

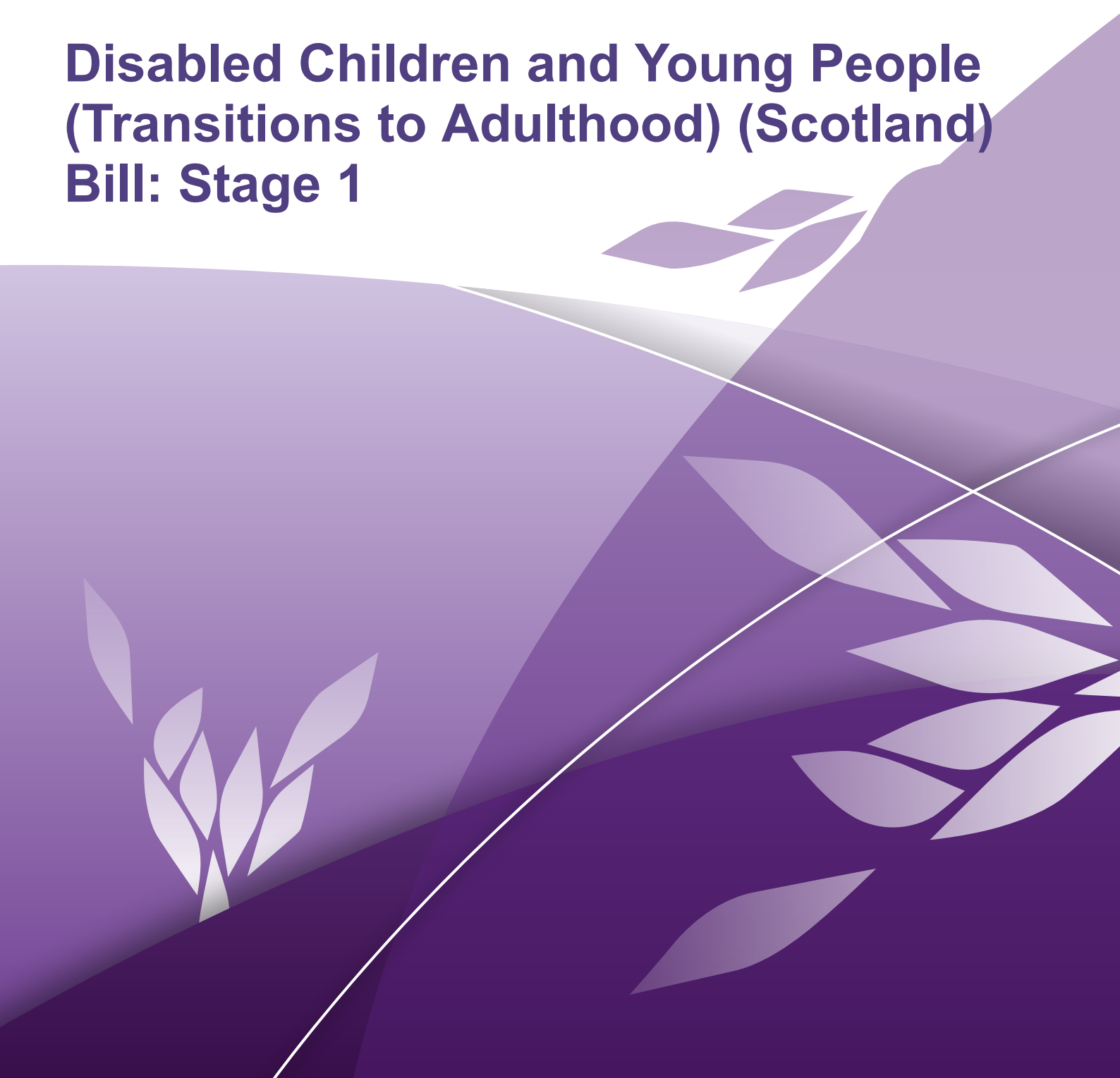


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill: Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 17 November 2020 and 26 January 2021, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill (“the Bill”) at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This Member's Bill was introduced by Johann Lamont MSP on 30 September 2020. The lead Committee is the Education and Skills Committee.
4. The stated purpose of the Bill is to improve outcomes for disabled children and young people in their transition to adulthood.
5. The Bill proposes to achieve this by:
 - requiring the First Minister to assign to a member of the Scottish Government, or a junior Scottish Minister, special responsibility for assisting children and young people with a disability in their transition to adulthood;
 - requiring the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for children and young people with a disability during their transition to adulthood; and
 - requiring local authorities to introduce transition plans to ensure each or young person with a disability receives appropriate care and support before, and during, their transition to adulthood.

Delegated Powers

6. The Bill confers several powers to make subordinate legislation on Scottish Ministers. The Member in Charge ("the Member") has prepared a Delegated Powers Memorandum which sets out the reasons for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.ⁱ
7. When the Committee considered the Bill on 17 November 2020, it agreed to write to the Member with regard to the delegated powers in sections **4(2)(e), 8, 13, 14 and 15** of the Bill.
8. The Committee considered the Member's response at its meeting on 26 January 2021.
9. A copy of all correspondence is included in the **Annex**.
10. The issues considered by the Committee in relation to these powers, together with its recommendations, are set out below.

Section 4(2)(e) – Duties to comply with National Transitions Strategy

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary Procedure: affirmative procedure

Provision

11. Section 4 places a duty on local authorities, NHS Health Boards, and Integration Joint Boards to comply with the National Transitions Strategy when they exercise functions under the Act. Section 4(2)(e) gives Scottish Ministers the power to prescribe additional persons who must comply with the National Transitions strategy when exercising their functions under the Act.

Committee consideration

12. The Committee asked the Member why it was necessary to take this power, as it was difficult to envisage which new/additional persons might be given functions under the Bill.
13. In her response, the Member explained that the Bill requires Scottish Ministers to:
 - prepare and consult on a strategy for improving transitions to adulthood for disabled children and young people ("the National Transitions Strategy");
 - review the National Transitions Strategy every 3 years; and
 - publish an annual report on the progress made in improving transitions to adulthood for disabled children and young people.

ⁱ The Delegated Powers Memorandum is available [here](#)

14. In discharging these duties, new information and/or issues may come to light. The Scottish Ministers may wish to respond by prescribing “other persons” who will require to comply with the National Transitions Strategy.
15. The Member gave examples of persons or bodies which Scottish Ministers might want to prescribe but explained that, as the picture will not become clear until Scottish Ministers start exercising their functions under the Act, this delegated power is required to give them the flexibility to respond appropriately to new developments.

Section 8 – Other Duties

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary Procedure: affirmative procedure

Provision

16. Section 8 gives Scottish Ministers power to make regulations to impose duties on local authorities, NHS Health Boards, Integration Joint Boards, and on such other persons as they consider appropriate in relation to a transitions plan.

Committee consideration

17. The Committee’s query here was similar to that regarding section 4; it questioned why it was necessary to take this power, as it was difficult to envisage which new/ additional persons might be given duties in relation to transitions plans, given that it is the local authority which is responsible for preparing and managing such plans.
18. Again, the Member explained that the Bill requires Scottish Ministers to:
 - prepare and consult on a strategy for improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”);
 - review the National Transitions Strategy every 3 years; and
 - publish an annual report on the progress made in improving transitions to adulthood for disabled children and young people.
19. In discharging these duties, new information and/or issues may come to light. Scottish Ministers may wish to respond by imposing new duties on local authorities, NHS Health Boards, Integration Joint Boards, and on such other persons as they consider appropriate in response.
20. The Member gave examples of persons or bodies which Scottish Ministers might want to prescribe but explained that, as the picture will not become clear until Scottish Ministers start exercising their functions under the Act, this delegated power is required to give them the flexibility to respond appropriately to new developments.

Section 13 – Dispute Resolution

Power conferred on: the Scottish Ministers

Power exercisable by: regulations Made by Scottish statutory instrument

Parliamentary Procedure: affirmative procedure

Provision

21. Section 13 allows Scottish Ministers to prescribe other bodies who will be subject to the dispute resolution procedure provided for in regulations under that section.

Committee consideration

22. The Committee asked why it was necessary for Scottish Ministers to be given a power to prescribe “other bodies or persons” who will be subject to the dispute resolution process, given that local authorities alone are responsible for preparing and managing transitions plans.
23. Again, the Member explained that the Bill requires Scottish Ministers to:
- prepare and consult on a strategy for improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”);
 - review the National Transitions Strategy every 3 years; and
 - publish an annual report on the progress made in improving transitions to adulthood for disabled children and young people.
24. The Member also explained that in discharging these duties, new information and/or issues may come to light. Scottish Ministers may wish to respond by prescribing other bodies which will be subject to the dispute resolution procedure provided for in regulations under section 13.
25. The Member gave examples of persons or bodies which Scottish Ministers might want to prescribe but explained that, as the picture will not become clear until Scottish Ministers start exercising their functions under the Act, this delegated power is required to give them the flexibility to respond appropriately to new developments.

Section 14 – Guidance

Power conferred on: the Scottish Ministers

Power exercisable by: regulations Made by Scottish Statutory Instrument

Parliamentary procedure: affirmative procedure

Provision

26. Section 14 allows Scottish Ministers to prescribe other bodies to whom they may issue guidance.

Committee consideration

27. The Committee asked why it was necessary for Scottish Ministers to be given a power to prescribe “other bodies or persons” to whom the Scottish Ministers can issue guidance, given that local authorities alone are responsible for preparing and

managing transitions plans.

28. Again, the Member explained that the Bill requires Scottish Ministers to:
- prepare and consult on a strategy for improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”);
 - review the National Transitions Strategy every 3 years; and
 - publish an annual report on the progress made in improving transitions to adulthood for disabled children and young people.
29. In discharging these duties, new information and/or issues may come to light. Scottish Ministers may wish to respond by prescribing other bodies to whom they may issue guidance; and which must have regard to guidance issued to them under section 14.
30. The Member gave examples of persons or bodies which Scottish Ministers might want to prescribe but explained that, as the picture will not become clear until Scottish Ministers start exercising their functions under the Act, this delegated power is required to give them the flexibility to respond appropriately to new developments.

Section 15 – Directions

Power Conferred On: The Scottish Ministers

Power Exercisable By: Regulations Made by Scottish statutory instrument

Parliamentary Procedure: Affirmative

31. Section 15 gives Scottish Ministers the power to issue directions to local authorities, NHS Health Boards, Integration Joint Boards and such other bodies as may be prescribed by regulations about transitions plans under the Bill. The second part of this power allows Scottish Ministers to prescribe “other bodies” to whom they can give such directions.

Committee consideration

32. Again, the Committee asked why it was necessary for Scottish Ministers to be given a power to prescribe “other bodies or persons” to whom the Scottish Ministers can issue directions about transitions plans, given that local authorities alone are responsible for preparing and managing transitions plans.
33. As in other sections, the Member explained that the Bill requires Scottish Ministers to:
- prepare and consult on a strategy for improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”);
 - review the National Transitions Strategy every 3 years; and
 - publish an annual report on the progress made in improving transitions to adulthood for disabled children and young people.

34. Again, the Member explained that in discharging these duties, new information and/or issues may come to light. Scottish Ministers may wish to respond by prescribing “other bodies” to whom they may issue directions on transitions plans under section 15.
35. The Member gave examples of persons or bodies which Scottish Ministers might want to prescribe but explained that, as the picture will not become clear until Scottish Ministers start exercising their functions under the Act, this delegated power is required to give them the flexibility to respond appropriately to new developments.
36. In concluding, the Member stated that she would be willing to bring forward amendments to sections **4(2)(e), 8, 13, 14 and 15** at Stage 2 to ensure that Scottish Ministers will consult stakeholders about adding statutory duties to new persons or bodies under the powers in these sections.

37. In light of the Member’s response, the Committee:

- **accepts the proposed powers in sections 4(2)(e), 8, 13, 14 and 15, in principle;**
- **is content that the exercise of those powers will be subject to the affirmative procedure; and**
- **welcomes the Member’s commitment to bring forward amendments to these powers so that Scottish Ministers require to consult any other persons or bodies they intend to prescribe before so prescribing them.**

Annex

Correspondence from the Delegated Powers and Law Reform Committee to Johann Lamont MSP

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on 17 November. The Committee noted that **sections 4(2)(e), 8, 13, 14 and 15** of the Bill all allow the Scottish Ministers to prescribe other bodies or persons who will become subject to the requirements in those sections. As it appears that the only parties likely to have an interest in transitions plans are local authorities and the children in question, the Committee would be grateful to know:

1. Why it is considered necessary to give Scottish Ministers powers to prescribe other persons or bodies under these sections?
2. Which additional persons or bodies (or categories or persons or bodies) the Member anticipates might be brought within the ambit of the Act?

Notwithstanding, the Committee would also be grateful to know:

3. Why a duty to consult any new persons or bodies before prescribing them has not been provided for on the face of the Bill?

I should be grateful if you would provide a response to the Delegated Powers and Law Reform Committee e-mail address at the head of this letter, by 5.00pm on Wednesday, 9 December 2020.

23 November 2020, Response from Johann Lamont MSP

1. Why it is considered necessary to give Scottish Ministers powers to prescribe other persons or bodies under these sections?

Section 4(2)(e)

The Scottish Ministers have a duty under Section 1 of the Disabled Children and Young People (Transitions to Adulthood) Bill to prepare, publish and implement the National Transitions Strategy, and have a duty under Section 2 of the Bill to consult on the draft National Transitions Strategy. The Scottish Ministers also have duties under Section 5 to keep the National Transitions Strategy under review.

Against this background, the Scottish Ministers may, after consulting key stakeholders on the draft National Transitions Strategy under Section 2, and also subsequently as part of a review of the National Transitions Strategy under Section 5, decide it is necessary to place duties on other persons, in addition to those currently listed in Section 4(2) of the Bill, to comply with the National Transitions Strategy in exercising their functions under the legislation.

I, therefore, take the view that the powers in Section 4(2)(e) of the Bill are necessary to ensure that the Scottish Ministers have the flexibility to add, if they believe it is necessary as a result of the consultations under Section 2 and/or Section 5, other persons to the list of persons who have a duty to comply with the National Transitions Strategy under Section 4.

Section 8

I believe it is essential that the Scottish Ministers should have the flexibility in Section 8 to add duties in relation to transitions plans on local authorities, NHS Health Boards Integration Joint Boards, or to place duties on any such other persons they consider appropriate. The Scottish Ministers may consider this is necessary as a result of issues and evidence which could emerge as a result of the following:

- a consultation on the draft National Transitions Strategy under Section 2 of the Bill; or
- a review of the National Transitions Strategy under Section 5 of the Bill; or
- the Scottish Ministers publishing an annual report under Section 16 of the Bill, outlining the progress made by the National Transitions Strategy, and by the transitions plans, in improving transitions to adulthood for disabled children and young people in that year, and laying it before the Scottish Parliament.

As a result of these processes the Scottish Ministers and its stakeholders may conclude that it is necessary to place new duties on local authorities, NHS Health Boards Integration Joint Boards, or on any such other persons they consider appropriate, in relation to transitions plans. This can be achieved by conferring the power on the Scottish Ministers in Section 8 of the Bill to introduce these duties through regulations.

Section 13

The regulation-making power in section 13 will provide the Scottish Ministers with the flexibility to prescribe, by regulations, the procedure for dispute resolution in relation to transitions plans. Section 13 also provides the Scottish Ministers with the flexibility to add to the persons to whom the dispute resolution framework will apply.

I believe that such flexibility is necessary because the Scottish Ministers may decide, as a result of a consultation on the Draft National Transitions Strategy under Section 2, or a review of the National Transitions Strategy under Section 5 or submitting an annual report under Section 16, to add other persons or bodies to those whom will be subject to the dispute resolution framework. Section 13 will enable them to do so.

Section 14

The Scottish Ministers may add, by regulations, to the list of persons or bodies in Section 14(2) of the Bill who must have regard to any guidance issued to them by the Scottish Ministers in relation to transitions plans.

I believe this is necessary to give the Scottish Ministers flexibility, and to enable them to respond appropriately to new developments. In this respect, the additional bodies, who must have regard to any guidance issued to them by the Scottish Ministers, could be identified after the Bill receives Royal Assent. This could be as a result of evidence drawn from the experience of disabled children and young people or other stakeholders highlighted during, for example, the consultation on the draft National Transitions Strategy under Section 2, or a review of the National Transitions Strategy under Section 5 or when the Scottish Ministers publish and submit to the Parliament an annual report under Section 16 of the Bill.

Section 15

This power is necessary to give the Scottish Ministers flexibility, and to enable them to respond appropriately to new developments.

In this respect, the additional bodies, to whom directions might be issued, could be identified after the Bill receives Royal Assent. This could be as a result of evidence drawn from the experience of disabled children and young people or other stakeholders highlighted during, for example, the consultation on the draft National Transitions Strategy under Section 2, or a review of the National Transitions Strategy under Section 5 or the Scottish Ministers submitting an annual report under Section 16 of the Bill.

2. Which additional persons or bodies (or categories or persons or bodies) the Member anticipates might be brought within the ambit of the Act?

Section 4(2)(e)

Section 4(1) provides that, in exercising their functions under this Act, the persons or bodies listed in subsection (2) must comply with the National Transitions Strategy. The persons listed in subsection (2) are as follows: (a) the Scottish Ministers, (b) local authorities, (c) Health Boards, (d) Integration Joint Boards, and (e) such other persons as the Scottish Ministers may prescribe by regulations.

Examples of persons or bodies which the Scottish Ministers might want to add under Section 4(2)(e) to those who must comply with the National Transitions Strategy could include Skills Development Scotland, Colleges, Universities, the Children's Hearings System and SCRA. It would, however, be a matter for the Scottish Ministers to decide which additional persons or bodies (or categories of persons or bodies), if any, might be brought within the ambit of the Act under Sections 4(2)(e).

I would anticipate that these additional persons or bodies (or categories of persons or bodies) would be identified as the Scottish Ministers exercise their statutory duties to consult on the draft National Transitions Strategy under Section 2 of the Bill, or conduct a review of the National Transitions Strategy under Section 5 or when the Scottish Ministers submit an annual report under Section 16 of the Bill. I, therefore, do not think it would be appropriate to try and anticipate which additional persons or bodies (or categories of persons or bodies) should be added through Section 4(2)(e), as this would be for the Scottish Government to determine.

Section 8

Section 8 of the Bill provides that the Scottish Ministers may prescribe by regulations duties on the following bodies or persons— (a) local authorities, (b) Health Boards, (c) Integration Joint Boards, and (d) such other persons as they consider appropriate, in relation to a transitions plan.

Scottish Ministers might want to add statutory duties to persons or bodies such as, for example, Skills Development Scotland, Colleges, Universities, Audit Scotland, the Children's Hearings System and SCRA. It would, however, be a matter for the Scottish Ministers to decide which additional persons or bodies (or categories or persons or bodies), if any, might be brought within the ambit of the Act under Section 8.

I would anticipate that these persons or bodies (or categories or persons or bodies) would be identified as the Scottish Ministers exercise their statutory duties to consult on the draft National Transitions Strategy under Section 2 of the Bill, or as a result of a review of the National Transitions Strategy under Section 5, or when the Scottish Ministers submit an

annual report under Section 16 of the Bill. I, therefore, do not think it would be appropriate to try and anticipate which persons or bodies (or categories or persons or bodies) might be added under Section 8 as this would be for the Scottish Government to determine.

Section 13

Section 13 of the Bill provides that the Scottish Ministers may by regulations make provision about the resolution of disputes between any local authority, or any other bodies or persons as may be prescribed by regulations, and— (a) any child who has attained the age of 14 years and who the local authority is satisfied has capacity as respects views or decisions relating to the purposes of resolving such disputes, (b) the parents or other carers of the child, (c) any young person, or (d) in relation to any child or young person who lacks capacity to express a view, or to make a decision, for the purposes of resolving such disputes, the child's or young person's parents, legally appointed guardian or other carers, concerning a transitions plan, including the preparation, contents, management or delivery of a transitions plan.

Examples of the additional persons or bodies (or categories or persons or bodies) which the Scottish Ministers might want to add to the dispute resolution framework could be Health Boards, integration joint boards etc. It would, however, be a matter for the Scottish Ministers to decide which additional persons or bodies (or categories or persons or bodies), if any, might be brought within the ambit of the Act under Section 13.

I would anticipate that these persons or bodies would be identified as the Scottish Ministers exercise their statutory duties to consult on the draft National Transitions Strategy under Section 2 of the Bill, or as a result of a review of the National Transitions Strategy under Section 5 or when the Scottish Ministers submit an annual report under Section 16 of the Bill. I, therefore, do not think it would be appropriate to try and anticipate which persons or bodies might be added under Section 13 as this would be for the Scottish Government to determine.

Section 14

Under Section 14 the Scottish Ministers may issue guidance to local authorities, Health Boards, Integration Joint Boards and to such other bodies as Ministers may prescribe by regulations about transitions plans.

Examples of additional persons or bodies (or categories or persons or bodies) which the Scottish Ministers might want to issue guidance to could include Skills Development Scotland, Colleges, Universities, Audit Scotland, Children's Hearings System and SCRA. It would, however, be a matter for the Scottish Ministers to decide which additional persons or bodies (or categories or persons or bodies), if any, might be brought within the ambit of the Act under Section 14.

I would anticipate that these persons or bodies would be identified as the Scottish Ministers exercise their statutory duties to consult on the draft National Transitions Strategy under Section 2 of the Bill, or as a result of a review of the National Transitions Strategy under Section 5 or when the Scottish Ministers submit an annual report under Section 16 of the Bill. I, therefore, do not think it would be appropriate to try and anticipate which persons or bodies (or categories or persons or bodies) might be added under Section 14 as this would be for the Scottish Government to determine.

Section 15

Section 15 of the Bill provides that the Scottish Ministers may give local authorities, Health Boards, Integration Joint Boards and such other bodies as Ministers may prescribe by regulations, general or specific directions about transitions plans under this Act.

Examples of the additional persons or bodies (or categories or persons or bodies) to which the Scottish Ministers might want to issue Directions could include Skills Development Scotland, Colleges, Universities, Audit Scotland, Children's Hearings System and SCRA. It would, however, be a matter for the Scottish Ministers to decide which additional persons or bodies (or categories or persons or bodies), if any, might be brought within the ambit of the Act under Section 15.

I would anticipate that these persons or bodies (or categories or persons or bodies) would be identified as the Scottish Ministers exercise their statutory duties to consult on the draft National Transitions Strategy under Section 2 of the Bill, or as a result of a review of the National Transitions Strategy under Section 5 or when the Scottish Ministers submit an annual report under Section 16 of the Bill. I, therefore, do not think it would be appropriate to try and anticipate which persons or bodies might be added under Section 15 as this would be for the Scottish Government to determine.

3. Why a duty to consult any new persons or bodies before prescribing them has not been provided for on the face of the Bill?

I would be willing to bring forward Amendments to sections 4(2)(e), 8, 13, 14 and 15 at Stage 2 of the Bill to ensure that the Scottish Ministers will consult stakeholders about adding statutory duties to new persons or bodies (or categories or persons or bodies) under these sections.

