

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

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

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

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

The aim of the Bill, to "improve outcomes for disabled children and young people in the transition to adulthood" ²⁵, was broadly supported in responses to the Committee's call for views. The intention that there are good planning processes for disabled children's transitions to adulthood was also not contentious.

There were more diverse views on whether legislation is required to meet this aim. Many of those that considered legislation necessary argued that non-legislative approaches don't support consistent approaches to transitions planning. Views were expressed that

statutory duties would provide such consistency and allow the realisation of young people's rights. Some held the view that local authorities would not act unless impelled to do so, others that legislation would provide impetus to achieve better outcomes through the transitions processes. A small number of respondents noted that there is already legislation and non-legislative policy development taking place, e.g. pilots under the [Principles into Practice framework](#). Some respondents argued that the proposals could impede progress being made.

The development of a National Strategy for Transitions was well-supported in the responses the Committee received. Although some were concerned that it should not detract from existing national strategic work in this area, such as the roll-out of [Principles Into Practice](#).

Data on Disabled Young People

The Financial Memorandum quotes data from the 2011 census to base estimates of how many young people the duties to plan under Part 2 would cover. This section looks at that data and other data around children and young people with a disability.

2011 Census

The 2011 Census collected data on long-term health problem or disabilities. It asked whether individuals' "day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months" and gave options of "Yes, limited a lot", "Yes, limited a little" and "No". The Financial Memorandum, combines data for the two "yes" responses.

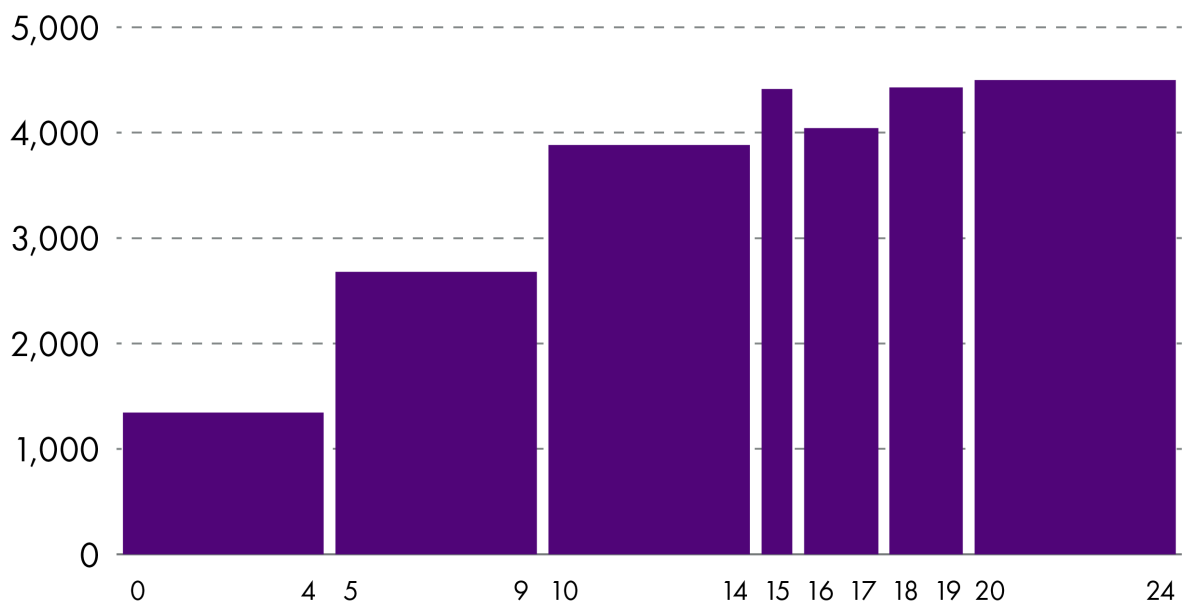
Long term health conditions are more likely to become apparent or begin in older children.

Table 1: Census 2011: Long-term health problem or disability by age

Age	All people	Day-to-day activities limited a lot	Day-to-day activities limited a little	Total
0 to 4	292,821	2,702	4,016	6,718
5 to 9	269,617	4,838	8,557	13,395
10 to 14	291,615	6,498	12,918	19,416
15	62,278	1,446	2,968	4,414
16 to 17	126,266	2,764	5,321	8,085
18 to 19	142,282	3,041	5,816	8,857
20 to 24	363,940	7,716	14,777	22,493

National Records of Scotland, 2011²⁶

The Census provides data across age ranges of differing sizes. For ease of reference, the chart below shows the average per year across these ranges.

Figure 1: Census 2011: Long-term health problem or disability by age

National Records of Scotland, 2011²⁶

Education

Pupil Census

Grant-aided schools and local authorities report data on the characteristics of pupils in their schools annually in the Pupil Census. This includes data on pupils who have been assessed as disabled by a professional and those who have been declared (but not assessed) as disabled by their parents/carers or by the pupil themselves.

In 2021, local authorities and grant-aided schools recorded 16,001 pupils as having been assessed as having a disability. A further 3,104 had been declared as having a disability, but not assessed as such.

Of the total 19,105 pupils declared or assessed as disabled, 5,544 were attending a primary school, 8,876 were in a secondary school, and 4,685 in a special school. Special schools cover all school ages; nationally around 45% of pupils in special schools are of primary school age and around 55% are secondary school age.ⁱ

The table below breaks down the number of pupils assessed or declared as disabled by local authority.

ⁱ These are estimates based on the 2021 pupil census, table 4.3.

Table 2: Number of pupils declared or assessed as having a disability, 2021

	Assessed as having a disability	Declared as having a disability	Percentage of all pupils Assessed or Declared
Aberdeen City	443	92	2.2
Aberdeenshire	715	69	2.1
Angus	221	39	1.7
Argyll and Bute	591	124	7.1
City of Edinburgh	2,051	196	4.3
Clackmannanshire	78	14	1.4
Dumfries and Galloway	455	246	3.7
Dundee City	1,185	196	7.5
East Ayrshire	319	21	2.1
East Dunbartonshire	286	43	1.9
East Lothian	150	33	1.2
East Renfrewshire	187	29	1.2
Falkirk	237	52	1.3
Fife	1,125	246	2.7
Glasgow City	2,137	191	3.3
Highland	985	111	3.6
Inverclyde	346	82	4.4
Midlothian	322	34	2.6
Moray	453	105	4.6
Na h-Eileanan Siar	21	-	0.6
North Ayrshire	175	114	1.6
North Lanarkshire	282	228	1.0
Orkney Islands	60	7	2.4
Perth and Kinross	171	55	1.2
Renfrewshire	165	73	1.0
Scottish Borders	113	28	1.0
Shetland Islands	48	8	1.7
South Ayrshire	1,218	385	11.2
South Lanarkshire	412	181	1.3
Stirling	315	25	2.7
West Dunbartonshire	361	20	3.1
West Lothian	281	57	1.2
Grant aided	93	0	8.0
Scotland	16,001	3,104	2.7

Scottish Government, 2022²⁷

This data indicates that the proportion of pupils assessed or declared as having a disability varies widely among local authorities. South Ayrshire identified 11.2% of their pupils as having a disability, whereas Na h-Eileanan Siar has identified 0.6%; the range across local authorities is therefore 10.6 percentage points. It is not clear why there is such a wide disparity between local authorities in this data. It could be due to a number of factors including identification and recording practices.

Positive Destinations

The Scottish Government also collects data on the destinations of school leavers. Data on the follow-up destinations for pupils that left school in 2021 looked at the activity of individuals in April 2022 and was [published in June 2022](#). The supplementary tables report that 89.2% of pupils who were assessed or declared having a disability were in a positive destination compared to those 93.4% of pupils who were not.

Positive destinations includes a range of activities the young person can be engaged with. There is a difference between the distribution across the types of positive destinations for school-leavers assessed or declared having a disability compared to those who were not.

Table 3: Types of positive destinations of school-leavers by whether they were assessed or declared having a disability

	Declared or Assessed Disabled (%)	Not Declared or Assessed Disabled (%)
Higher Education	21.8	40.9
Further Education	33.8	17.8
Training	5.3	2.2
Employment	24.8	31.8
Voluntary Work	0.7	0.4
Personal Skills Development	2.8	0.3
All Positive Destinations	89.2	93.4

Scottish Government, 2022²⁸

Apprenticeships

The employment category in the table above includes apprenticeships. [Skills Development Scotland regularly publish statistics on Modern Apprenticeships](#), including the number of starts who have self-identified as having a disability. In Q2 of 2022/23, 14.7% of Modern Apprenticeship starts self-identified as having a disability.

University students

The [Higher Education Statistics Agency](#) reported that in 2020/21, 6,840 Scottish-domiciled students at Scottish universities in their first year of degree study (both part and full time) had a known disability, 17% of the total. This is up from 13% in 2016/17. A further 1,970 first year degree students at Scottish Universities from outside of Scotland had a known disability in 2020/21.

College Students

In 2020/21 there were 41,435 students with a disability undertaking college courses in Scotland. This was 14.9% of the total which is up from 13.5% in 2016/17. The table below breaks down the 2020/21 data of students with a disability by age, higher or further education, and part or full time. The percentages presented are students with a disability as a percentage of the total number of students in that category. To note: a school pupil can also undertake a college course.

Table 4: College students identified as having a disability

2020/21 Age Group	Full-time				Part-time				Total	
	FE		HE		FE		HE			
Under 16	85	27.1%	0	0.0%	2150	6.4%	0	0.0%	2235	6.5%
16-19	6410	28.5%	2185	16.0%	7475	18.5%	185	9.9%	16255	20.7%
20-24	2550	32.1%	1980	20.7%	3760	15.1%	340	9.8%	8630	18.9%
25 and over	2225	20.1%	1790	19.0%	9365	10.8%	935	7.8%	14315	12.0%
Total	11270	27.0%	5950	18.2%	22755	12.2%	1460	8.4%	41435	14.9%

Personal correspondence with the Scottish Funding Council

Employment

The [Scottish Government published labour market analysis looking at employment data for people with protected characteristics](#).

This showed that in 2021, the gap between the level of employment between disabled and non-disabled people (aged 16-64) was around 31 percentage points. With the exception of 2020, the trend has been a reduction in this gap; in 2014, it was around 38 percentage points. Over this period, the gap has been closed because of a trend of the employment rate of disabled people increasing.

The Scottish Government also provided data on this "employment rate gap" by sex and age group. Disabled men's employment rate gap was greater than women's. The employment rate gap for people aged 16-24 was lower than for all other age groups - 21 percentage points.

Social Security

In February 2022, 42,567 children in Scotland were in receipt of child Disability Living Allowance or the new Child Disability Payment. 50% of these children's "main disabling condition" was "Learning Difficulties".²⁹

Children here will mean, in the most part, under 16s. Recipients of the new Child Disability Payment may choose to continue to receive it up to 18 years, but it is a relatively recent devolved benefit. The transfer from child Disability Living Allowance to Child Disability Payment is due to complete in spring 2023.

The [Scottish Fiscal Commission has modelled](#) the caseload for Child Disability Payment/child Disability Living Allowance.

Table 5: Modelled Caseload for Child Disability Payment/child Disability Living Allowance

Payments, Thousand people receiving	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Child Disability Payment	56	61	65	69	72	75

Scotland's Economic and Fiscal Forecasts – December 2022 (Table S.5.3)

The increasing caseload is likely to be because of underlying demographics and Child

Disability Payment being more generous and continuing to 18.

The Office for Budget Responsibility's [2019 Welfare trends report](#) noted that surveys had found that the reported prevalence of disability had increased "among children, working-age adults and pensioners over the past four decades." The OBR stated that the "largest change, both proportionately and in absolute terms, has been among children, where it has roughly doubled since 1975 and has increased from 6 to 8 per cent over the past decade."

The OBR noted that measuring the prevalence of disability in a population is difficult and contingent. It said:

“ Measures of reported disability prevalence derived from surveys are often highly sensitive to the survey methodology on which they are based. So different surveys can yield different results. ... Even if survey measures were consistent within and across surveys, the decision to self-report “a longstanding illness/disability/impairment that causes difficulty with day-to-day-activities” (necessarily) is the product of: (i) actual incidence of longstanding conditions; (ii) awareness of ‘disability’; and (iii) the perceived effect of impairments in interfering with everyday life. Changes in awareness and/or the demands of everyday life could therefore lead to changes in self-reported prevalence with no accompanying change in the underlying rate of conditions.”

Office for Budget Responsibility, 2019³⁰

Financial Memorandum

The Financial Memorandum for the Bill has been updated since the corresponding Bill was introduced in Session 5.

The Financial Memorandum (FM) was prepared by Camphill Scotland and Inclusion Scotland on behalf of the Pam Duncan-Glancy MSP. The overall estimated costs are set out below. All these costs are expected to met by the Scottish Government.

Table 6: Estimated costs of the Bill

Item	Cost	One-off or ongoing
Preparing and implementing the National Transitions Strategy	£123,000	One-off
Reviewing the National Transitions Strategy every 3 years	£92,500 [£30,833 per year]	Every three years
Publishing the National Transitions Strategy	£2,000	One-off
Publishing copies of revised National Transitions strategies	£2,000	Every three years
Publishing copies of the report on the review of the National Transitions Strategy	£2,000	Every three years
Local authority costs of preparing, implementing and reviewing transitions plans	Approximately £893,372 in Year 1 rising gradually to £4,467,360 in Year 10	Annual

The FM does not include estimates of downstream costs arising from the Bill. For example, neither the costs of meeting any duties set out in the National Transitions Plan, nor the costs of meeting the needs and supporting disabled children and young people as part of the implementation of plans are covered in the above costs.

It is not clear how the FM reflects the duty on local authorities to "ensure each disabled child or young person within the local authority area receives the care and support necessary to meet the needs identified in the child's or young person's transitions plan" which is set out directly in the Bill at Section 9.

The FM also expects any plans developed while the pupil is in school to be met from existing resources by guidance or pastoral teaching staff. This assumes that there is headroom in the workload of those teachers, or that there are other tasks that would be replaced by the development of transition plans.

COSLA's submission to the current Committee's call for views focused on the FM. COSLA's submission indicated a cost of delivery estimate of over £9.5 million from the first year of implementation – significantly higher than the estimates in the FM.

Six submissions were received in response to the [Finance and Public Administration Committee's call for views on the Financial Memorandum](#). All of these were from individual local authorities. Themes from these submissions include questioning the modelling of salary costs and the number of transitions plans required annually.

The FM uses data from the 2011 census to estimate the number of school leavers for whom local authorities will have a duty to prepare and implement transitions plans. As the previous section of this paper sets out, there are a range of data which suggest different levels of individuals with disability among young people. The extent to which the Bill ought

to include individuals with a range of disabilities which may not be immediately visible but may meet the criteria of disability under the Equality Act 2010 will impact on the number of transition plans being prepared and implemented. The number of transition plans required each year would be a key driver for costs under the Bill.

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