

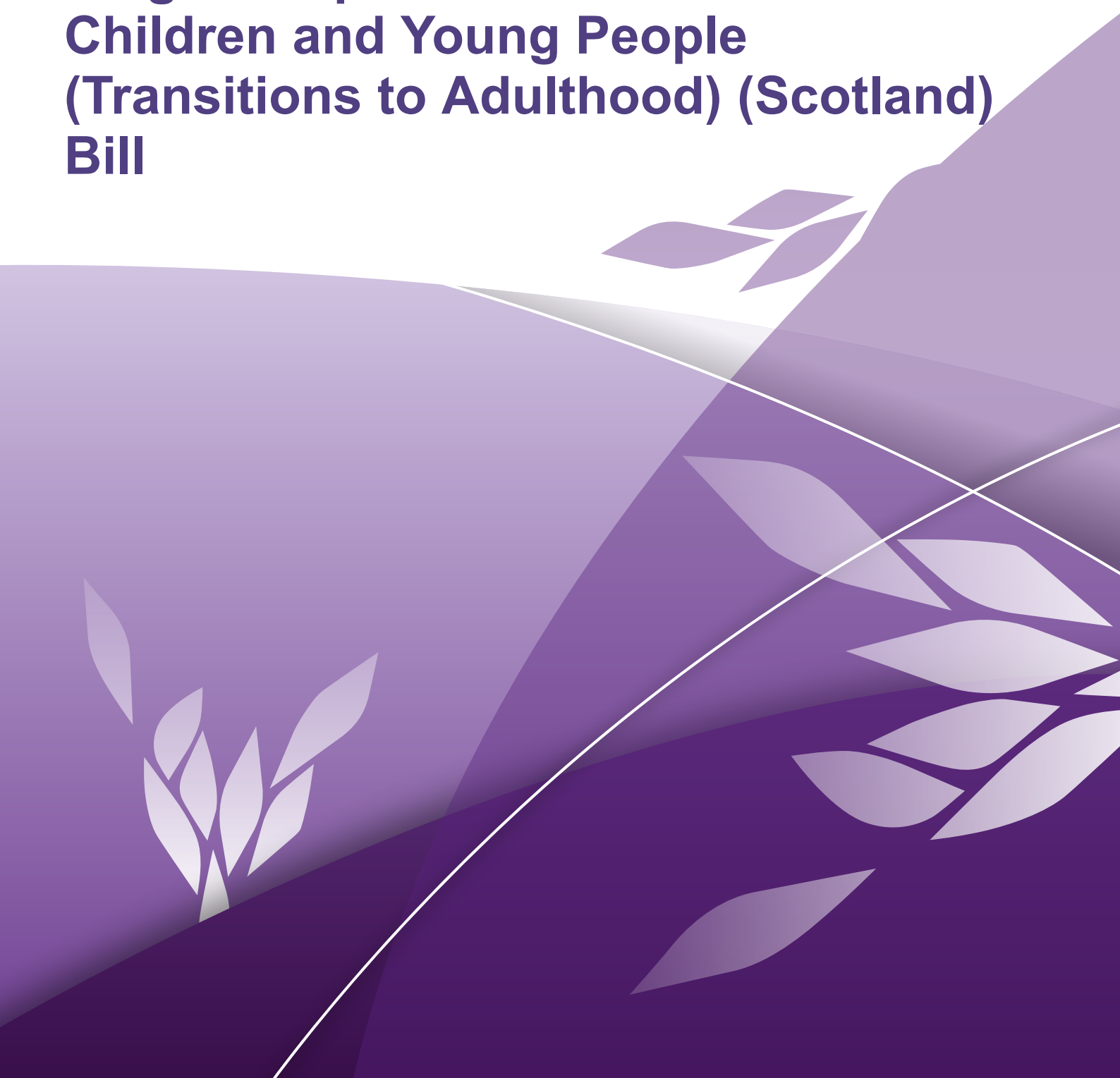


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## Education, Children and Young People Committee

# Stage 1 Report on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill



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# Education, Children and Young People Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills and matters relating to the Historical Abuse Inquiry and redress falling within the responsibility of the Deputy First Minister.



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# Committee Membership



**Convener**  
**Sue Webber**  
Scottish Conservative  
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**Deputy Convener**  
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Scottish National Party



**Stephanie Callaghan**  
Scottish National Party



**Pam Duncan-Glancy**  
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**Deputy Convener**  
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Scottish National Party



**Willie Rennie**  
Scottish Liberal  
Democrats



**Michelle Thomson**  
Scottish National Party

# Membership changes

1. The following changes to the membership of the Committee took place during its Stage 1 scrutiny—

Graeme Dey MSP (SNP) - 31 March 2022 – 31 March 2023

Bob Doris MSP (SNP) - 17 June 2021 – 29 June 2023

Liam Kerr MSP (Conservative) - 29 June 2023 – to date

Stephen Kerr MSP (Conservative) - 17 June 2021 – 25 May 2022; 22 September 2022 – 29 June 2023

Ben Macpherson MSP (SNP) - 18 April 2023 – to date

Michael Marra MSP (Lab) - 17 June 2021 – 25 April 2023

Oliver Mundell MSP (Conservative) - 17 June 2021 – 22 September 2022

Kaukab Stewart MSP (SNP) - 17 June 2021 – 18 April 2023

Michelle Thomson MSP (SNP) - 29 June 2023 – to date

Martin Whitfield attended meetings as committee substitute for Pam Duncan-Glancy.

# Introduction

## Overview of scrutiny and purpose of the Bill

2. The Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill<sup>1</sup> (the Bill) was introduced in the Scottish Parliament on the 20 April 2022 by Pam Duncan-Glancy, the Member in Charge. The Bill was accompanied by a Policy Memorandum (PM), Explanatory Notes (EN) and Financial Memorandum (FM).
3. The Bill was referred to the Education, Children and Young People Committee on 27 April 2022. Both the Finance and Public Administration Committee (in relation to the FM) and the Delegated Powers and Law Reform Committee (in relation to the delegated powers) considered aspects of the Bill and their views are covered later in this report.
4. As set out in the PM, the "aim of the Bill is to improve outcomes for disabled children and young people in the transition to adulthood".<sup>2</sup> Broadly speaking the Bill seeks to achieve this by providing for the following two mechanisms—
  - a National Transitions Strategy (with a Minister with Special Responsibility for Transitions)
  - a transitions plan for each disabled child or young person.
5. Part 1 of the Bill requires the Scottish Ministers to prepare, publish and implement a strategy in relation to improving transitions to adulthood for disabled children and young people ("the National Transitions Strategy") within one year of Royal Assent to the Bill.
6. Section 1 of the Bill provides that a 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 which the Scottish Ministers will take to meet the aims and objectives of the National Transitions Strategy;
  - the outcomes in relation to improving transitions to adulthood for disabled children and young people which are to be achieved by the National Transitions Strategy;
  - the actions and arrangements which local authorities, Health Boards, Integration Joint Boards and other bodies or persons must take, or put in place, to meet the aims and objectives of the National Transitions Strategy, information about the support and assistance which will be available to disabled children and young people before, and during, the transition to adulthood; and
  - such other matters as the Scottish Ministers consider relevant to the transition to adulthood for disabled children and young people.

7. The remainder of Part 1 of the Bill sets out requirements on—
  - consultation on a draft Strategy;
  - publication and laying of the Strategy within one year of Royal Assent;
  - duties to comply with the National Transitions Strategy for specified bodies;
  - review and publication of a revised National Transitions Strategy before the end of every three-year reporting period (beginning on the date on which the first Strategy was published); and
  - the assignment of a Minister or Cabinet Secretary with special responsibility in relation to the exercise of their functions under the Bill.
8. The Committee ran a call for views on the Bill between 1 September and 27 October 2022 and received 47 responses which are published online<sup>3</sup> and a summary of the responses produced by SPICe was also published alongside the responses.<sup>4</sup> At the same time, the Committee also ran a shorter survey aimed at providing young people and their parents and carers an opportunity to voice their personal experiences. This survey received a total of 31 responses, a summary of which was published by SPICe.<sup>5</sup> The survey was also available in Easy Read and British Sign Language.
9. The Committee held informal engagement sessions with a group of young disabled people called the Divergent Influencers,<sup>6</sup> a group of parents and carers<sup>7</sup> of disabled children and young people, and a group of practitioners<sup>8</sup> involved in the Principles Into Practice<sup>1</sup> trial. All of these sessions were supported by ARC Scotland. In order to allow those participating in the informal sessions to speak candidly, anonymised notes were produced for each session.
10. The Committee also visited Buchanan High School, an additional support needs secondary school in Coatbridge, North Lanarkshire. The Committee heard from staff working to support young people to prepare for life after school, and a group of young people who were preparing to leave school. The Committee produced an anonymised note following the visit.<sup>9</sup>
11. The Committee held evidence sessions at its meetings on the 1, 8 and 22 February 2023, where it took evidence from the then Minister for Children and Young People, Clare Haughey and the then Minister for Equalities and Older People, Christina McKelvie, and on the 1 March 2023, where it heard from the Member in Charge and Bill Scott of Inclusion Scotland.
12. The Committee also took oral evidence from—
  - Royal College of Psychiatrists in Scotland
  - Royal College of Occupational Therapists
  - Scottish Autism
  - Scottish Commission for People with Learning Disabilities



- Heath and Social Care Alliance Scotland
  - Linking Education and Disability Scotland
  - Royal College of Paediatrics and Child Health
  - NASUWT
  - Donaldson Trust
  - Colleges Scotland
  - Universities Scotland
  - Association for Real Change (ARC) Scotland
13. The Committee is grateful to all those who provided evidence, especially the young people who met Members and spoke about their experiences.

## Background to the Bill

14. The Bill was first introduced in Session 5 by Johann Lamont but fell before Parliament was able to complete its consideration of the Bill.<sup>10</sup> Owing to the short amount of time between the scrutiny of the Session 5 Bill and the introduction of the Session 6 Bill, the Committee agreed to consider the evidence received in Session 5 as part of its scrutiny. In Session 5, the Education and Skills Committee ran a call for views between 16 November 2020 and 11 January 2021, receiving a total of 75 submissions.<sup>11</sup>

## Committee findings

15. Following the oral evidence sessions, the Committee agreed to write to the Scottish Government<sup>12</sup> and to the Member in Charge<sup>13</sup> seeking a response to its detailed findings on the Bill<sup>14</sup> prior to reporting at Stage 1. The Committee's findings were published on the website and are reproduced at Annexe A to this report. The responses received from the Scottish Government<sup>15</sup> and the Member in Charge<sup>16</sup> were also published on the website and are reproduced at Annexe B to this report.
16. The Committee formally considered these responses at its meeting on 13 September 2023 and considered its overall conclusion on the Bill in light of these responses. In addition, the Member in Charge provided further written evidence on 25 September 2023<sup>17</sup> which is published on the website and attached at Annexe C.

# Finance and Public Administration Committee and Delegated Powers and Law Reform Committee Consideration

17. The Finance and Public Administration Committee received six responses<sup>18</sup> to its call for views on the estimated financial implications of the Bill and wrote to the Committee on issues raised by respondents.<sup>19</sup> The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill and published its report on the Bill on 4 January 2023.<sup>20</sup> The Committee's consideration of financial implications and the delegated powers contained in the Bill are included in the Committee's findings at Annexe A to this report.

## Overall conclusions

18. As set out in the letters to the Scottish Government and the Member in Charge, the Committee remains extremely concerned by the evidence it heard about the poor experiences of transitions for many disabled young people. Several witnesses told the Committee that young people and their families were not always listened to by professionals, that there was a disconnect between children's and adult services with poor communication across agencies and with young people and their families, and often, there was no clear person to take the lead on transitions, leading to parents and young people having to advocate for themselves. The Committee recognises the need to act on these issues to improve disabled children and young people's experiences of transitions.
19. The Committee notes that there is already legislative and policy provision in this space and that it has not had the positive impact that was envisioned. The current legislative landscape was described by many witnesses as being complex, cluttered, and difficult to navigate for young people and their families, and, in some instances, for the professionals working to support them. Several stakeholders highlighted the poor deployment of Coordinated Support Plans (CSPs) by local authorities despite these being statutory plans.
20. The Committee heard that there was an "implementation gap" with existing legislation and policies owing to issues relating to resources, inconsistent practice and access to services across Scotland, organisational cultures, particularly the differences between children's and adult services, and difficulties with information sharing. For that reason, the Committee has carefully examined the Bill and is not currently convinced that the Bill before it will resolve the issues being experienced by young people. The Committee recognises, however, the important role that the Bill has played to date in shining a light on these issues and the impact they are currently having on disabled children and young people and their families.
21. Several stakeholders expressed concerns about how the Bill would work in practice. The Bill differs from the existing legislative framework, which refers to Additional Support Needs rather than disability. It is unclear who exactly would be covered by the Bill and how they would be identified. The use of the Equality Act 2010 definition of disability is likely to entitle a much larger cohort of young people to a transitions plan than the number of young people currently being supported by social services. The Committee also heard that many disabled children and young people and their families are unable to receive much needed support from social services due to pressures on resources and staffing. This has implications for how the Bill would work in practice as it states that transitions plans should be managed by an officer of the local authority.
22. The Committee is concerned about the need for a diagnosis in order for young people to access support in the transition to adulthood. Sections 7(3) and 10(1)(a) of the Bill refer to disability as being "diagnosed", while the 2010 Act definition of disability used in the Bill does not require a diagnosis to be made. The Committee heard that many children and young people face long waiting

times for a diagnosis, and some young people do not wish to pursue a diagnosis or view themselves as disabled, or as having a disability. The Committee believes that requiring a diagnosis to access the provisions of the Bill would present an additional barrier to receiving support for a number of young people at a crucial stage in their lives.

23. The Financial Memorandum uses figures from the 2011 Census to estimate the numbers of disabled children and young people to be entitled to a statutory transitions plan, but COSLA considers the figures in the Financial Memorandum to be an underestimate. Without clarity on who exactly would be entitled to a transitions plan under the Bill it is not possible to accurately estimate the cost and resource implications associated with implementing the Bill.

24. A number of stakeholders also expressed concerns about the ability of teachers to manage much of the initial planning process as part of their existing responsibilities, as it is envisioned by the Bill. The Committee heard that teachers were already struggling with workloads and would be unable to do this without additional resource.

25. For young people with more complex needs and transitions spanning health, social care, education, housing, third sector funding and a number of different agencies, there is a question of how appropriate it would be for a teacher to take on this role. This too would have implications for the costs associated with the Bill as well as the ability to implement it.

26. The Committee commends the Member in Charge on the work done in introducing this Bill and supports the general aims of the Bill to improve transitions for disabled children and young people. However, for the reasons set out in this report, the Committee is not convinced that the general principles should be agreed.<sup>i</sup>

27. With that being said, the Committee is clear that doing nothing is not an option and believes that the Scottish Government must address the issues of deep concern to the Committee as a matter of urgency.

28. The Committee intends to continue to monitor the work of the Disabled young people: National Transitions to Adulthood Strategy Strategic Working Group<sup>21</sup> and to scrutinise the forthcoming Scottish Government National Transitions to Adulthood Strategy and the Statement of Intent on the strategy,<sup>22</sup> to ensure the published strategy will address concerns raised during scrutiny of this Bill.

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<sup>i</sup> Martin Whitfield MSP dissented from this sentence.

# Annexe A - Committee findings on the Bill

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

### Introduction

The Policy Memorandum accompanying the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill (“the Bill”) sets out its policy objectives. It says that the “aim of the Bill is to improve outcomes for disabled children and young people in the transition to adulthood”. Broadly speaking the Bill seeks to achieve this by providing for the following two mechanisms:

- a National Transitions Strategy (with a Minister with Special Responsibility for Transitions)
- a transitions plan for each disabled child or young person.

### National Transitions Strategy

Part One of the Bill requires the Scottish Ministers to prepare, publish and implement a strategy in relation to improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”) within one year of Royal Assent to the Bill.

Section 1 of the Bill provides that a 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 which the Scottish Ministers will take to meet the aims and objectives of the National Transitions Strategy
- the outcomes in relation to improving transitions to adulthood for disabled children and young people which are to be achieved by the National Transitions Strategy
- the actions and arrangements which local authorities, Health Boards, Integration Joint Boards and other bodies or persons must take, or put in place, to meet the aims and objectives of the National Transitions Strategy, information about the support and assistance which will be available to disabled children and young people before, and during, the transition to adulthood; and
- such other matters as the Scottish Ministers consider relevant to the transition to adulthood for disabled children and young people.

The remainder of Part One of the Bill sets out requirements on:

- consultation on a draft Strategy;
- publication and laying of the Strategy within one year of Royal Assent;
- duties to comply with the National Transitions Strategy for specified bodies;
- review and publication of a revised National Transitions Strategy before the end of

every three-year reporting period (beginning on the date on which the first Strategy was published); and

- the assignment of a Minister or Cabinet Secretary with special responsibility in relation to the exercise of their functions under this Bill.

### *Rationale for a National Transitions Strategy*

The Strategy is a key aspect of the Bill's approach to improving outcomes for disabled children and young people.

The Policy Memorandum states that: "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."<sup>1</sup>

The majority of responses to the Committee's call for views supported the introduction of a National Strategy. The Royal College of Occupational Therapists (RCOP), for example, stated that this "has the potential to house a clear understanding of what should, as a minimum, be expected by young people and their families/carers that local health boards, IJBs, and local authorities can be held accountable to." In its view, "a national approach to what metrics should be in place, their measurement and procedures to tackle underperformance should be prioritised as part of any strategy."<sup>2</sup>

Similarly, ENABLE suggested that a National Strategy would help embed the importance of transitions support for young people who have a disability across relevant agencies, which in turn "should end the current experience of transitions being considered at such a late stage that the window for achieving a positive impact on a young person's outcomes has been missed." ENABLE also considered that there should be room for local approaches to reflect local circumstances.<sup>3</sup>

Scottish Autism pointed out that "there is no overarching strategic plan. In many cases, we know who those young people are from a young age, but it is only when they get to 17 or 18 years old that people think, "Oh, goodness me—what are we going to be able to find for them?" That really limits their choices." Commenting further, it stated "we have the data—we know who these young people are and what is likely to be required—so there is a definite lack of strategy around that. I am really hopeful that the bill can address some of that."<sup>4</sup>

The Member in Charge also highlighted the view of the Law Society of Scotland which "has said that a national transitions strategy would contribute to achieving all the rights accorded by the UN Convention on the Rights of Persons with Disabilities by ensuring that all relevant policies and planning— as well as individual planning— achieves that purpose."<sup>5</sup>

However, others expressed doubts about the potential for a National Strategy to make a tangible difference to the lives of disabled young people unless accompanied by commensurate resources. The Scottish Commission for People with Learning Disabilities

(SCPLD), for example, stated that: “We have a more general scepticism about the effectiveness of legislation to change things and the effectiveness of the strategy as a means to change things. That is based on a number of learning disability and other strategies that we are aware of that, to all intents and purposes, sit on the shelf until they are reviewed so that the next strategy can be written. We have a slightly jaundiced view of that—implementation is the problem.”<sup>6</sup>

The SCPLD continued: “Creating a strategy sucks energy out of doing your day job. The risk with a national strategy is that you pour a lot of energy into creating it and then nothing happens for a year or three years until the reporting period kicks in. What do you do about that? I am not sure. When you speak to people from health and social care partnerships, I am sure that they will say, “Just making something statutory doesn’t mean we’re going to do it, because we’ve got so many statutory obligations and so few staff— we’re in crisis.” The thing that would make a difference, and that would make the national strategy work and fulfil the statutory duty to do transitions planning with individuals, is funding.”<sup>7</sup>

The Health and Social Care Alliance Scotland expressed similar views, stating “I think that a strategy would be great if it had the resource behind it.”<sup>8</sup>

Several responses suggested that the Scottish Government should co-produce the Strategy with those directly affected by it, a position supported by the Royal College of Occupational Therapists in oral evidence when it stated “you cannot enact any change without co-production and without staff believing in it. Staff will not engage in the process if they do not think that it will result in better outcomes for the population or the young people they work with.”<sup>9</sup>

The National Deaf Children’s Society suggested that “a National Transitions Plan [*Strategy*] would be helpful in assisting deaf and disabled young people to achieve independent living but would need to align with a stronger and more strategic approach to planning for services and support for deaf and disabled children and young people throughout their lives.”<sup>10</sup>

However, it went on to note that “a comprehensive transitions strategy is already in development by the Scottish Government, covering the period from birth to adulthood.” In its view, “placing a National Transitions Plan within this longer-term transitions plan would help avoid an excessive concentration on post-14 transitions to the detriment of ensuring that vital early years and primary to secondary school transition planning is delivered effectively to every deaf child and young person in Scotland.”<sup>11</sup>

### *Duties on public bodies*

Under the provisions in the Bill, public bodies would have a duty to comply with actions set out in the National Transitions Strategy. In other words, duties could be created on a range of bodies through the publication of the strategy (including colleges and universities), rather than being approved by Parliament.

COSLA reiterated its view expressed to the previous committee that it had concerns about the potential for the National Transitions Strategy to create new duties on local authorities.

It stated that: “The Bill gives significant new powers to Ministers to direct Local Government services and undermines the role of our Member Council Officers and Elected Members. The Bill fails to specify what additional duties will be placed on local authorities and others and legislates for Ministers to decide these new duties after the Bill is enacted through a National Transitions Strategy.”<sup>12</sup>

### *Scottish Government National Transitions to Adulthood Strategy*

A key development since the consideration of the previous Bill has been a commitment from the Scottish Government to develop its own National Transitions to Adulthood Strategy. In its Programme for Government 2021- 22, the Scottish Government announced that it would “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.”<sup>13</sup>

In reference to ministerial responsibility for transitions and the development of a National Transitions Strategy, the Minister for Children and Young People stated: “We have already given non-statutory effect to two of the main provisions in the bill. We have done that through the joint ministerial leadership for transitions, which Ms McKelvie and I are taking forward, and through our programme for government commitment to introduce in this parliamentary term the first national transitions to adulthood strategy for disabled young people.”<sup>14</sup>

Whilst keen to highlight the work being taken forward by the Scottish Government, the Minister for Children and Young People also stressed that “we are not resting on our laurels.”<sup>15</sup>

The Minister for Equalities and Older People noted that the Scottish Government recognised the concerns of the Member in Charge and other stakeholders, stating “that is the reason why we have taken forward the work that we are doing on the national strategy. The evidence that the committee has heard so far echoes the issues that we have.”<sup>16</sup>

She went on to explain that the Scottish Government had commissioned a literature review of UK and Scottish evidence, and that “all the issues mentioned are common challenges that have emerged from that. Some of the key concerns relate to stress and uncertainty for young people— particularly when they leave friends, environments, teachers and carers that they know—and the difficulty of transferring into the adult world and to the services that are available at that point.”<sup>17</sup>

The Minister for Children and Young People then set out the Scottish Government’s position on the Bill’s proposals for delivering a National Strategy as follows: “We believe that implementing the strategy on which Ms McKelvie is leading is actually a more effective way of enabling change. We do not believe that we need legislation to do that. We believe that we can work alongside COSLA, as we do on numerous strategies, as well as individual local authorities and the Association of Directors of Education in Scotland to implement change. We can work co-operatively to achieve the aim that we all collectively, including the member who has lodged the bill, want—that is, better transitions between school and university or college, or wherever. I think that working with agencies and representatives of organisations such as COSLA and local authorities is a much more effective way of delivering the outcomes that we want.”<sup>18</sup>

Following her evidence session, the Minister for Children and Young People wrote to the Committee providing an update on timescales for development of the National Strategy. The letter confirms that the Government is in the process of forming a new external working group of key stakeholders to help take forward the work on the Strategy and that the group would meet on 14 March 2023 “to consider the work plan and timeline for the development of the Strategy.” The Committee has not yet received an update on the outcome of that meeting on 14 March 2023. The letter further confirmed that “sufficient



time to allow for the meaningful engagement and participation of disabled young people” would be provided. The Minister then committed to writing again to the Committee to provide a further update and details on the proposed timescales for the development of, and public consultation on, the National Transitions Strategy once a workplan had been agreed.

Responding to some of the points raised in evidence, the Member in Charge expressed some dubiety about the Scottish Government’s plans, pointing out that Government priorities can change when not backed up by legislation: “When the bill was lodged the first time round, it was noted in committee that the SNP manifesto committed to a national transitions strategy, but, at that point, it had been five years since that commitment had been made and there was still no strategy. We also know that things can be deprioritised depending on leadership...to highlight the transient nature of strategies that are plans and not laws.”<sup>19</sup>

In the Member’s view, the issue she seeks to address “requires a transition strategy in law to be laid before Parliament, protecting it against changes of Government or leadership.”<sup>20</sup>

In response to suggestions that she should wait to see whether the Government Strategy works, the Member replied, “I would say this: we have heard that before.”<sup>21</sup>

The Member continued: “Right now, we do not have a strategy to address transitions. I know that the Government is producing one, and I welcome that, but we need it in legislation because we cannot just leave it in manifesto commitments that may or may not ever be enacted or that exist only while a certain well-intentioned, passionate member of the Cabinet drives it forward. We need to legislate. That is incredibly important.”<sup>22</sup>

The Member went on to point out that there had been no change in the data since 2008 showing that young disabled people are three times more likely to end up not in education, employment, or training. In her view, “disabled people are consistently told, “this next strategy will be the thing. You do not need this in legislation.” ...a constant refrain of “the next thing will do it,” but it has not done it yet.”

The Member went on to ask “how long does the committee think that disabled people should wait? What does it think is the right timescale to say whether the strategy is or is not working?”<sup>23</sup>

The Member highlighted that there are disabled people who are about to leave school or have already left school with no plan and that “they cannot wait for the Government’s strategy, which is not yet published.” Whilst she “fully acknowledged” that the Scottish Government has committed to that strategy, she urged the Committee “to consider that question and say how long it thinks that it is acceptable to wait and see whether that strategy works.”<sup>24</sup>

However, in response to questions from the Committee about whether it was possible to “legislate for relationships”, the Member acknowledged that benefits may arise from the Scottish Government’s approach, stating “from the evidence that the ministers...gave to the committee last week, it seems that the national transitions strategy might, indeed, address some of these questions. That is all really valuable.”<sup>25</sup>

## **National transitions strategy – conclusions**

- **The Committee agrees that a national strategy is needed to improve transitions**

### **to adulthood for disabled children and young people.**

- **However, the Committee notes concerns that the new strategy, as proposed in the Bill, would place duties on public bodies without the need for Parliament to consider secondary legislation and therefore insufficient Parliamentary oversight. The Committee asks the Scottish Government and the Member in Charge to respond to this point.**
- **The Committee also notes that the Scottish Government is currently working on a National Transitions Strategy.**
- **The Committee asks the Scottish Government to set out how it will ensure that, in the absence of them being placed on a statutory footing, the application of any existing or future strategies relating to disabled children and young people will be monitored to ensure they improve transitions to adulthood.**
- **The Committee asks the Scottish Government to provide an update on the timeline for the development of its National Transitions Strategy following the meeting with key stakeholders on 14 March 2023.**

### **Minister with Special Responsibility**

Section 6 of the Bill provides that “the Scottish Ministers are 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.”

One of the challenges for managing transitions is that as a policy issue, it crosses many different policy areas. The Policy Memorandum describes the assignment of special ministerial responsibility as “vital ... to deliver major improvements in the outcomes achieved by disabled children and young people” for the following reasons:

- to ensure that the Scottish Parliament has an ongoing focus on the effectiveness of the National Transitions Strategy, and on the implementation of the transitions plans across Scotland;
- to help support the effective implementation of the National Transitions Strategy, and of the transitions plans for disabled children and young people; and
- it could make a major contribution to ensure that the legislation is implemented effectively, and to significantly improve outcomes for disabled children and young people in the transition to adulthood.

Respondents to the Committee’s call for views overwhelmingly supported such an assignment of special responsibility.

For example, ENABLE stated that: “As well as better connecting issues related to transitions and joining up the policy across school education, assigning special responsibility for transitions to a specific Minister would also help improve accountability in this policy area, with that Minister responsible for implementing the policy, answering questions in Parliament, and reporting on progress against targets.”<sup>26</sup>

Similarly, the National Deaf Children’s Society described such an assignment as being “necessary and welcome” as: “There will be a clear need to coordinate and monitor the impact of multiple policy areas that will affect deaf and disabled young people’s lives at

points of transition and to advocate on their behalf nationally.”<sup>27</sup>

Several witnesses also spoke positively of the assignment of special ministerial responsibilities in oral evidence with the Royal College of Occupational Therapists, for example stating that it “supports the bill in terms of it bringing in accountability and someone being accountable. It also gives us the opportunity to eradicate the postcode lottery by having a set of standards across Scotland and an equitable service for our children.”<sup>28</sup> The Health and Social Care Alliance Scotland noted that “the bit that always seems to be missing is the accountability. What happens if people do not have transition plans? What happens if there is not a dedicated worker? I often feel that the accountability and the teeth are missing.”<sup>29</sup>

The Scottish Commission for People with Learning Disabilities confirmed that it “cautiously supports the bill because it will bring in a level of accountability that is lacking.” Whilst it considered some simplification was needed, it contended that “accountability is really important, and the Bill would add that.”<sup>30</sup>

The proposal may appear uncontroversial given that any Government strategy usually falls within the remits of one or more Minister or Cabinet Secretary. However, this provision could be interpreted as directing the Government on its distribution of ministerial responsibilities and binding all future administrations to do the same.

The Scottish Government's submission argued that this section is beyond the legislative competence of the Scottish Parliament for the following reasons: “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”.”<sup>31</sup>

In the Scottish Government's view, should the general principles of the Bill be agreed to at Stage 1, these issues would need to be addressed through amendment of the Bill.

On 31 March 2022, the Presiding Officer confirmed that in her view, the provisions of the Bill would be within the legislative competence of the Scottish Parliament.<sup>32</sup>

Ultimately, it would be for the courts to determine whether or not a Bill was legislatively competent.

When invited to comment on the Bill's proposed approach, the Minister for Children and Young People pointed out that the Government had already created joint ministerial responsibility for transitions on a non-statutory basis. The Committee acknowledges that there have been Ministerial changes since it took evidence on this. She highlighted that transitions are not a single-portfolio issue but a cross-Government one touching “on all areas of health, social care, education, early years provision and equalities.” In the Scottish Government's view, “having joint ministers leading on transitions is a more effective way of delivering good transitions for children and young people.”<sup>33</sup>

The Minister for Equalities and Older People agreed, stating that “one of the things that we are often accused of in Government is sitting in our silos and not working across Government when it comes to issues such as the one that we are discussing. One of the

great benefits of the role that I have is that I get to work across the whole of Government.”<sup>34</sup>

ARC Scotland made similar comments stating that this would require the Minister to be across a very broad remit, “with the definition of transition covering not just education and employment, the minister would have to cover everything that the Scottish Parliament does.”<sup>35</sup>

Commenting on some of the points raised in evidence, the Member in Charge reiterated her position that the assignment of special ministerial responsibilities would help bring “responsibility and accountability at the ministerial level to ensure that people and families can see clearly what their rights are.”<sup>36</sup>

She went on to explain that one of the things she had learned since being elected as an MSP “is that nothing sharpens a minister’s mind more than having to get on their feet in the chamber and talk about something that they have done.” In her view, there “needs to be an opportunity for people to hold ministers to account on that. That is what the bill would specifically provide. That does not exist in other pieces of legislation.”<sup>37</sup>

The Member in Charge concluded by stating that: “all the things that I outlined in relation to scrutiny—the assignment of ministerial responsibility, the laying before Parliament of the annual report, the review of plans, and the review of the strategy—will sharpen the focus to make sure that, if we are doing the right thing on the ground, we will know that we are, because we are asking people about it.”<sup>38</sup>

### **Minister with Special Responsibility for transitions – conclusions**

- **The Committee believes, from the evidence it has received, that those with responsibility for transitions must do more to ensure that there is a focus and urgency around improving the experiences of disabled children and young people transitioning into adulthood. This includes, but is not limited to, the Scottish Government, Local Authorities, education, health and social care services, and the NHS.**
- **The Committee agrees with the Member in Charge that there must be clarity on where accountability and Ministerial leadership lies in Government for ensuring that transitions to adulthood for disabled children and young people are given the necessary focus and drive.**
- **The Committee notes the provision in the Bill for the creation of a Minister with Special Responsibility for transitions. The Committee asks the Member in Charge to respond to the issues raised by the Scottish Government relating to legislative competence.**
- **The Committee asks the Scottish Government to set out how it would ensure that there is visibility and accountability in government for improving transitions to adulthood for disabled children and young people in the absence of a Minister with Special Responsibility for transitions.**
- **The Committee believes that regardless of which National Strategy is progressed, that the experiences of those who have been through transitions should be at the heart of its design, to ensure that any negative outcomes are avoided, and that person-centred best practice is built upon. The Committee encourages the Member in Charge and the Scottish Government to enter into**

## dialogue at an early stage to ensure that this is the case.

### Current experiences of transitions and opportunities for disabled children and young people

As part of its scrutiny of the Bill, the Committee wanted to gain a clear understanding of disabled young people and their families' experiences of transitions. The Committee heard that experiences of transitions could vary considerably. The Committee notes the recent [literature review](#), published by the Scottish Government, on transitions to adulthood for disabled young people.

The Committee recognises that transition encompasses far more than the move from school to college, or from college to the workplace; it is an ongoing transition to adult life which includes everything from developing hobbies and interests and relationships, to where to live and how to get around.

Further to this, the Committee acknowledges that not all disabled young people will continue their formal education after school or enter the workforce and it is imperative that transitions outwith these spheres should be equally valued.

St Crispin's Out of School Care Association told the Committee: "Our young people will not enter the job market or attend further education. We feel strongly that there should be value placed in all areas of adult transitions, to ensure all of our young people, no matter their destination, feel supported and loved in their community."<sup>39</sup>

In an informal evidence session, the Committee heard from six young people who are members of Divergent Influencers, supported by ARC Scotland.

In this session, one young person said: "In terms of my plan when leaving school - person centred plan - the chat is dominated by education but there are so many other needs. Transition is an ongoing process; we never stop coming of age."<sup>40</sup>

Similarly, Louise Storie, from the Donaldson Trust, said that there is a question on who leads on the planning process for young people who do not want to go on to further education. She said there is "probably a gap in support for that and in how people access opportunities".<sup>41</sup>

This was echoed by Mike Corbett of NASUWT who reflected that if a young person is successful in a job or apprenticeship application then that is the end of the school's involvement.

On the question of who would then pick up the support for that young person once they have moved into their job or apprenticeship, he said, "there is potentially a gap there that needs to be addressed".<sup>42</sup>

Over the course of its scrutiny of the Bill, the Committee heard evidence on some of the barriers for young disabled people in accessing education, employment, and training.

Whilst recognising that transitions span education, health and social care, many disabled young people identified leaving school as a key point of transition.

ARC Scotland highlighted the words of one young person from their *Facing the Future Together* (2017) report. The young person said: "I'm terrified of leaving school. No support – social work is already pulling away and I feel abandoned."<sup>43</sup>

The Committee wanted to understand young people's experiences of transitioning from school to further or higher education.

For some young people, the transition from school to college was not a good, or smooth, experience.

The Committee heard of failures to adequately support transition from both schools and colleges, causing frustration and potentially leading to young people having to adjust their aspirations.

In an informal evidence session, one young person said: "I didn't have a transition between secondary school and college. The school abandoned me. We contacted the college who helped with the transition, they helped me to adjust to the college, to literally feel my way around the buildings but I had to fight for everything."<sup>44</sup>

When talking about their experience of college, a young person told the Committee: "The only good thing that I got from college was meeting my partner. Entry to learning skills course, it was crap. Then I did a mainstream course but I didn't feel like the support was there. I don't want to go back to college ever again."<sup>45</sup>

Another young person stated that their school had understood their needs and the loss of the relationships developed over the course of the five or six years at school was felt greatly. They said: "There was no support from college for transitions, for instance with a lack of transport measures in place – there had been talk about pre-arranged taxis but that never happened. My needs were not understood."<sup>46</sup>

This loss of relationships with those in the school was also an issue for parents and carers who were previously able to communicate with the school and advocate for their young person. In an informal evidence session, one parent told the Committee that they had a fantastic relationship with their child's school, but the college were not as open to communicating with parents and carers. The parent said: "Even though I had guardianship, when things ran into trouble with people not fully understanding my son's disability and needs, I had to insist there was a meeting called where his stepdad and I were able to support him as his voice wasn't being listened to – and that was a course for young people with ASD [*Autism Spectrum Disorder*]."<sup>47</sup>

The Committee also heard evidence that the actions and support of one individual – often a teacher - could enable young people to succeed in education, work or other spheres of life.

For example, in an informal session, one young person told Members how their teacher had supported them: "I was interested in going to art school, but my parents weren't that interested in art, or knew what living in Glasgow would be like. My teacher took me to an independent cinema, to libraries etc to see how what it was like and give me an idea of how I could live in a different city. This was valuable. They took the time to show me ways of life."<sup>48</sup>

Similarly, another young person said: "At my high school, I felt that I didn't have support in general from teachers but there was one teacher who helped me get to where I wanted to go."<sup>49</sup>

The Committee acknowledges that often it is the actions, enthusiasm and ultimately, the relationship between one adult and a young person that can change the outcome for young people moving into young adulthood. However, Scott Richardson-Read, ARC

Scotland, told the Committee: “We can probably legislate for someone to be in that role, but the values that they bring when they come into it cannot necessarily be legislated for.”<sup>50</sup> Put another way, the Committee heard that we cannot legislate for those relationships that are key to making the transition to adulthood work well for disabled young people.

The Member in Charge noted this point and stated: “you cannot legislate for relationships, but you can legislate to put people in the room and build those relationships, which is what the bill seeks to do.”<sup>51</sup>

Echoing the point about the importance of relationships, Scottish Autism said: “We rely heavily on the relationships between professionals across disciplines... Those relationships rather than a coherent plan, tend to be what shifts things.”<sup>52</sup>

The Committee heard that there was, at times, a deficit of aspiration for disabled young people who were sometimes discouraged from attending university or other goals which were dismissed by adults as being ‘unrealistic’. For example, in an informal session, one young person said that their school was not supportive of their ambition to go to university: “I felt that they were pushing me towards college, and were negative about my desire to go to university. They said that “I would get tired, I wouldn’t be able to handle it”. They didn’t give me information about universities, about open days. I didn’t get the support that I needed. I did go to open days, but only because my parents got that information.”<sup>53</sup>

In the end, the young person went on to attend university and graduated following participation in a four year course.

#### *Buchanan High School – example of good practice*

As part of its scrutiny of the Bill, the Committee visited Buchanan High School, a secondary school in Coatbridge for children and young people with Additional Support Needs. The approach to transitions in the school is to look at helping its young people on to sustainable positive destinations. The school begins preparatory work for transitions from S1 onwards, with more detailed work beginning in S4. Most pupils at the school stay until S6.

There is a large team involved in supporting transitions: the young person, their parent or carer, the Principal Teacher or Depute Head, a transition social worker, Skills Development Scotland, North Lanarkshire Council Supported Enterprise Team, the local college, local support services and school nurses. This team is consistent, and everyone gets to know the young person over a period of time. Several witnesses stressed the importance of consistency and continuity in relationships.

The school has also worked to build up networks with other agencies and local employers. The school looks at what is needed in the local community and identifies opportunities that could lead to jobs. The school has worked closely with local partners including MacTaggart and Volvo. The Committee heard that this approach has been very successful, and the school’s outcomes are well above the national average. This approach could be replicated for children attending mainstream schools.

During the visit, pupils preparing to leave school told the Committee about their aspirations and goals for the future; some were planning to continue their education at college, one young person was hoping to do an apprenticeship in plumbing and others were planning to start working in sectors such as hospitality and construction.

The young people told the Committee that their teachers had supported them, helped to build their confidence and develop their independence. All of the young people said that they were looking forward to the future.

### **Current experiences of transitions and opportunities for disabled young people - conclusions**

- **The Committee would like to thank the young people, parents, carers and support workers who spoke to Members about their experiences. The Committee believes that there are some excellent examples of good practice, such as in Buchanan High School. The Committee recognises the importance of organisational culture and leadership in ensuring positive transitions for disabled children and young people and recognises that individuals supporting young people can also make a significant difference between a young person having a positive or a negative experience. The Committee asks the Scottish Government what it is doing to replicate and scale up such examples of good practice.**
- **However, the Committee is deeply concerned by what it has heard about the current experiences of many disabled children, young people and their families of transitions. The Committee believes that action must be taken to address these issues, such as poor communication with young people and failures to adequately support the transition from school to further or higher education.**
- **The Committee believes that data relating to the transition from children's to adult services and access to further and higher education, and employment should be collected, analysed and reported upon regularly to ensure that sufficient progress is being made. The Committee asks the Scottish Government to respond to this recommendation.**

### **Current services for disabled children and young people**

The Committee heard from several witnesses that the availability of services for disabled young people to move on to was a “postcode lottery”. Scottish Autism told the Committee that geographically, the picture was “patchy” and that there were not always services close to a young person’s home or in their own community. The consequences of this were that the young people “face losing all of their support network when they are moved”.<sup>54</sup>

The Committee heard that this was partly owing to a staffing crisis in social care. LEAD Scotland told the Committee that the inconsistency in the options available for young people is also caused by issues relating to resourcing, capacity, and training for services.<sup>55</sup> The Health and Social Care Alliance Scotland also highlighted staffing issues: “One of the big issues at the moment is that there are no adult social workers to step in and support the transitions.”<sup>56</sup>

The Committee heard that there was sometimes an inequity between children’s and adult services leading to a rapid removal of support at the point of transition. The Health and Social Care Alliance Scotland said: “...as children, they needed three days of physiotherapy and occupational therapy input, and then suddenly they hit adult services and nothing is provided for them.”<sup>57</sup>

Similarly, Scottish Autism said that there was a funding gap: “It is challenging enough when children’s services and education are funding placements, opportunities and experiences for young people, but, when that moves into health and social care



partnerships, the funding does not follow the young person, so there is no smooth pathway or coherent way through the system.”<sup>58</sup>

LEAD Scotland told the Committee: “The lack of appropriate provision for young disabled people when they move on from school is a national disgrace.”<sup>59</sup> A number of witnesses questioned whether the Bill could improve outcomes for disabled young people moving on to adult services in the absence of any planned increase in resources or service provision. Many stakeholders pointed to the lack of “like for like” services – or indeed any services targeted towards young adults – considerably narrowing the options available to those carrying out transitions planning and to the young people themselves.

This means many young disabled people face a “cliff edge” when they are no longer eligible for children’s services. A number of young people are still under the care of children’s services for many years past the point where they should have transitioned to adult services as there is no alternative provision.

The Committee also heard evidence on transitions in healthcare services. Dr Mairi Stark, Royal College of Paediatrics and Child Health, told the

Committee: “Often, we have no idea about where, in adult services, we can transition a young person to.”<sup>60</sup>

As a result, young people are still attending the children’s hospital many years after they should have transitioned to adult services. Echoing this, the Royal College of Occupational Therapists told how their members say that “there is a lack of facilities or like-for-like services that they can refer on to.”<sup>61</sup>

Where there were services which a young person could transition to, witnesses told the Committee that this transition was not always managed well. Stakeholders suggested there were sometimes cultural issues which contributed to poor transitions in health services. For example, Dr Kandarp Joshi of the Royal College of Psychiatrists in Scotland noted that the separation of children and adult services has created issues in transition between them.<sup>62</sup>

Witnesses also highlighted that there was sometimes a lack of clarity from adult services on their role in transitions or a view that transitions were the responsibility of children’s services alone. This was exacerbated by pressures on staff workloads. Dr Stark, Royal College of Paediatrics and Child Health said: “Whenever we set up meetings on transition in our local area, those on the adult side invariably send their apologies.”<sup>63</sup>

In an informal session with parents and carers of disabled children and young people, supported by ARC Scotland, one parent told the Committee that for her daughter, “transitioning from paediatric audiology services to adult audiology services has been a complete failure – despite good intentions.”<sup>64</sup> The parent said that although a clear transitions plan was created by

paediatric audiology, “none of what was in the plan happened beyond the

first year”.<sup>65</sup> The Committee was told there was a lack of knowledge of deaf young people in adult services. For example, the audiologist in adult services did not know how to set up the audio technology and had to be shown by the young person themselves. Moreover, although information in the transition plan was passed on from paediatric audiology, the Committee heard that “it just wasn’t followed”.<sup>66</sup>

The Committee recognises that issues relating to information sharing and communication are key in terms of transitions and this is set out in paragraphs 223-225 and 247-258 below.

### **Current services for disabled children and young people – conclusions**

- **The Committee is deeply concerned by what it has heard about current services for disabled children and young people. The Committee also notes the disconnect between children’s and adult services. There is an urgent need to improve access to specialist services for disabled children and young people and to ensure consistency across Scotland. The Committee asks the Scottish Government what urgent steps it will take to address these issues.**
- **The Committee is also concerned at the considerable pressures on those who work to support young people in their transition to adulthood. The Committee heard about the extreme pressures on resources – felt most keenly by those working on the front line - in local authorities, health and social care systems and the precarious nature of funding in the third sector. The Committee also heard about issues relating to organisational culture, such as that adult services do not**

**always adhere to children’s transitions plans, and practices and training.**

- **The Committee does not believe that the Bill will resolve the issues with resourcing and interaction between children’s and adult services.**
- **The Committee asks the Member in Charge to set out how she hopes the Bill can achieve its aims of improving transitions for disabled children and young people without specific measures to address these wider issues.**
- **The Committee also asks the Scottish Government to set out what steps it will take to address current resource and staffing pressures in relation to transitions.**

### **Current legislative and policy landscape**

In scrutinising the Bill, the Committee considered the wide range of existing legislation and policy already in place governing disabled children and young people's and adults' entitlement to educational, health, social care and other types of support. The Committee heard a range of evidence to suggest that the existing landscape was already complex, with different requirements on different professionals, and that this could pose challenges in young people receiving a holistic support package. The Committee believes that careful thought should be given as to how the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill would potentially interact with existing legislation/policy relating to transitions. This legislation/policy is set out in more detail below.

#### *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. The Committee notes the most recent Pupil Census data, gathered in September 2022, which found the number of pupils in state funded schools in Scotland with identified additional support needs was 241,639 (34% of the total). Of these 1,401 had a CSP in place, that is 0.6% of those with an identified ASN.

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 (CSP) 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.

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 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.

### *Policy*

Supporting young people through the transitions process and ensuring that they continue to receive support has been a long-standing policy issue. There are a number of policies and non-statutory guidelines that are relevant to the transition of disabled children and young people to adult services. The National Institute for Clinical Excellence has produced guidelines on the transition from children's to adult services for young people using health or social care services. More recently, the Scottish Transitions Forum, part of ARC Scotland, published the Principles of Good Transitions 3 in March 2019. Within this, they note 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.

The Principles of Good Transitions are set out later in the annexe.

### *Getting It Right For Every Child (GIRFEC)*

A number of stakeholders, in giving evidence on the Bill, mentioned Getting It Right For Every Child (GIRFEC) as an important policy framework both in relation to children's policy generally, but also specifically in relation to transitions. The Royal College of Psychiatrists in Scotland told the Committee that "a lot of what is in the bill sits within GIRFEC as practice and culture. It

would be useful if there was a way to simplify that by reinforcing it, rather than by adding another layer of legislation."<sup>67</sup>

The Scottish Government memorandum to the Committee on the Bill outlined a number of developments which are, or will, positively improve transitions. Amongst these was the next phase of GIRFEC which will: "focus on revising guidance for planning for the child or young person, including effective planning for transitions for all children and young people."<sup>68</sup>

The Scottish Government expressed a commitment to “streamlining the planning process to work towards a single-planning approach” and noted that this work will be undertaken through “extensive engagement with a wide range of stakeholders.”<sup>69</sup>

In giving evidence on the existing legislative and policy landscape, Mike Corbett, NASUWT, told the Committee that there were “too many competing policy drivers.”<sup>70</sup> Echoing other evidence the Committee had heard, the existing initiatives were described as being not “coherent.”

He said: “There are responsibilities around additional support needs. There is also getting it right for every child – GIRFEC – and mental health and wellbeing, which is now promoted much more, and rightly so. There is already the right to have co-ordinated support plans, and we will also have what is in the bill.”<sup>71</sup>

The intention of GIRFEC is to provide the foundation to all policy relating to children, but some witnesses highlighted that there had been a failure to fully implement this in practice. In an informal evidence session supported by ARC Scotland, a parent of a disabled young person told the Committee: “You need people who do good practice – if we did GIRFEC we wouldn’t need this bill.”<sup>72</sup>

### *Scottish Transitions Forum*

The Scottish Government funds the Scottish Transitions Forum, which 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.

This comprises of 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 to at least 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.

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. The trial came to an end in March 2023 and is intended to be

implemented across Scotland in 2023.

The Principles Into Practice draft framework reflects the Principles of Good Transitions 3 and provides guidance on:

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

### **Existing policy and legislation – conclusions**

- **The Committee notes the volume and complexity of existing legislation and policy already in place governing disabled children and young people’s and adults’ entitlement to education, health, social care and other types of support, and the difficulty this poses for professionals trying to navigate the competing tensions in the legislative landscape.**
- **The Committee asks the Member in Charge and the Scottish Government to carry out detailed analysis of how the provisions in the Bill would interact with these existing provisions.**

### **Statutory transitions plans**

Part 2 of the Bill 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 area. 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 ended sooner.

The intention is that the local authority will be the body responsible for developing, reviewing, and delivering the plan. 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 child and young person with a disability within the local authority area in the transition to adulthood.”

A number of key issues relating to the planning element of the Bill were highlighted to the Committee by various stakeholders. Some witnesses expressed concerns about how the transitions plans, as proposed in the Bill, would interact with existing plans and the consequences of introducing a statutory planning process.

#### *Ability of legislation to drive change*

Many stakeholders told the Committee that meaningful change to current transitions practices could not come about through legislation alone, and this it would require shifting attitudes and significant culture change, both of which could not be easily legislated for.

The Health and Social Care Alliance Scotland stated: “My big worry is what will happen if you create legislation and there is not the will and the culture to take it forward. There must be a real will to embrace everybody’s human rights.”<sup>73</sup>

The Committee heard that the Bill can legislate for a plan, but that alone cannot create better opportunities for disabled young people.

ARC Scotland, told the Committee: “The best planning in the world does not remove the barriers of discrimination that are faced daily by young people who had additional support needs, disabilities or autism.”<sup>74</sup>

The Scottish Commission for Learning Disability (SCLD) expressed concerns that allocating significant additional resources to statutory transitions plans would mean disinvesting in other priorities. They were concerned that transitions plans would be “superficial and tokenistic” owing to a lack of capacity, in both time and skills in the system to undertake thorough person-centred plans.

The SCLD also identified a risk that resources for planning would be prioritised towards those defined in this statutory duty, at the “expense of other young people who might need just as much transitions support”, such as pupils with ASN who do not have a disability.<sup>75</sup>

The recent literature review of transitions, published by the Scottish Government, recognises the focus on education and employment in transitions, perhaps at the expense of other aspects of adult life, such as relationships. Being supported in this aspect of life is of vital importance to young disabled people but success in this area is not easily quantifiable.

Based on her experience of existing legislation, Rebecca Scarlett, Linking Education and Disability (LEAD) Scotland, told the Committee that she was not convinced that legislation can “achieve the improved outcomes that we want disabled young people to have.”<sup>76</sup>

Other stakeholders echoed this sentiment; some witnesses expressed a general scepticism about the ability of legislation to enact change for disabled young people. Scott Richardson-Read, ARC Scotland, said: “I am also not so naïve as to expect that the fact that something is law means that it will happen on the ground. It can take a lot of time.”<sup>77</sup>

In response to issues relating to legislative provision for transitions plans, the Member in Charge said: “Fundamentally, what we do not have in legislation is a right for children and young people to have a transitions plan from the age of 14 that follows them through to the age of 26 or beyond. There are regulation-making powers in the bill to do that. It is about focusing on what they need in order to give them a fighting chance at a future, and that is just not there right now.”<sup>78</sup>

### *Cluttered landscape and implementation gap*

The Committee heard evidence that the current policy landscape is cluttered and that there is an implementation gap. Witnesses told the Committee that many of the problems are not owing to a deficiency of the existing legislative framework but a failure to implement those policies.

Some stakeholders questioned the ability of the Bill to address the barriers which lead to the poor experiences of disabled young people and their families in transitions.

ARC Scotland said: “We wish the Committee to note, in our experience, professionals at all levels and in all sectors share the deep concern about the poor experiences of young disabled people, young people with additional support needs and their families and there is an overwhelming willingness to address this. This requires overcoming barriers in relation to resources, differing practice and organisational cultures, systemic change, lack of data and the complexity of the existing policy framework as it applies to young disabled people. The Bill will not solve these problems.”<sup>79</sup>

LEAD Scotland said that although they agree with the overall aims of the Bill, they are not convinced that the Bill can meet these aims. They said: “This is an already very cluttered policy landscape with multiple laws and plans already in place in relation to children and young people and additional support to learn.”<sup>80</sup>

Similarly, Andy Miller of SCLD highlighted existing legislation and the duplication of planning requirements. He said: “Other legislation requires plans to be provided. One person can end up with lots of different plans that duplicate and overlap, each of which require a process to be completed. I would say that is a real downside to the legislation.”<sup>81</sup>

However, ENABLE Scotland recognised that there were potential benefits offered by having a statutory planning process, noting that “no other legislation makes a requirement for transitions plans.”<sup>82</sup>

Existing legislation, namely the Education (Additional Support for Learning) Scotland Act 2004 established a statutory planning process – Co-ordinated Support Plans (CSP).

The Committee heard that whilst CSPs were designed to identify and ensure provision of services for children and young people with complex or multiple additional support needs, they were widely under-utilised across Scotland.

In an informal evidence session, one practitioner said: “We already work with plans – CSPs [co-ordinated support plans], health plans, child plans. CSPs are statutory but doesn’t necessarily mean it holds more success for them than a child’s plan. Yes, plans are good, we already have child’s plan. There is option to tag it as a transitions planning meeting.”<sup>83</sup>

They went on to question whether making transitions plans statutory would “make it reductionist” and risk making it a tick box exercise.<sup>84</sup>

NASUWT referred to the example of one special school, where rather than there being a significant number of CSPs in place as they had expected, there was a CSP in place for a single pupil.<sup>85</sup>

The Committee heard that there is a lack of clarity in terms of how the transitions plans would interact with existing plans, namely CSPs. Iain Nisbet, Education Law Solicitor, said: “The Bill includes an obligation to prepare a transitions plan, without any consideration of how such a plan would interact with existing plans, and specifically with any Co-ordinated Support Plan (CSP) in place. The potential for confusion in having two separate plans dealing with transition under two separate statutory regimes is obvious.”<sup>86</sup>

This was echoed by the Equality and Human Rights Commission, which said that if the Bill goes forward “it must include clarification regarding the interaction between co-ordinated support plans (CSPs) and transitions plans.”<sup>87</sup>

Other stakeholders were unsure how the Bill would fit with existing work and expressed concern that it might duplicate work that was already underway. Scott Richardson-Read of ARC Scotland questioned how the Bill aligns with existing legislation, namely the Education (Additional Support for Learning) (Scotland) Act 2004.

He told the Committee, “I am concerned that introducing more legislation...will give us a more complex situation.”<sup>88</sup>

The then Minister for Children and Young People, Clare Haughey MSP, told the Committee

that the Scottish Government share some of the questions raised by those who responded to the Committee's call for views and those who gave oral evidence around "the potential duplication or overlap of provisions in the bill with existing policy and legislation".<sup>89</sup>

The Member in Charge told the Committee that the Bill provides "a one child, one plan focus."<sup>90</sup> However, the Member in Charge also pointed out that the transitions plans proposed in the Bill are not the same as CSPs and that transitions plans could, for some children, be an additional plan alongside CSPs, health plans and child's plans.<sup>91</sup>

Other stakeholders gave examples of failures to implement existing legislation in this space; the Equality and Human Rights Commission highlighted the low prevalence of CSPs, which are statutory plans. They said: "While the policy memorandum accompanying the current Bill suggests that this evidences the need for new legislation to address the lack of planning for disabled children, it may also be regarded as a failure of implementation rather than a failure of legislation."<sup>92</sup>

Iain Nisbet, Education Law Solicitor, told the Committee that: "There are already statutory post-school transition duties in place for children and young people with disabilities (as well as others with additional support needs). These are, at best, inconsistently applied."<sup>93</sup>

East Lothian Council, Children's Services and Adult Wellbeing told the Committee that it was not clear why establishing a new Bill was the best way to improve outcomes for disabled children and young people in the transition to adulthood. In a written submission, they said: "There are various pieces of legislation, policy and guidance already in place to ensure that disabled children and young people have access to the support they require in their transition to adulthood."<sup>94</sup>

The Committee heard from a number of stakeholders that the existing legislative and policy landscape was complex and difficult to navigate for parents and young people as well as professionals working in the sector.<sup>95</sup> Rebecca Scarlett, LEAD Scotland, said: "I am particularly critical not necessarily of replicating [*existing duties*] but of adding to the existing legalisation and existing duties...No detail has been provided about how the bill will interact and align with the existing legislation. We need to simplify and clarify the situation for people, and we need to focus on practice, capacity and resourcing."<sup>96</sup>

Andy Miller, giving evidence on behalf of the SCLD, told the Committee that although SCLD "cautiously supports the bill" owing to a need to "bring in a level of accountability"<sup>97</sup>, that there is some duplication in the Bill in relation to planning requirements.

The Member in Charge agreed that there was currently "a bit of a legislation salad"; however, she stated that her Bill was designed to address a specific gap in the current legislative framework, noting: "we do not have something that supports [*disabled young people*] through a crucial part of their life – from about the age of 14, which is proposed in the bill, up until the age of 26".<sup>98</sup>

The Law Society of Scotland also expressed support for the Bill and recognised a need for new legislation: "Many of the shortcomings currently experienced by children and young people with disabilities are the result of poor planning, coordination, and delivery of services, rather than the law at an "operational" level. However, we would suggest that significant improvement is unlikely to be achieved without legislative measures."<sup>99</sup>

## Resources

Some witnesses expressed concerns that about the resource restrictions and pressures



on local authorities that “we will go to the lowest common denominator of planning”.<sup>100</sup>

The Committee also heard that without adequate resourcing young people may receive transition plans that cannot be acted on.<sup>101</sup>

The SCLD, shared some of the responses from their own consultation on the Bill when it was first introduced in 2019. One person said: “To believe we could deliver the Bill within existing resources is...fantastical.”<sup>102</sup> Another person described the Bill as “a great plan that cannot be executed.”<sup>103</sup>

The National Autistic Society Scotland also highlighted their concerns about the effectiveness of the approach to transitions plans outlined in the Bill without an adequate level of accessible services: “Any strategy which places a duty on local authorities to plan for a young autistic person’s transition into adulthood will only be as effective as the quality of services, support and education or training options currently available in a local authority area. Autistic people and their families continually tell our charity that, very often, the support services are simply not available, particularly in rural or isolated parts of Scotland.”<sup>104</sup>

The SCLD told the Committee: “There is nothing in the bill that will improve adult services per se. It will, we hope, improve access to the services that people want, if those services are available, but without the funding to improve what is available.”<sup>105</sup>

Echoing this sentiment, the Health and Social Care Alliance Scotland said: “If there is nowhere to transition to – if there are no services – or resources to access, it does not matter whether you have the best transition plan.”<sup>106</sup>

In written evidence, a group of parents and carers of disabled children and young people also told the Committee that the Bill will not address the shortage of services and resources. They said: “Vital services proven to work, such as advocacy, continue to be underfunded or cut. If we can’t develop what is already working well and implement it more widely, more legislation is unlikely to achieve this.”<sup>107</sup>

### **The need for statutory transition plans and additional legislation - conclusions**

- **Based on the evidence set out above, the Committee is not yet convinced that introducing further legislation in an already cluttered and complex legislative and policy landscape will resolve the issues set out above and ultimately improve outcomes for disabled young people.**
- **The Committee notes that there is a significant implementation gap between the intended policy and the experiences of children and young people. Further, it notes the detrimental impact this has on disabled children, young people and their families. The Committee was disappointed to hear in evidence that Coordinated Support Plans are widely under-utilised. The Committee is not convinced that the transitions plans provided for by the Bill would be any different.**
- **The Committee asks the Member in Charge to set out how the provisions in the Bill would be fully implemented, given that other legislative provisions have been under-utilised.**
- **The Committee notes the Scottish Government review of Coordinated Support Plans, published in November 2021. The report recognised that it was widely**

**accepted that Coordinated Support Plans were underused. The Committee requests an update from the Scottish Government regarding progress that has been made in addressing the conclusions of this report to date. The Committee acknowledges that quantitative data exists in relation to the destinations of disabled young people post- transition, but notes that there is currently no systematic collection of qualitative data on children and young people’s experiences of transitions to adulthood, and that this should be collected.**

*Transitions plans– how will they work in practice?*

A number of stakeholders expressed concerns about the workability of the planning element of the Bill and sought clarity on what transitions plans might encompass.

These concerns included:

- Who owns the plan and what type of information will it include.
- The intended audience of the plan (i.e. is it the young person, support agencies or both?)
- How the planning process will put young people at the centre.
- How a plan can meaningfully cover the period between the young person being aged 16 up until 26 years old, including taking account of the fact that young people’s hopes and aspirations are likely to change over that time period.
- A concern that the planning process is mainly education-focused, when that may not be appropriate for all disabled young people.
- Ongoing discrimination and structural inequalities may mean that even the best plan is unlikely to succeed.
- As the Bill is currently drafted, disabled young people will have to have a transitions plan, whether they want one or not.

ARC Scotland said: “The way in which planning is dealt with in the bill that we are discussing is problematic for me, because it makes no sense on how it will work. Who should make the plan, who is it for, and what is it about? We need to go back to the definition of transition being a whole-life change.”<sup>108</sup>

When asked about the planning provisions in the Bill, one practitioner said that there is “not enough understanding of young people themselves” and that the Bill has taken “a top-down approach”.<sup>109</sup>

They went on to state: “If we give young people the opportunity to explore their goals, approached it through less educational setting, [then] we would welcome the plan. We are giving too much responsibility to bodies with this and less on what the young people want.”<sup>110</sup>

The importance of the young person being at the centre of the planning process was continually stressed to the Committee by witnesses. ARC Scotland said: “We do not want a plan to be something that is done to a family or young person...The plan has to be led by the young people and their parents and carers.”<sup>111</sup>

Echoing this sentiment, the Scottish Commission for People With Learning Disabilities, told

the Committee that plans should be offered on an “opt-out basis”.<sup>112</sup>

As it is currently, the Bill does not make provision for eligible young people to decline or opt-out of receiving a transition plan.

### Transitions planning in practice: conclusions

- **The Committee is very concerned by lack of clarity on how transitions plans, as proposed in the Bill, would work in practice. Given that transitions plans would be required by statute, it would be imperative for disabled young people and the agencies tasked with delivering the plans to have a clear understanding of what is required.**
- **The Committee believes that disabled children and young people should be supported to decide how to approach their transition to adulthood.**
- **However, the Committee notes evidence that a requirement for a transitions plan was seen by some as a ‘top down’ approach, with no opportunity for the young person to opt out.**
- **The Committee asks the Member in Charge to respond to the concerns set out in paragraph 162 above.**

### Age

The Committee heard evidence on the age at which transitions planning should begin and end. 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.

Scottish Autism stated that the time at which young people leave school “is often quite an arbitrary point of transition, and transition planning starts far too late for most young people.”<sup>113</sup> Jenny Miller, Health and Social Care Alliance Scotland, recommended that the transitions for complex children start much earlier. She went on to state: “They should start at 14, but...some of them are not starting until six months before the young people go into adult services – if that.”<sup>114</sup>

Echoing this, Dr Mairi Stark of the Royal College of Paediatrics and Child Health stated that transitions should start early, be carefully co-ordinated and the process should take two to three years.<sup>115</sup>

Some stakeholders stressed the need for flexibility in transitions planning as young people develop at different ages and stages. In an informal evidence session with parents and carers of disabled children and young people, one parent told the Committee that by the time their daughter was ready to engage with services, she was too old for those services.

The parent said: “She seemed to fall through the cracks, and there wasn’t a way back. You feel a bit on your own – but beyond school, if you haven’t got a social worker involved, then falling through the cracks in your early 20s is scary”.<sup>116</sup>

The need for flexibility was echoed by a practitioner in an informal evidence session, who commented on asking young people to make a plan aged 14. They said: “...is it going to lock them into a journey and not allow them to change their mind? I think the plan should be young people should be exposed to as many different opportunities as possible, we can’t fix them into a destination at 14. What happens if they change their mind? A plan is

important not a be all and end all and needs to be as flexible as possible.”<sup>117</sup>

## Age – conclusions

- **The Committee notes the age range set out in the Bill. However, the Committee recognises that there is currently a lack of alignment across legislation and policy relating to disabled children and young people, including in relation to the age when a child/young person might be eligible for support.**
- **In the interests of young person-centred planning, there should be some flexibility to allow the planning process to start earlier or later, depending on the needs of the individual young person.**
- **Where transitions planning is postponed beyond 14 years of age, a clear timescale would be needed to allow the young person, parents/carers and practitioners to revisit that decision after a set time period - in order to ensure that transitions planning is not lost and can begin as soon as the young person is ready to participate.**
- **The Committee believes that transitions planning should start from an early age and be embedded in the support received by disabled young people. The planning process should evolve at a pace set by the young people themselves. The Committee encourages the Member in Charge and the Scottish Government to explore how flexibility could best be incorporated into transitions planning in future.**

### *Definition of disability and identifying recipients of transitions plans*

As previously stated, a key concern amongst stakeholders is the need for clarity as to who would qualify for a transitions plan.

Whilst the Bill states that a young person is entitled to a transitions plan if they meet the definition of disability set out in the Equality Act 2010, what was less clear to stakeholders was how these young people would be identified in practice - i.e. is the expectation that they would self-identify or whether the onus would be on the local authority to identify the young people concerned?

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.”

It was also unclear whether this identification would be dependent on a formal diagnosis, something that stakeholders said was used more frequently as a gateway to support in adulthood, whereas support in childhood was often provided regardless of any diagnosis being in place.

The Committee also heard that using the Equality Act 2010 definition of disability would likely lead to a much larger cohort of children and young people being entitled to a transitions plan than was currently supported by social work. These issues are explored in the section on the Financial Memorandum in paragraphs 259-297 below.

When asked about the rationale behind the use of this definition of disability, the Member in Charge told the Committee that the reason for choosing that definition is because it is broad. The Member said: “It includes people on the autistic spectrum and those with

learning disabilities and with mental ill health, because it is about how an impairment impacts on their social interaction and the way that they interact with society.”<sup>118</sup>

The Bill differs from the existing legislative framework which refers to Additional Support Needs, rather than disability.

Clare Haughey, the then Minister for Children and Young People, told the Committee: “The bill looks at disability, whereas the other plans we have on transitions look at additional support needs, which might be short term and acute, such as in response to family bereavement or for a child whose first language is not English. As things are now, those children would be supported through transitions, but the transitions bill does not look at those issues. Its definition, wide though it is, narrows down who would have a legal right to a transitions plan.”<sup>119</sup>

The Royal College of Psychiatrists in Scotland stated that the use of the 2010 Act definition of disability in the Bill limits the scope of the Bill and in reference to mental ill health conditions, it fails to recognise those with mild to moderate mental ill health, those going through a mental health crisis and those with fluctuating support needs.<sup>120</sup>

Similarly, Iain Nisbet, Education Law Solicitor, told the Committee: “It is regrettable that the Bill focusses on children and young people with disabilities. While it is understood and well documented the particular difficulties which this group face, it seems anomalous to exclude the many children and young people whose school education and future chances have been affected by other factors (home circumstances, substance abuse, adverse childhood experiences, homelessness etc) from the protections of the Act.”<sup>121</sup>

In giving evidence to the Committee, the Member in Charge addressed the definition of disability used in the Bill, and the absence of reference to those with Additional Support Needs: “It is a different group of people that we are looking to support under the bill. We are looking to address the significant discrimination and oppression faced by a group of people who have a protected characteristic under the Equality Act 2010.”<sup>122</sup>

Bill Scott, Inclusion Scotland, stated that: “A lot of people under the ASN would not qualify as disabled people because their level of impairment does not have a significant impact on their daily lives.”<sup>123</sup> Giving the example of children with dyslexia, he said they “have approximately the same number of positive outcomes as children without dyslexia.”<sup>124</sup> Dyslexia is explicitly mentioned as qualifying as a disability in the guidance to the Equality Act 2010. When asked about this, Mr Scott told the Committee: “the 2010 act does not just say it is the condition that qualifies you as a disabled person; it has to have a significant impact on your daily life for a period of time...It is necessary to go beyond the question of whether the person has an impairment to that of whether the impairment is having a significant impact on their daily life. If the answer to that is yes, then they qualify for support.”<sup>125</sup>

The Committee notes that some young people who would benefit from receiving a transitions plan would not be eligible under the Bill owing to the exclusion of those with Additional Support Needs, but not a disability. This was highlighted in a written submission from ARC Scotland, who shared the words of a young person published in their report, *Hearing Our Voices Respect Our Choices* (2021).

The young person said: “I do not fit into being disabled but I have memory and organising problems and I'm accident prone. People don't understand as my difficulties are hidden. Even the people at Remploy had no understanding of my condition and how to help even

though there's loads of information online.”<sup>126</sup>

Commenting on the absence of Additional Support Needs in the Bill, Lead Scotland suggested that as a wider umbrella term its inclusion in the Bill would be “more helpful” than the use of the 2010 Act definition of disability alone.<sup>127</sup>

In written evidence, East Lothian Council, Children’s Services and Adult Wellbeing told the Committee that, for local authorities, it is unclear how the Bill will impact on the current eligibility criteria for both Adult’s Wellbeing and Children’s Services, which currently has clear eligibility criteria. They said: “If this legislation extends the definition of disabled children and young people, services will be required to provide support to significantly more families. This would have a substantial impact on services, resources and budgets that are already under considerable pressure.”<sup>128</sup>

The Committee notes that Deaf BSL users may not feel that the Bill is relevant to them. The British Deaf Association Scotland said: “Deaf BSL users cannot simply be consigned to the “disability agenda”, as most BSL users feel that they are part of a linguistic and cultural minority and that it is society’s attitude and unwillingness to adapt that disabled them, and not their deafness.”<sup>129</sup>

### *Identification of disabled children and young people*

In practical terms, the Committee heard some concerns over the process of identifying disabled children and young people who would have a legal right to a transitions plan under the Bill.

In a written submission to the Committee, the Equality and Human Rights Commission stated: “The Bill should clarify the process for identifying children and young people eligible for a plan to ensure consistency of application across local authority areas.”<sup>130</sup> They highlighted that it is unclear whether children and young people or their parents, carers or guardians would have to make a request for a plan.<sup>131</sup>

The Bill may also create a situation where a statutory obligation exists for children and young people who may not have disclosed their disability to their school, or who equally may not self-identify as having a disability despite meeting the statutory definition.”<sup>132</sup>

In addition, The Bill does not address how a local authority would identify disabled pupils who live in their area and attend mainstream independent schools or otherwise have little contact with the local authority.

### **Definition of disability and identification of eligible children and young people - conclusions**

- **The Committee would welcome clarity from the Member in Charge on who would be entitled to a transitions plan under the Bill and how eligible children and young people would be identified, and by whom.**
- **The Committee is concerned that the Bill would place a statutory duty on Local Authorities to provide transitions plans to disabled children and young people with a lack of clarity on how they would identify the eligible children and young people in their area.**
- **The Committee is also concerned that the use of the Equality Act 2010 definition of disability may mean that some young people with significant**

**support needs miss out on support, particularly where they do not identify as disabled or where their impairments may not always be visible and/or fluctuate over time.**

- **The Committee believes that, if the Bill progressed to Stage 2, then the current definition of disability in the Bill would need to be revisited, in order to provide clarity as to entitlement to a transitions plan and allow for more accurate estimates of the costs and resource implications of implementing the Bill.**
- **The Committee shares the concerns expressed by some stakeholders that children with Additional Support Needs - particularly those with acute, short term ASN such as bereavement or homelessness - but not necessarily a disability, would be eligible for support as children under the existing legislative framework but would not be entitled to a plan under this Bill.**
- **The Committee would welcome feedback from both the Member in Charge and the Scottish Government regarding this point.**

### *The requirement for a diagnosis*

A number of witnesses raised concerns about the need for a diagnosis in order to access support. Sections 7(3) and 10(1)(a) of the Bill refer to disability as being “diagnosed”. However, the Equality Act 2010 definition of disability used in the Bill does not explicitly require a diagnosis to have been made.

Key concerns relating to this included:

- Receiving a formal diagnosis of learning disability often takes a considerable amount of time and a diagnosis may not be in place by the time a young person is starting the transitions process;
- Not all young people meeting the Equality Act 2010 definition of disability would self-identify as disabled and, as such, may be reluctant to have a formal transitions plan;
- Professionals can often be reluctant to provide a diagnosis as they are concerned about potential stigma for the child;
- Those young people with mild to moderate mental health problems may not fall under the auspices of the Bill.
- Current support legislation, particularly in schools, is geared around Additional Support Needs, rather than disability.

LEAD Scotland, said: “We hear all the time from disabled young people that they do not identify with the language of disability and that they do not identify as being disabled.”<sup>133</sup>

Similarly, the Donaldson Trust told the Committee: “I note that the challenge is sometimes that not everybody recognises that they have a disability, so they do not acknowledge it...That is a challenge that also applies to people who are undiagnosed and people who are going through a process of diagnosis at the point of transition, and are going into a service.”<sup>134</sup>

In an informal evidence session, one practitioner stated that they had reservations about the plan being led by the local authority. They said: “Some young people have [a] pathway

and support is in place but some people [are] mainstreamed and not as easily identifiable,” suggesting that this could see some young people “falling off the cliff edge.”<sup>135</sup>

While supportive of the use of the 2010 Act definition of disability in the Bill, the National Autistic Society Scotland suggested that clear guidelines on who would qualify for a transitions plan would be needed. They told the Committee: “We are pleased that the Bill is explicit about the use of the Equality Act compliant definition of disability. We would also suggest that clear and concise guidelines are provided on who exactly would qualify for a transition plan under the Equality Act definition of disability. Specifically, the right to a transition plan should not be dependent on having a diagnosis, as many autistic children and young people find difficult to get a diagnosis or can wait months, sometimes years, for a diagnosis. Section 7(3) refers to the need for a diagnosis and, as such, we would urge that this is amended.”<sup>136</sup>

Echoing this, Partners in Advocacy Scotland told the Committee: “The Bill references a disability as defined in the Equality Act 2010, how will the Bill plan to address the issues of requiring a diagnosis? The current waiting lists and timescales that disabled young people and their families are facing are extensive, the Bill needs to be clear if a diagnosis is required and who determines if a young person is eligible to access the Bill and what the process is.”<sup>137</sup>

Similarly, from the perspective of schools, NASUWT told the Committee: “One initial key point to note is that the focus of the Bill is

disability. Within an education context, teachers, schools and local authorities are currently working within a policy framework built around additional support needs (ASN). While many children and young people with ASN will have a disability, some may not. The Union is concerned that an unintended consequence of the legislation would be that an unhelpful two-tier system of support for ASN children and young people in schools would ensue.”<sup>138</sup>

In an informal session with practitioners, the Committee heard that assessment and criteria can be a barrier for some young people in receiving support. One practitioner said: “Some less complex and more neurodivergent young people might not want to go through assessment for disability but doesn’t mean they shouldn’t be eligible for support.”<sup>139</sup>

### **Requirement for diagnosis – conclusions**

- **The Committee notes that the requirement for a diagnosis set out in the Bill is inconsistent with the Equality Act 2010 definition of disability, which does not require a diagnosis.**
- **Given the gap in resources and difficulties in obtaining a diagnosis, the Committee is concerned that requiring a diagnosis in order to access support would be a barrier for many disabled children and young people in accessing a transitions plan.**
- **The Committee asks the Member in Charge to respond to these points.**

### *Impact on the parents and carers of disabled children and young people*

Section 11(b) of the Bill states that when preparing a transitions plan, a local authority must, in so far as it is reasonably practicable, ascertain and have regard to the views of “the parents, legally appointed guardian or other carers of the disabled child or young person”.



The Committee wanted to gain an understanding of the impact of transitions on the parents and carers of disabled children and young people.

The Committee heard that, at times, the role required of parents or carers in managing transitions went far beyond what could be reasonably expected of them.

Parents and carers told the Committee that they were forced to coordinate their young person's transition to adult services and take on a role that should be fulfilled by a professional.

In an informal evidence session, one parent said: "we've become the CEOs of our children. A semi-professional psychologist, local councillor, semi-professional teacher..."<sup>140</sup>

The level of time and commitment required of parents and carers led to some having to give up paid work in order to support their young person in the transition to adulthood. The Health and Social Care Alliance Scotland said: "Family members have had to give up employment because there are so many appointments across a week that they have to attend – there is no co-ordination."<sup>141</sup>

The Committee acknowledges the difficulties faced by parents in navigating complex systems of health, social services and education. Across the evidence gathered, there was a clear sense that support was often something that had to be fought for by parents and their young people, and information was not always readily available.

The disadvantages faced by disabled young people were compounded for those whose parents or carers were not as able to navigate such systems, or advocate for their young person as effectively as others, such as those who may themselves have a learning difficulty.

In an informal evidence session, one practitioner told the Committee that there was an "assumption that all parents are able to do all this."<sup>142</sup>

In some instances, the professional backgrounds, knowledge or connections of parents were beneficial to supporting young people in their transition, but this is not available to all disabled young people in Scotland.

To illustrate this, in an informal evidence session, a support worker stated: "One participant and their sibling are at university, but the participant's school never thought they would make it to university. Their parents had to advocate for them and get private tuition as the school didn't provide it. Credit to their parents for doing this, not everyone's parents would be able to."<sup>143</sup>

### **Impact on the parents and carers of disabled children and young people - conclusions**

- **The Committee acknowledges that parents, carers and legal guardians play an essential role in supporting transitions for their disabled child or young person. However, there is currently an over-reliance on parents and carers to advocate for their young person, and to coordinate support and facilitate communication between agencies more broadly.**
- **The parents, carers and legal guardians of disabled children and young people should themselves be supported through the process of transitions; their**

**voices should be listened to by professionals and their expertise on their child or young person's needs be valued and meaningfully engaged with.**

- **The Committee asks the Scottish Government what it is doing or plans to do to ensure that parents, carers and legal guardians are provided with the support and resources they need to support their young person's transition to adulthood. The Committee asks the Member in Charge how the provisions in the Bill would improve the position for parents, carers and legal guardians, given that availability of services and resources can present barriers.**

### *Advocacy and being heard*

In relation to transitions plans, section 7(5) of the Bill states: "In relation to any child or young person who 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."

The Law Society of Scotland raised concerns around the wording of this section in the Bill. They stated that there should be a presumption in favour of all children, young people and adults having the ability to express a view. They suggested that this section should not state "lack capacity to express a view" but rather "be unable to express a view" and that "this section should include the consideration of the past and present views, rights, will and preference of the child or young person."<sup>144</sup>

The Bill states that a local authority officer would be responsible for the management of a transitions plan, but some stakeholders questioned this. In relation to the responsibility of the local authority to appoint an officer or social worker, Partners in Advocacy Scotland told the Committee: "The officer may not know the young person, their needs, wants or communication requirements, or the young person may not feel comfortable in speaking to them. Transitions and change of any kind can be particularly difficult for disabled young people. Dealing with stressful situations, such as meetings with decision makers or speaking up for your rights, can be overwhelming for children and young people...Not all young people have positive relationships with the named professionals in their lives."

The Committee heard that many young people were, through necessity, adept at advocating for their own needs. In an informal session with parents and carers of disabled young people, one parent stated that both she and her daughter had to continually advocate for her needs: "I spent my entire life going into schools and explaining what my daughter's deafness meant, what people needed to accommodate – and she did too. From the age of 7 or 8 years old, my daughter was advocating for her own needs and giving talks to classes on deafness."<sup>145</sup>

A number of witnesses highlighted that young people were not always listened to or respected by professionals who were supporting them through transitions. In an informal session with a group of disabled young people, supported by ARC Scotland, one young person said: "I am still regularly spoken over, to my parents, carers or whoever I am with. When doing my plan, I would say what I wanted. Social workers would say "it isn't what you want, it is what you need." My aspirations were not listened to. I was disrespected in meetings."<sup>146</sup>

Similarly, another young person told the Committee that they felt dismissed by staff in school: "I attended a disabled unit within a mainstream school and I was treated like I was

a child and spoken to like I was a child. They acted as if they knew more about my disability than I did and I think that they were quite dismissive of what I was saying.”<sup>147</sup>

This problem was not confined to school settings. Young people attending further education settings also reported not being listened to. One young person stated: “There are lots of time when I have felt that I wasn’t respected. And I felt that some of the college lecturers treated me as more disposable. I struggled with one unit towards the end of my course and the college suggested I should just drop out, rather than support me.”<sup>148</sup>

### *Communications support*

The need for support in communications was a key issue highlighted to the Committee in evidence. The Committee heard that it is imperative that disabled children and young people have their voices heard throughout the process of transition. In some instances, additional support is required in order to facilitate young people being able to communicate their needs and wishes. A number of witnesses told the Committee that this did not always happen.

In some instances, children and young people were using communication aids or alternative forms of communication, such as Makaton, whilst in school but those working in adult services are not always trained in these methods so young people lose their ability to communicate. St Crispin's Out of School Care Association stated that: “Many of our young people are non-verbal, therefore innovative ways of seeking their voice are needed and, we reiterate, time is needed.”<sup>149</sup>

Some disabled children and young people and their families may require support in the form of interpretation owing to having English as their second language. One practitioner told the Committee in an informal evidence session that a lot of schools were reporting a language barrier and a lack of support from interpretation services.

### *Advocacy support*

Sections 11(c) and 12 (3) (c) stipulate that in the preparation and reviewing of a transitions plan, local authorities must consult “any advocate or support agency instructed by the child or young person, or instructed by the parents, legal appointed guardian or other carers of the child or young person to act on behalf of the child or young person.”

In written evidence, Partners in Advocacy Scotland urged that Independent Advocacy is included in any National Transitions Strategy. They said: “There is potential of disabled young people to not being listened to or consulted on their transitions plan in a meaningful and independent way. Without this, a transitions plan will not be appropriate or effective. Disabled young people need access to independent advocacy services to be able to have their views heard and included, to challenge decision makers and have their needs met.”<sup>150</sup>

One young person told the Committee that they had been told in the past that there was no one able to advocate for them as they had physical disabilities rather than a learning disability. The young person said: “...it is exhausting so [*we need*] more advocates for people with physical disabilities and that it is important that we can choose our own advocates, someone that we feel understands us and can give their additional voice to what we want, not what they think we want or need.”<sup>151</sup>

Echoing the importance of support for communications to be made available, the National Autistic Society Scotland stated: “Any strategy introduced by the Scottish Government

should ensure that communication aids and advocacy services are made available to guarantee that the voice of the young person is heard in the plan that is subsequently produced.”<sup>152</sup>

### **Communications and advocacy – conclusions**

- **The Committee acknowledges the importance of access to independent advocacy, communication aids, languages such as Makaton, and interpreters for disabled children and young people going through the process of transitions.**
- **The Committee recognises that disabled children and young people are the experts in their own needs and that they should be at the centre of the transitions planning process. Any adaptations or support required by the young person in order to communicate must be provided to ensure a person-centred planning process.**
- **The Committee asks the Scottish Government to set out how it ensures that these requirements are met.**
- **The Committee also asks the Member in Charge to comment on whether the Bill, as currently drafted, would address the issues highlighted to the Committee in evidence relating to communications and advocacy support.**

#### *Who manages the transitions plan?*

In the context of the Bill, transitions plans would be managed by an officer of the local authority. Some witnesses questioned whether local authorities are sufficiently resourced to support this role, whilst others suggested that other bodies would be better placed to lead on transitions plans.

The Royal College of Psychiatrists in Scotland stated that “local authorities taking the lead on this ignores the new landscape of health and social care”<sup>153</sup> They suggested that IJBs and Health and Social Care Partnerships should be leading on developing transitions plans, with local authority input.

ARC Scotland, said: “I think that the assumption is that social work will be responsible, but we know that, in practice, many families are struggling to be allocated a social worker because resources are not as good as they should be.”<sup>154</sup>

ARC Scotland also highlighted the SEEMIS data 2021 pupil census which indicates that out of the young people at school with additional support needs only around 20% of them are known to social work presently.<sup>155</sup>

The Bill envisions that much of the initial planning would take place in school and be managed by guidance or pastoral care teachers as part of their existing responsibilities.

Bill Scott, Inclusion Scotland, stated: “It will only be the initial work and the planning that will take a lot of time at school, because the plan does not really take effect until the young person leaves school.”<sup>156</sup>

Particularly for those children and young people with more complex needs, having the initial transitions planning managed by a teacher may not be appropriate. St Crispin’s Out of School Care Association shared the concerns expressed by one parent on the

administration of the plan, in the first instance, by a member of school staff.

The parent said: "I am not clear whether school staff would have the skills, and in particular the agency, to put together an effective plan. If I look at (Child's name) case this involved housing, care and support, potential adaptations, third party funding, CAMHS, work with other agencies...Quite a different skill set and role to the current school staff."157

NASUWT told the Committee: "At the sharp end, a lack of time for guidance teachers is certainly an issue...Something as simple as a guidance or pastoral teacher trying to bring together a social worker and someone from the health sector can sometimes take a long time, because those other areas of the public sector are struggling with staffing."158

The Member in Charge told the Committee that: "It is absolutely not my intention to put something in place that burdens people, with them not having the resources or capacity to deal with the issue."159

### *Transitions coordinator and dedicated transitions teams*

The approach to transitions varies widely across the different local authority areas. Some local authorities have dedicated transitions teams, but most do not. The work in one local authority area, and the commitment of one

individual who is employed as a dedicated transitions coordinator was continually highlighted to the Committee as an example of best practice.

As part of the Principles into Practice Trial, Falkirk created a dedicated Transitions Coordinator role and are now establishing a team.

The Committee heard from a number of different stakeholders that it would be beneficial to establish dedicated transitions coordinators within transitions teams across all the local authority areas. In an informal evidence session, one parent said: "Why can't we have a Transitions Co-Ordinator in all Local Authorities?"160 They went on to state that with Principles into Practice, "the framework is there" and questioned the need to "rewrite this" in reference to the Bill.161

Addressing this point, the Member in Charge told the Committee that: "There is nothing in the bill that says that the principles into practice framework should no longer exist or that it would not continue."162

Several witnesses told the Committee that it would be beneficial for young people and their families to have a consistent key point of contact – or 'key person' – who would be with them throughout the process of transitions.

The Scottish Commission for People with Learning Disabilities stated that there "have to be dedicated transitions workers" and that these should be "made mandatory".163

One young person, a pupil at Buchanan High School, said that for transitions planning, they should have a "dedicated person who you can talk to".164 In an informal evidence session, practitioners were also enthusiastic about having dedicated transitions coordinators and teams in each local authority.165

### **Who manages the transitions plan? - conclusions**

- **At present, it remains unclear exactly who should take responsibility for a child or young person's transitions planning process at different stages of their transition and who might monitor the plan's implementation over time.**
- **The evidence heard by the Committee suggests that much of the initial transitions planning work is expected to be done by guidance/pastoral care teachers in schools. However, there was no consensus from stakeholders that this should be case for all young people. E.g. for some young people where there was a significant health/social care element to their day to day life, then it might make more sense for health and social care staff to take the lead.**
- **There were also concerns raised as to whether the Bill, as currently drafted, significantly under-estimates the work, time and complexities involved in delivering effective transitions planning for a wide range of disabled children and young people.**
- **If it is to be education professionals carrying out the initial planning process, then who will take ownership of the plan once that young person leaves school?**
- **The Committee notes the significant difference having a single, consistent point of contact throughout the transitions process has made for disabled children and young people, and their families.**
- **The Committee is of the view that in order to deliver effective transitions planning, those carrying out the planning would require additional resources and that this would need to be factored into the costs set out in the Bill's Financial Memorandum. In the absence of additional resources being provided, the Committee is aware that this may mean existing resources will have to be reallocated. The Committee asks the Member in Charge and the Scottish Government to set out how they see the provisions in the Bill operating, in the absence of additional resources being provided.**
- **The Committee asks the Member in Charge and the Scottish Government to respond to the findings relating to the management of transitions plans.**

### *Communications and information sharing across agencies*

The evidence highlighted that transitions are complex and often involve a number of different agencies. The Committee heard that the approach towards information-sharing could vary between agencies.

In an informal evidence session, parents and carers of disabled young people told the Committee that various professionals such as physiotherapists and speech therapists do not routinely speak to each other and the responsibility for sharing information fell to parents.<sup>166</sup>

This was echoed in an informal evidence session with practitioners, supported by ARC Scotland, where one practitioner said that there is a disparity in IT systems and information sharing across health boards which means families have to negotiate many different systems.<sup>167</sup>

Whilst recognising that there are often legitimate reasons not to share information – including where the young person has withheld consent – young people, parents and

practitioners all recognised that, in the right circumstances, information-sharing could improve transitions planning and coordination.

One parent stated: “Sharing information [is an issue] – children and families, GP records, social work records, someone from education – and even the systems don’t speak to each other to share information. Or it can’t be

recorded or it gets lost in translation...it’s hard as a parent and the young people themselves.”<sup>168</sup>

The Scottish Commission for People with Learning Disabilities, told the Committee: “It is difficult and upsetting for young people to have to tell their stories again and again. There needs to be better co-ordination between health-based plans and more general transition plans that does not require young people to retell their stories repeatedly.”<sup>169</sup>

### *Communications passports*

The Committee heard evidence about how disabled children and young people could hold their own information; a number of communications passports have been developed to support disabled young people to communicate their needs.

In an informal session with practitioners, one practitioner said: “I sit on local networks and data sharing is huge - by far the biggest issue. The easiest solution is for the young person to be able to hold that information themselves, with support. That supports all the values.”<sup>170</sup>

Similarly, the Royal College of Psychiatrists in Scotland suggested that a legal version of the transition care plan would empower families in that it would “become their own document that they carried with them, as a story.”<sup>171</sup>

Dr Joshi went on to state: “That passport could then be carried with them and would be owned by them rather than being limited by the health, education or social work systems. It would be owned by the children, young people and parents, and it would be modified as they moved forward.”<sup>172</sup>

The Committee notes that Compass, the passport developed through the Principles Into Practice Trial, was made available to all young people with additional needs, their parents and carers and all Local Authorities in Scotland from April 2023.

ARC Scotland, who supported the development of Compass, explained the purpose of digital application: “This enables young people, parents and carers and professionals to access information specific to their individual circumstances, increase their awareness of understanding their statutory rights and how to exercise them, and to share their opinions and experiences with their local authority.”<sup>173</sup>

### **Communications and information sharing across agencies - conclusions**

- **The Committee notes the national roll out of Compass, the online tool developed by ARC Scotland, scheduled for April 2023 following a trial of two years.**
- **The Committee acknowledges that transitions are often complex and require coordination between a large number of people, organisations and agencies. There can also be multiple transitions for a young person that do not**

**necessarily take place in tandem. The responsibility to facilitate communication between different agencies and coordinate highly complex transitions must not fall to parents, carers and young people alone.**

- **The Committee asks the Scottish Government and Member in Charge to respond to the conclusions set out above.**

## **Financial Memorandum**

Under Standing Orders, Bills must be accompanied by a Financial Memorandum (FM) which sets out “best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates”, along with best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise.

The FM for the Bill was prepared by Camphill Scotland and Inclusion Scotland on behalf of the Member in Charge. The overall estimated costs are set out in the table below.

The FM states that the Bill’s intention is “to give young people an opportunity to identify, and to access, existing resources and potential positive destinations, rather than for each transitions plan to require new funding for each destination identified by the transitions plans.”<sup>174</sup>

The FM expects all costs associated with the Bill, including “the relatively small amount of additional resources which local authorities will require to prepare and manage transitions plans, and to keep them under review” to be funded by the Scottish Government.

The Finance and Public Administration (FPA) Committee scrutinises FMs although the lead committee retains responsibility for considering and reporting on them. The FPA Committee received six responses to its call for views on the FM, all of which came from local authorities and related bodies.

After considering written evidence, the FPA Committee wrote to the Committee setting out “some of the key issues highlighted in written evidence”<sup>175</sup> including questioning the modelling of salary costs and the number of transitions plans required annually. The FPA Committee’s letter states that respondents suggested that “the Bill has significant financial implications for local authorities, particularly for children’s and adult’s social work services and...the expectation that some of the costs could be accommodated within existing resources is unrealistic.”

Under Standing Orders, a Bill containing provisions which charge expenditure on the Scottish Consolidated Fund or where the likely effect would be to increase significantly expenditure charged on that Fund, may not proceed beyond Stage 1 unless the Parliament has agreed a financial resolution. Only members of the Scottish Government can lodge a motion for a financial resolution and unless such a motion is lodged and agreed to by the Parliament, a Bill requiring a financial resolution falls. The Presiding Officer has determined that a financial resolution will be required for this Bill.

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 Strategy, nor the costs of meeting the needs of and supporting disabled children and young people as part of the implementation of plans are covered in the 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" as set out in Section 9 of the Bill.

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 such teachers have additional capacity, or that there are other tasks that would be replaced by the development of transitions plans.

COSLA's written submission<sup>176</sup> indicated a cost of delivery estimate of over

£9.5 million from the first year of implementation, significantly higher than the FM's estimate of £893,372 in year one.

#### *Number of transitions plans needed*

The FM uses data from the 2011 census to estimate the number of school leavers for whom local authorities would have a duty to prepare and implement transitions plans. The extent to which the Bill will apply to individuals with 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 transitions plans being prepared and implemented. The number of transitions plans required each year would be a key driver for costs under the Bill.

The FM suggests that, on the basis of the 2011 census figures, around 4,000 school leavers per year would meet the current definition of "disabled" which translates to around eight per cent of school leavers from state schools. COSLA dispute this figure on the basis that the Bill states that all school leavers up to the age of 26 will have plans.

They said: "This means an estimated 32,000 transition plans will be in place for those in post school destinations. Whereas the FM suggests that only those leaving need a plan, but this is really only for Year 1 - later on the FM does account for some compounding (although it assumes significant 'attrition'). However, there is nothing to reflect the implementation for people over 16 when the Bill is enacted."<sup>177</sup>

The FM further states that there are on average 125 disabled young people per local authority leaving school each year and suggests that approximately 60 disabled children per year per local authority will require support with their transitions plans.

East Lothian Council highlighted this figure as being significantly higher than its current provision of 25 children per year who are supported to transition from children's to adult services. As such, it considers it unrealistic to expect that support for all eligible children and young people can be met from within existing resources.

In written evidence, COSLA expressed concerns about the numbers of disabled children and young people estimated to be entitled to a statutory transitions plan in the Financial Memorandum (FM). Based on the 2011 Census figures, the FM states that there were approximately 60,000 Scottish children and young people aged 0-18 who had "a long term limiting health condition or impairment."<sup>178</sup>

COSLA told the Committee that the 2020 Pupil Census indicated that there are 226,838 pupils with additional support needs in mainstream and special schools, of which 18,852 pupils are assessed or declared disabled. COSLA stated that it was unclear whether the figures used in the Financial Memorandum (FM) include autistic children and young people and if not, "these would increase the anticipated demand substantially."<sup>179</sup>

Both East Lothian Council and Glasgow City Health and Social Care Partnership noted that the absence of a definition of “disabled child and young person” and the criteria used for eligibility for a transition plan could also significantly increase the numbers eligible, for example children and young people with autism or those with a mental health issue who are not necessarily involved with social work services under current provision could now be eligible under the Bill.

In oral evidence, the Scottish Commission for People with Learning Disabilities described the FM as “an underestimate of what is needed... because some of its other assumptions err significantly on the low side.”<sup>180</sup> Witnesses representing the RCPS, Royal College of Occupational Therapists (RCOT) and RCPCH agreed, with the RCOT stating “we know that there is increasing demand and complexity, and that we are still missing people. Therefore, 4,000 is probably a conservative number.”<sup>181</sup>

ARC Scotland went further still, suggesting that the FM exponentially underestimated the true figures: “If you go through the list of different conditions on SEEMIS, you can probably say that perhaps two thirds to three quarters of those young people would potentially fall under the premise of the bill, which would be roughly 75,000 or 80,000 people in one school year. If there are 80,000 of those young people in one school year, and we are talking about young people from the age of 16 to 26, then 800,000 young people would suddenly fall under the premise of the bill, if it was enacted, and would need transition plans and support.”<sup>182</sup>

When invited to respond to this suggestion, Inclusion Scotland explained that “there are a lot of young people with additional support needs who do not qualify as young disabled people.” In its view, whilst there are probably around 7,000 who are potentially impaired, “we would have to look at the extent to which they are impaired.”<sup>183</sup>

On that basis Inclusion Scotland had arrived at the figure of around 4,000 school leavers a year who will have impairments at a level that would qualify them for protection under the Equality Act 2010. It pointed out that “if the number of young disabled people is significantly more than that, the census has failed to catch them and so have a lot of other services.”<sup>184</sup>

The SCLD also described as “shocking” the FM’s assumptions on attrition and the expectation that a proportion of service users will cease to use the support meetings each year. In its view, “if someone is not answering phone calls or emails, we should keep trying, find out where they live and do whatever it takes to make contact.”<sup>185</sup> However, Inclusion Scotland suggested that COSLA and the FPA Committee assume that “every young disabled person with a plan will still be accessing support eight or ten years after they leave school.” It went on to explain that “by providing support, we will increase the number of successes, so fewer people will access support later.”<sup>186</sup>

### *Resource needed to develop and support transitions plans*

Turning to the resource needed to develop and support transitions plans, the FM expects that each plan would need four hours of multi-agency meetings (approximately two hours’ attendance per meeting, one hour for pre-meeting preparation and one hour for follow-up action).

Commenting on this assumption, the SCLD stated that “one of the big assumptions that is just wrong is that it will take only four hours per meeting,” something it described as a “vast underestimate.”<sup>187</sup> ARC Scotland agreed, stating “we know that, for young people to even

engage in the process, that (four hours) is nowhere near what is needed.”<sup>188</sup>

East Lothian Council noted in its submission that the FM provides costings related to attending transition meetings only; however, “meetings alone will not achieve the Bill’s aim of improving outcomes for disabled children and young people in the transition to adulthood”. East Lothian Council went on to explain that implementing the plan is what will make a difference, and this requires significantly more time and resource than is outlined in the FM.<sup>189</sup>

A number of submissions received by the FPA Committee questioned the accuracy of the costs of £27,197 attributed to supporting transitions in year one of the Bill’s implementation (rising to £139,605 per year for each authority). East Lothian Council suggested that the cost of supporting young people moving from children’s to adult services is approximately £350,000 to £400,000 per young person per year. As such, it estimates that increasing provision from 25 to 60 children per year in its own area would incur costs of between £12.25 and £14 million per year.<sup>190</sup>

Glasgow Health and Social Care Partnership also expressed concern about estimated salary costs in the FM which suggests a £36,000 salary for the local authority officer preparing the transitions plan. Glasgow HSCP points out that its current salary scales for a qualified Social Worker are between £36,599 - £42,637 and notes that the FM does not factor in pay inflation or management oversight of staff.<sup>191</sup>

The Member in charge stated that “in a number of cases, what we suggest will be accurate.” However, she did go on to “acknowledge” the SCLD’s evidence.<sup>192</sup>

When asked about the discrepancy between the FM’s estimates of costs of £893,372 in year 1 and COSLA’s suggestion that the true costs could be eleven times greater, Inclusion Scotland questioned how COSLA had arrived at that figure “because it does not provide any accompanying figures with that estimate of £10 million.”<sup>193</sup>

Inclusion Scotland did acknowledge, however, that “we might have got our figures wrong in terms of the amount of money that is required, but the amount that we are talking about is somewhere between £10 million and £15

million.” It went on to ask “is that investment in the future of tens of thousands of disabled school leavers worthwhile? It very definitely is, I would argue.”<sup>194</sup>

Inclusion Scotland further stated that “the bill creates a duty on local authorities to have transition plans, and, if the Scottish Government agrees, it will provide local authorities with the resources to do the planning and to provide support after young people have left school.” It went on to suggest that the economic costs of not taking such action outweighed the costs associated with the Bill, stating “we cannot afford to lose that resource from our economy at the moment. We need those young people to be entering work or training to get the skills that they need.”<sup>195</sup>

Commenting further in terms of costs and benefits associated with the Bill, Inclusion Scotland argued that “even if we say that it is another £5 million on top of the £10 million that we have estimated after year 8, I still think that that is money well spent, and I do not think that we should be quibbling about a few million here or there.”<sup>196</sup>

The Member in Charge also highlighted the Law Society of Scotland’s statement that “the wider costs of inaction would be greater in comparison to the costs of implementation.” She pointed out that the National Audit Office had suggested that effective support for

disabled people could realise savings of £1 million per person meaning that even if COSLA's upper estimate was used, "we would only have to get it right for five people to make a longer-term saving for the state."<sup>197</sup>

The Member in Charge also pointed out that there was a lack of detailed budgetary information on the costs of the Scottish Government's National Transitions to Adulthood Strategy and suggested that "because the figures in our FM are contingent on a given number of people, which relates to a number of hours and, therefore, the costs, it details the rationale for the costs in a way that some Government bills have not done."<sup>198</sup>

#### *Discussions between the Member in Charge and the Scottish Government and COSLA*

When specifically asked in evidence whether the Scottish Government would lodge a motion to agree the Bill's financial resolution, the Minister for Children and Young People noted concerns raised by stakeholders that the FM underestimated the costs of the Bill and stated: "We would therefore welcome further evidence and analysis of the figures provided, and the estimated uptake of transitions plans to inform the Government's position on the financial implications of the bill."<sup>199</sup>

The Minister for Children and Young People confirmed in oral evidence that she had met with the Member in Charge towards the end of 2022 where she raised concerns about the FM as presented. She told the Committee that "Ms Duncan-Glancy said that she would do some further work on that...and was continuing to engage with COSLA on some of the figures."<sup>200</sup>

The Member in Charge confirmed in oral evidence that she had held further meetings with COSLA, but there remained certain points on which they disagreed such as COSLA's suggestion that additional staff would be required. In the Member's view, "existing staff already have such duties and responsibilities" and the fundamental point was that: "If COSLA and local authorities are arguing that it will be significantly more expensive to do this, we have to ask ourselves what we are not doing already that makes this such an additional cost...Either those responsibilities exist now and councils should be spending money on them, or they do not exist—which is another argument for the Bill."<sup>201</sup>

When asked directly about the outcome of her discussions on the FM with COSLA, the Member stated that "there is a departure when it comes to agreement on the figures."<sup>202</sup>

The Member went on to explain that "the last thing that anyone wants to do is land local authorities with duties that they do not have the financial support to back up, but I contend that such support is government's responsibility."<sup>203</sup>

#### **Financial Memorandum - conclusions**

- **The Committee is deeply concerned about the disparity between the costs set out in the Bill's Financial Memorandum and those outlined in COSLA's written submission. The Committee asks the Member in Charge to provide updated figures following discussions with COSLA.**
- **The Committee notes that additional resources will be needed to address issues with transitions, irrespective of whether the provisions in the Bill are enacted.**
- **The Committee recommends that the Member in Charge engages with the Scottish Government on this point, given that a Financial Resolution from the**

## **Scottish Government is required in order for the Bill to progress beyond Stage 1.**

### **Delegated Powers**

The Bill confers eleven powers to make subordinate legislation, one power to make directions, and one power to issue guidance on Scottish Ministers.

The Bill is accompanied by a Delegated Powers Memorandum which sets out the Member in Charge's reasons for conferring the delegated powers in the Bill and for the procedures chosen.

The Delegated Powers Memorandum explains that the Bill is of a "stand-alone" nature. It does not amend existing legislation, and the powers contained in the Bill are new, with no existing powers being amended or repealed.

The Delegated Powers and Law Reform Committee considered the Bill's delegated powers provisions on 8 November and 13 December 2022 before publishing its report to the lead committee on 4 January 2023.

The report confirms that the DPLR Committee was content with all of the Bill's delegated powers provisions with the exception of the regulation making power contained in Section 14(1) which provides "that the Scottish Ministers may issue guidance about transitions plans 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."

Under the Bill as introduced, guidance issued under section 14 would not be subject to any parliamentary procedure.

The DPLR Committee wrote to the Member in Charge asking whether she considered that it would be appropriate for the Parliament to have some oversight of the content of the guidance via the negative procedure, given that external bodies would be expected to follow the guidance in order to meet their duties under the Bill.

In her response, the Member in Charge confirmed her expectation that those prescribed would have regard to such guidance and would be expected to follow it in order to meet their duties under the Bill. She agreed that the negative procedure would provide an appropriate level of parliamentary scrutiny and indicated that she would be willing to lodge an amendment to this effect.

However, in its response to the DPLR Committee's letter to the Member in Charge, the Scottish Government questioned the appropriateness of making guidance issued under Section 14 of the Bill subject to the negative procedure as it stated that this is a procedure designed to ensure appropriate parliamentary scrutiny of subordinate legislation.

The Scottish Government's position is that "guidance is not subordinate legislation" as is made clear under section 37 of the Interpretation and Legislative Reform (Scotland) Act 2010 (read with section 27 and the definition of "subordinate legislation" in schedule 1), and Rule 9.3.3B of the Standing Orders.

The Scottish Government also highlighted other existing approaches to enable parliamentary scrutiny of guidance. For example, the laying of draft guidance before the Parliament in advance of it being finalised or the requirement for Ministers to lay a copy of

the guidance before the Parliament.

In its consideration of the power, the DPLR Committee noted that it “would not always be appropriate to subject a power to issue guidance to the negative procedure, as guidance can be lengthy, changeable and often supplements detailed provision made on the face of the Bill.” However, the

DPLR Committee considered that where persons are expected to follow guidance, “it could be said that such guidance is legislative in character and therefore it is appropriate that it is subject to parliamentary scrutiny.”<sup>204</sup>

The DPLR Committee therefore concluded that in this scenario the power to issue guidance should be subject to parliamentary scrutiny and made the following recommendation: “The Committee welcomes the Member's response and commitment to lodging an amendment and calls on the Member to lodge an amendment that would require the Scottish Ministers to issue guidance by regulations subject to the negative procedure in section 14(1) of the Bill.”<sup>205</sup>

### **Delegated powers – conclusions**

- **The Committee notes the recommendation in the DPLR Committee’s report that guidance provided for in the Bill should be subject to parliamentary scrutiny under the negative procedure.**
- **The Committee notes the Member in Charge’s response to the recommendation and asks the Scottish Government to provide its views on the matter.**

1 [Disabled Children and Young People \(Transitions to Adulthood\) \(Scotland\) Bill, Policy Memorandum](#)

2 [Royal College of Occupational Therapists, written submission](#)

3 [ENABLE Scotland, written submission](#)

4 [Scottish Autism, written submission](#)

5 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)

6 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)

7 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)

8 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)

9 [Royal College of Occupational Therapists, written submission](#)

10 [National Deaf Children's Society, written submission](#)

11 [National Deaf Children's Society, written submission](#)

12 [COSLA, written submission](#)

13 [A Fairer, Greener Scotland: Programme for Government 2021-22](#)

14 [Education, Children and Young People Committee, Official Report, 22 February 2023](#)

- 15 [Education, Children and Young People Committee, Official Report, 22 February 2023](#)
- 16 [Education, Children and Young People Committee, Official Report, 22 February 2023](#)
- 17 [Education, Children and Young People Committee, Official Report, 22 February 2023](#)
- 18 [Education, Children and Young People Committee, Official Report, 22 February 2023](#)
- 19 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 20 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 21 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 22 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 23 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 24 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 25 [Education, Children and Young People Committee, Official Report, 1 March 2023](#)
- 26 [ENABLE Scotland, written submission](#)
- 27 [National Deaf Children's Society, written submission](#)
- 28 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)
- 29 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)
- 30 [Education, Children and Young People Committee, Official Report, 1 February 2023](#)
- 31 [Scottish Government, written submission](#)
- 32 [Presiding Officer's Statement on Legislative Competence, 31 March 2022](#)
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# Annexe B - Correspondence with the Scottish Government and with the Member in Charge

## Letter from the Scottish Government to the Convener – 11 August 2023

Dear Convener,

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

Many thanks for your correspondence on the above Member's Bill dated 19 May 2023. The Scottish Government is grateful for the Committee's thorough consideration of the Bill's provisions, and this opportunity to provide further information on the important questions that you have raised. I met with the Member-in-charge, Pam Duncan-Glancy MSP, on 29 June 2023 to discuss the Committee's correspondence. I am grateful for her work in raising awareness of transitions for disabled young people through this Bill and I look forward to continuing to work with her on this important area.

The Scottish Government agrees that the current situation in respect of disabled young people's experiences of their transitions to adult life needs to improve, and that doing nothing is not an option. We are already taking forward a number of activities which will contribute to improving these transitions, and we are committed to doing more.

That is why the Scottish Government is pressing forward with developing Scotland's first National Transitions to Adulthood Strategy so that that all disabled young people can experience a supported and positive transition to adult life. We have recently reaffirmed this 2021 Programme for Government commitment by including it as a priority commitment in the First Minister's Equality, opportunity, community: New leadership - A fresh start which was published in April 2023.

It is our intention to publish a Statement of Intent on the strategy in September of this year, setting out the proposed scope, vision, and priorities which have been co-developed with partners in our strategic working group. This will be a crucial step in ensuring that disabled young people are at the heart of any change and ensuring that there is a joined-up approach to supporting our disabled young people as they make the transition to adult life.

In addition, we are taking forward reform of important policies and legislation such as refreshed planning guidance under Getting it Right for Every Child, transitions focused pathfinders under Getting it Right for Everyone, and the review of the Action Plan on Additional Support for Learning, amongst others. The evidence you have gathered to date through your consideration of the Bill provides helpful insights that we will ensure are considered as part of this work.

Whilst fully supporting the intentions of the Bill to improve transitions for disabled young people, the Scottish Government shares many of the questions that the Committee has raised in its correspondence in respect of how the Bill's provisions would be implemented; the duplication and overlap with existing policy and legislation; the proposed costs associated with the Bill; and whether the Bill could achieve its intended aims and impact. We have provided more detail in response to the specific questions raised by the Committee to the Scottish Government in the annex attached to this letter. I hope you find

these helpful.

Many thanks again for your continued consideration of this important issue.

Yours sincerely

**Natalie Don**

## **ANNEX**

### **Scottish Government Response**

#### **National transitions strategy- conclusions**

**Page 7: The Committee asks the Scottish Government to set out how it will ensure that, in the absence of them being placed on a statutory footing, the application of any existing or future strategies relating to disabled children and young people will be monitored to ensure they improve transitions to adulthood.**

The Scottish Government has co-developed many strategies which are being successfully implemented without legislation, and this collaborative approach is welcomed by our partners such as COSLA. Any strategy prepared by the Scottish Government is in the public domain, and even if not laid before Parliament, Parliament is able to make inquiries about it, including its effectiveness.

There are many examples of non-statutory strategies that are subject to monitoring, review and amendment. For example, the National Carers Strategy published on 21 December 2022 includes a section on monitoring that sets out how the Carers Rights and Support Steering Group will be 'responsible for ensuring that the actions in the Strategy are implemented, monitoring their impact and ensuring that the Strategy remains relevant'. Additionally, 'A Fairer Scotland for Disabled People Employment Action Plan' was published by the Scottish Government in December 2018. In this we committed to annual progress updates. Progress Reports were subsequently published on 30 March 2020 and 8 March 2021, and a refreshed Fair Work Action Plan was published in December 2022.

In relation to our Programme for Government and the First Minister's Policy Prospectus commitment to deliver Scotland's first National Transitions to Adulthood Strategy, it is our intention that this strategy will be subject to robust and regular monitoring and review, to ensure it delivers on its intended aims and remains relevant. A delivery plan and monitoring, evaluation and reporting framework, with success measures, will be developed alongside the strategy, in collaboration with the National Transitions to Adulthood Strategy Strategic Working Group. We are already publishing the minutes from the meetings of the Strategic Working Group on the Scottish Government website so that the progress on our commitment to introduce this strategy, and its subsequent development, can be publicly monitored. Minutes of the meetings can be found [here](#).

**Page 7: The Committee asks the Scottish Government to provide an update on the timeline for the development of its National Transitions Strategy following the meeting with key stakeholders on 14 March 2023.**

To date we have been laying the foundations to deliver on Scotland's first National Transitions to Adulthood Strategy through research and engagement, and by supporting the Association for Real Change (ARC) Scotland with the Principles into Practice Trials, which commenced in January 2020 and concluded in March 2023.

This year will see a continuation of the development and engagement on the strategy. As the Committee have heard, a Strategic Working Group was established in March 2023 and has been meeting monthly. This group comprises representatives of local authorities, health, education, social work, the third sector and parents and carers. Three groups of disabled young people have also been contributing to this work, and we have taken care within our timescales to adopt flexible approaches for engaging groups of young people, to support their meaningful engagement.

We are currently co-developing a Statement of Intent which we hope to publish in September 2023. This will set out the proposed scope, vision, priorities and areas of focus for the strategy. This will then be tested through wider engagement which is expected to take place from October 2023 to December 2023. This will be a crucial step in ensuring that disabled young people are at the heart of any change, and in gathering wider views on whether the draft vision and priorities are the right ones, ultimately for inclusion in the strategy. Following this, the strategy will be drafted, and a formal public consultation expected to launch in Spring 2024. We plan to publish a summary of all the responses to show what people have said, before publishing the final National Transitions to Adulthood Strategy.

### **Minister with Special Responsibility for transitions- conclusions**

**Page 10: The Committee asks the Scottish Government to set out how it would ensure that there is visibility and accountability in government for improving transitions to adulthood for disabled children and young people in the absence of a Minister with Special Responsibility for transitions.**

As highlighted in our [memorandum](#) submitted in response to the Committee's Call for Views on 26 October 2022, 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.

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". The provision in the Bill for the creation of a Minister with Special Responsibility for transitions is therefore an issue of legislative competence which would require addressing through amendment of the Bill, should the general principles of the Bill be agreed by the Parliament at Stage 1.

There are a number of ways in which Ministers are already held accountable, including through Parliamentary Questions, scrutiny by Parliamentary Committees, and ultimately, the electorate. The Committee will also be aware that the Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. The principle of collective responsibility, save where it is explicitly set aside, applies to all Ministers – a point that is extremely important given the complex and cross-portfolio nature of transitions.

The Scottish Government has already taken forward a number of actions to ensure there is visibility and accountability in government for improving transitions to adulthood for



disabled children and young people. This includes giving non-statutory effect to two of the main provisions in the Member's Bill: through our Programme for Government commitment to introduce Scotland's first National Transitions to Adulthood Strategy, and reaffirming this as a priority commitment within the Cabinet Secretary for Education and Skills portfolio in the First Minister's Prospectus, Equality, opportunity, community: New leadership - A fresh start, and through providing joint Ministerial leadership and responsibility for transitions.

This joint Ministerial leadership and responsibility was recently seen by the attendance at the Committee's Stage 1 evidence session on the Member's Bill on 22 February 2023 of both the former Ministers for Children and Young People and for Equalities and Older People. The Scottish Government is committed to continuing this joint Ministerial leadership, with the Minister for Children, Young People and Keeping the Promise and the Minister for Equalities, Migration and Refugees continuing to work together in this area. For example, whilst the Minister for Children, Young People and Keeping the Promise has specific responsibility for transitions listed publicly on the Scottish Government website here, both Ministers provided a joint foreword for the recently updated version of the Association for Real Change (ARC) Scotland's Principles into Practice publication, with the Minister for Equalities, Migration and Refugees also providing a recorded speech to support its national launch on 16 June 2023.

Given the complex and cross-cutting portfolio nature of transitions, an internal cross-policy working group of officials has also been established to facilitate greater communication, maximise synergies, and identify opportunities to improve co-ordination of the breadth of work across the number of Ministerial portfolios within Scottish Government which contributes to improving outcomes for disabled young people as they transition to young adult life.

**Page 10: The Committee believes that regardless of which National Strategy is progressed, that the experiences of those who have been through transitions should be at the heart of its design, to ensure that any negative outcomes are avoided, and that person-centred best practice is built upon. The Committee encourages the Member in Charge and the Scottish Government to enter into dialogue at an early stage to ensure that this is the case.**

We wholeheartedly agree that those with lived experience of transitions must be at the heart of any change and they will be integral to the design and development of our strategy in order for it to be as effective as possible. Across Scottish Government we are committed to ensuring the voices of lived experience are heard in policy making.

As previously stated, we have already been engaging with three groups of disabled young people in the development of the strategy, and we will ensure that there is sufficient time to allow for the meaningful engagement and participation of more disabled young people throughout its development.

We are very aware that disabled young people, their families and other relevant stakeholders have already shared some of their experiences to date, and there is a large amount of evidence already in existence. This includes the information gathered during the call for views on the Member's Bill both in November 2020 and September 2022. To collate the evidence to date and to develop a more comprehensive picture of what a good transitional experience from school to adulthood would look like for all disabled children and young people, last year we awarded the Diffley Partnership a short-term social research contract to help inform future engagement to support the development of a National Transitions Strategy. As part of this work the organisation undertook and

developed the following:

- A literature review of existing evidence on transitions to adult life, with a particular focus on what disabled children and young people have said to date.
- Gaps in evidence analysis.
- Topic guides which could be used to assist further engagement with disabled children, young people, parents/carers and practitioners.

Publication of the literature review in February 2023 provided a comprehensive evidence base to underpin the strategy, drawing upon well-documented evidence directly from disabled young people, and those that support them, on both common challenges and person-centred effective practice in transitions.

As we have mentioned, we are working with partners in the Strategic Working Group, and have also been engaging with three groups of disabled young people: The Divergent Influencers working with ARC Scotland; Independent Living Fund's Young Ambassadors for Inclusion; and The Inclusion Ambassadors working with Children in Scotland, to strengthen these foundations with their lived experience in order to co-develop an evidence-based Statement of Intent for the strategy.

In addition to this, the Scottish Government provides secretariat support to the independently chaired Disabled Children and Young People Advisory Group (DCYPAG), which advises the Scottish Government on issues relevant to the development and implementation of policies which impact upon disabled children, young people and their families. Its membership aims to be representative of the children's disability sector, as well as organisations representing young disabled people and families of disabled children and is drawn from a range of public and third sector organisations and individuals.

In 2022, we awarded funding to a sub-group of DCYPAG to:

- identify and develop tools and methodology to support the meaningful engagement and participation of disabled children and young people whose needs are complex and whose voices are rarely heard, and their families, and share learning on these approaches; and
- capture what matters to this cohort of disabled children and young people and their families within the context of effective planning and effective support, to contribute to the design and development of the National Care Service and the National Transitions to Adulthood Strategy.

We are continuing to work with the delivery partners of this project to collate the final outputs, and identify the messages, including from young people with complex support needs, which will contribute to the development of the strategy.

As the Committee heard, we are delighted that we have been able to support ARC Scotland to trial Principles into Practice in 10 local authority areas to improve the lived experiences of young people who need additional support as they make the transition to young adult life. Through funding from the Scottish Government, ARC have also developed 'Compass' - a web-based application which has been developed with young people and parents and carers. There are three versions of Compass - for young people, parent carers and professionals, and the tool provides tailored information and advice to help them navigate transitions. Compass can also gather feedback from its users which

can be provided to help shape transitions services and policy in local authority areas. ARC have now published an Impact Report detailing the key challenges and successes of the trials, and we will also use this learning as we continue to focus on improving transitions and develop Scotland's first National Transitions to Adulthood Strategy.

### **Current experiences of transitions and opportunities for disabled young people- conclusions**

**Page 14: The Committee would like to thank the young people, parents, carers and support workers who spoke to Members about their experiences. The Committee believes that there are some excellent examples of good practice, such as in Buchanan High School. The Committee recognises the importance of organisational culture and leadership in ensuring positive transitions for disabled children and young people and recognises that individuals supporting young people can also make a significant difference between a young person having a positive or a negative experience. The Committee asks the Scottish Government what it is doing to replicate and scale up such examples of good practice.**

As previously mentioned, the Scottish Government has supported ARC Scotland to trial Principles into Practice in 10 Local Authorities over 2 years. Principles into Practice is a practical framework designed to improve the experiences of young people with additional support needs aged 14-25, and their parents and carers, as they make the transition to young adult life. The trial programme focused on 'learning by doing', pioneering new approaches to multi-agency working, staff development, engagement with young people, parents and carers, and data gathering and evaluation. Throughout the stages of the trial, programme improvement methodology from 'Changing the World: The 3-Step Improvement Framework for Scotland Public Services' (Scottish Government 2013), was used to identify, design, test, measure, implement and spread new and better ways of working to make services more effective and responsive to the needs of children, young people and their families, and to transform the way young people are supported as they make the transition to young adult life.

We are providing funding for a further two years to enable ARC Scotland to continue to embed and spread Principles into Practice in the planning and delivery of support for young people who require additional support to make the transition to adulthood, and to implement it in more local authority areas across Scotland. This includes the continued delivery of learning exchange events to expand the current community of practice of local authority practitioners involved in transitions.

The funding will also enable ARC to continue to run the Scottish Transitions Forum – a national network of over 950 members, including professionals from all relevant sectors, young people and their carers, working together towards the following objectives:

- Supporting joined up working across all services;
- Continually improving knowledge, motivation and practice; and
- Informing and empowering young people and their carers.

In developing the National Transitions to Adulthood Strategy, we are working with partners in the Strategic Working Group and drawing upon the lived experience of those involved in transitions to develop a national strategy with solutions drawn from existing effective practice. This includes consideration of the key learning arising from ARC Scotland's Principles into Practice trial, with a particular focus on actions which led to local

improvements in disabled young people's experiences of transitions to adulthood, and the characteristics of positive transitions highlighted by the [literature review](#). These will contribute to the evidence base of existing good practice from which we will develop a realistic set of outcomes and actions to ensure all disabled young people in Scotland can experience a positive and supported transition to adult life.

As the Committee will be aware, Getting it Right for Every Child (GIRFEC) continues to provide Scotland with a consistent framework and shared language for promoting, supporting, and safeguarding the wellbeing of children and young people. It is locally embedded and positively embraced by organisations, services and practitioners across Children's Services Planning Partnerships, with a focus on changing culture, systems and practice for the benefit of babies, infants, children, young people and their families.

Refreshed GIRFEC policy and practice materials were published in September 2022, complemented by virtual engagement sessions in February and March 2023. Officials have also worked with The Alliance and Children in Scotland to support the development of education materials for those working in health, social care, and the third sector respectively. Work is also ongoing to re-establish a GIRFEC learning network. We have engaged with local authority and health practitioners to help us design a highly effective network. We plan to meet with our national partners to consider a joint approach to supporting improvement in GIRFEC practice across the different workforces in children's services.

We are also currently co-designing Getting it Right for Everyone (GIRFE), a proposed multi-agency approach to support and services from young adulthood through to end of life care. This approach will help define the adult's journey through individualised support and services and will respect the role that everyone involved has in providing planning and support. The place-based pathfinders helping to co-design GIRFE are aligned to five thematic areas, including families with multiple and/or complex needs, and young people in transition from Getting it right for every child (GIRFEC) to GIRFE.

GIRFE builds on existing adult best practice and GIRFEC, and will provide a national practice model to embed inter-agency working. GIRFE is being tested and developed in local areas with practitioners and the people the initiative is designed to benefit. This will help us understand how it will be interpreted and implemented in different contexts, before implementing and scaling up GIRFE across Scotland.

**Page 14: The Committee believes that data relating to the transition from children's to adult services and access to further and higher education, and employment should be collected, analysed and reported upon regularly to ensure that sufficient progress is being made. The Committee asks the Scottish Government to respond to this recommendation.**

The Scottish Government is a strong advocate of the use of data to improve the quality and inclusivity of Scotland's services and agrees with the Committee that robust and meaningful data collection is required to ensure that sufficient progress is being made, and that services deliver for everyone.

[School leaver attainment and destinations](#) and [Labour market statistics for Scotland by disability](#) are already published annually on the Scottish Government website.

Statistics for Attainment and Initial Leaver Destinations show that amongst school leavers from publicly funded mainstream schools with an Additional Support Need, 93.4% of 2021/

22 school leavers were in a positive destination 3 months after the end of the school year (up from 92.8% in 2020/21). Amongst those school leavers from publicly funded mainstream schools without an Additional Support Need, 97.3% of 2021/22 school leavers were in a positive destination 3 months after the end of the school year (up from 97.0% in 2020/21).

The latest widening access data was published by the Scottish Funding Council on 25 July 2023 and can be found [here](#). This report finds that in 2021-22, 17.4% of Scottish-domiciled entrants to full-time first-degree courses at university had a declared disability, which is an increase on the 2020-21 figure of 16.3% and has in part been driven by an increase in those declaring multiple disabilities, and those declaring specific learning difficulties such as ADHD, dyslexia or dyspraxia. In the college sector in 2021-22, 21.2% of enrolments to full-time Higher Education level courses were by students with a declared disability, and 29.9% of enrolments to full-time Further Education level courses were from students declaring a disability.

Labour market statistics for Scotland by disability (January to December 2022) show that in 2022, an estimated 436,400 disabled people aged 16 to 64 were in employment. The employment rate for disabled people aged 16 to 64 was estimated at 50.7 per cent, increasing from 49.6 per cent in 2021. The employment rate for disabled people is above the rate in 2019 (49.0 per cent) and has passed 50.0 per cent for the first time. However, this was significantly lower than the rate for non-disabled people (82.5 per cent).

We have made progress towards our goal of reducing the disability employment gap by 2038 to 18.7 percentage points since setting the target in 2016. Last year, the Disability Employment Gap was 31.2 percentage points, the lowest it has been since our baseline year in 2016 when it was 37.4 percentage points. We know however more needs to be done to tackle the structural barriers faced by disabled people in the labour market. In December 2022 we published a refreshed [Fair Work Action Plan](#) which sets out our actions to promote fair and inclusive workplaces across Scotland, including tackling the disability employment gap.

We are aware of the value of day and short break support for some disabled young people and their families who are making the transition from children's to adult services. In 2022, the Scottish Government carried out two surveys seeking insight into the current operating status of adult building-based day and respite services throughout all local authority areas. The findings from the first survey, carried out in late spring 2022, can be accessed [here](#). The second survey, carried out in December 2022, showed a marked increase in services operating to pre-pandemic levels and increased capacity. The results of the second survey can be found [here](#).

The December Survey indicates that there are over 150 building-based day services throughout the 28 responding authorities, which support those with learning difficulties, physical and sensory disability, mental health or long-term health conditions. Most of these services are currently open or partially open. The survey also indicated there are 70 building-based respite services which are open or partially open and offer support to those with a range of needs such as learning difficulties, complex support, physical and sensory disability, or mental health.

While both surveys carried out in 2022 focused on adult building-based services, qualitative data or narrative provided to accompany responses also indicates there are a number of day and respite opportunities for all adults through community-based outreach programmes which have been retained following the Covid-19 pandemic to offer a more

flexible approach to support. We are continuing to work with local authorities and Health and Social Care Partnerships to encourage services to reopen.

We also recognise there are some areas where further social care data would be valuable, and work is progressing to address these challenges. The National Care Service (NCS) will have equality, dignity, and human rights at its heart to empower people to make the choices that are right for them. Robust data and digital infrastructure will be a key enabler of the NCS by: enabling ethical commissioning, underpinning regulation and improvement; supporting workforce planning; facilitating research; and, ultimately supporting people to live fulfilling, independent lives.

We are reviewing data collections to ensure they are providing value, identifying where there is duplication and looking at opportunities to streamline collections or share best practice to improve efficiencies and reduce the burden on data providers. As part of this we are also identifying what data is not available and developing plans on how to source this.

More broadly, the Scottish Government and our partners already publish a wide range of robust equality evidence on the Equality Evidence Finder platform. Scotland's new Equality Evidence Strategy, covering the period March 2023 to December 2025, sets out a range of actions to strengthen Scotland's equality evidence base that will be carried out by the end of 2025, along with a refreshed vision and direction that have been developed based on stakeholder views and feedback. The strategy aims to enable policymakers to develop sound and inclusive evidence-based policies to improve service delivery and outcomes for Scotland's people. The publication of this strategy marks the completion of the first phase of the Equality Data Improvement Programme (EDIP), which laid the groundwork in strengthening Scotland's equality evidence base following the continued recovery from the COVID-19 pandemic.

Responsibility for successfully implementing the strategy has to be shared across a range of organisations and interests, and across all Scottish Government ministerial portfolios. The Scottish Government will support the collection and use of information by the public sector, academic institutions, the third sector and from within communities themselves. Certain listed authorities have responsibilities under the Public Sector Equality Duty (PSED) and it is incumbent on all organisations to consider their role in funding, designing or undertaking data collection, research and analysis to fill equality evidence gaps.

### **Current services for disabled children and young people- conclusions**

**Page 16: The Committee is deeply concerned by what it has heard about current services for disabled children and young people. The Committee also notes the disconnect between children's and adult services. There is an urgent need to improve access to specialist services for disabled children and young people and to ensure consistency across Scotland. The Committee asks the Scottish Government what urgent steps it will take to address these issues.**

*Current services for disabled children and young people and reducing the disconnect between children's and adult services.*

The Children and Young People (Scotland) Act 2014 (Part 3) places duties on each local authority and health board to work collaboratively with other service providers to plan, develop, deliver and report on a Children's Services Plan. This must set out how and what provision of services and supports will be available locally and describe how these will be

delivered in such a way to result in improved outcomes for children, young people and families. The Children's Services Plan includes both children's services, and adult services, with Integration Joint Boards/Health and Social Care Partnerships a specified service provider designated under Part 3. The Children's Services Plan must set out how multi-agency partners in the public and third sector will work together at all levels (frontline practice, operational services and strategic planning) so that services, support and improvement activity is delivered locally, through a whole-system approach which spans prevention, universal services and early help, through to more targeted/intensive and crisis support.

The development of a Children's Services Plan requires partners to use available data and intelligence to undertake a multi-agency joint strategic needs assessment (JSNA) to identify the needs of children, young people and families living in that area. This considers the specific needs of certain groups (such as those with complex health conditions/disability, care experience, living in poverty, or young people in transitions). The JSNA should be used to inform service planning and local strategic commissioning processes for the Children's Services Plan, with specific consideration of the needs of young people as they move between receipt of children's and adult services. There are further duties to report annually on how outcomes have been improved for children, young people and families in line with the statutory aims of Children's Services Planning

Statutory Guidance on Children's Services Planning, updated in 2020, encourages consideration of the transitions between children's and adult services by integration authorities, local authorities and health boards, in order to achieve the statutory aims prescribed for both a Strategic Plan and a Children's Services Plan.

The legislation requires the development and publication of a Children's Services Plans every three years, with the Children's Services Planning Partnership setting out how organisations and services will work together collaboratively, and in partnership with the local community, to improve outcomes for children, young people and families living in that area. The legislation requires those plans to be reviewed against set criteria, on behalf of Scottish Ministers. A summary review of Children's Services Plans for 2020 to 2023 was published in July 2022 which reviewed the extent to which Scotland's 30 Children's Services Plans for the period 2020-2023 met the criteria. The report highlighted key strengths, areas for development and details from strategic engagement with local children's services planning strategic leads and other networks. We continue to work together at national and local level, including through the Children's Services Planning Strategic Leads Network, to improve the effectiveness of strategic planning and to ensure Children's Services Planning Partnerships (CSPP) continue to play a strong role in shaping policy developments and local leadership through effective collaborative planning and delivery of services and support which leads to improved wellbeing.

The integration of certain children's services is not required under the Public Bodies (Joint Working) (Scotland) Act 2014; however, integration authorities may choose to do this. Integration planning principles are set out in section 4 of the 2014 Act, which states that the main purpose of integrated services is to improve the wellbeing of service users. Services should be provided in a way that is integrated from the point of view of service users, taking account of their needs, rights, dignity and participation in the community. Services should also be planned and led locally in a way which engages service users, those who look after service-users and all others those involved in the provision of health or social care.

We are in the process of refreshing the statutory guidance that supports integration

authorities to produce their strategic plans and annual performance reports. Through this work, in collaboration with a range of partners, we have sought to broaden the focus of the guidance to ensure links across policy areas, including children's services. This includes encouraging links between strategic plans and Children's Services Plans, and promoting consideration of the transition between children's and adult services that supported people may experience, with an overarching aim of ensuring that services are appropriately planned and connected.

### Consistency of access and specialist services

The Scottish Government remains committed to ensuring that every person in Scotland has access to the same high-quality social care and support regardless of where they live or their personal circumstances. In March 2021 we published a social care: self-directed support framework of standards written specifically for local authorities to provide them with an overarching structure, aligned to legislation and statutory guidance, for further implementation of the self-directed support approach and principles. This framework includes a standard on 'Early planning for transitions'. The standards and action statements outlined in this document were developed to ensure consistency of outcomes and approaches in Self-Directed Support practice across Scotland experienced by supported people (children and adults) and carers.

In addition, we published The Self-Directed Support Improvement Plan 2023-2027 in June 2023 in collaboration with COSLA, with the intention of closing the gap between what was promised in the Social Care (Self-Directed Support) (Scotland) Act 2013 and the current reality of people supported by self-directed support across Scotland. This plan builds on the successes of previous efforts to improve self-directed support availability, and relies on the continuing work that local authorities do every day to make flexible, personalised care available to thousands of people across Scotland.

The "Golden Threads" of the plan are a number of cross-cutting issues which are fundamental to the full delivery of self-directed support as intended by the 2013 Act and other relevant legislation. The golden threads are areas that all activity related to self-directed support improvement should consider in implementation. One of these golden threads is the importance of transitions – both from children's to adults' services, and at other life stages, for example moving into residential care or out of hospital.

Every child and young person in Scotland also has the right to good quality health care that meets their needs and respects their rights. To provide examples from a number of specialist areas:

- In 2018 we published the Transition Care Plan (TCP) Guidance, describing the standards required in the planning of good transitions for young people moving from Child and Adolescent Mental Health Services (CAMHS) to Adult Mental Health Services. This approach allows flexibility for those aged 18-25 to continue their care and treatment with CAMHS, where this is in their best interests, rather than automatically transfer to adult services. The National CAMHS Service Specification requires a robust TCP for those children and young people who are more at risk of adversity during transitions (including children supported under the Additional Support for Learning Act). The key principle is that the care provided, and those providing the care, should be determined by the needs, wishes and best evidence for that care, and not solely on the chronological age of the young person being supported. The ethos of this approach is to encourage joint planning of care for those who have mental health needs that necessitate TCPs. Decisions should be clinically led and made jointly



between adult services and CAMHS to ensure smooth transitions.

- Our 5 Year Framework to improve neurology services also includes a commitment to ‘work with key partners across sectors, to embed the Principles of Good Transitions, as a good practice framework for transitions for people living with neurological conditions.’ This includes transitions for adults with neurological conditions across different care settings as well as from child to adulthood. We have produced a midpoint progress report on the framework that can be found [here](#).
- The Scottish Government has funded a partnership between the NHS, third sector and academic institutions which has provided the following outputs:
  - development of a definition of transition for people with neurological conditions,
  - published a systematic literature review,
  - worked with adults/young adults with a neurological condition, caregivers and families to explore the impact of ‘life’ transitions and health and social care transitions on the individual and their significant others.
  - identified areas for improvement and inform future design processes.

Following the published outcomes of this work we will consider the development of a national work programme to facilitate adoption and promotion of the principles of good practice.

- Our Respiratory Care Action Plan (2021-2026) also contains a commitment to improving pathways for a good transition, and ensuring that all young people with a long-term respiratory condition go through a dedicated transition service. This was identified as a priority for implementation, and a sub-group of the Scottish Respiratory Advisory Committee, made up of clinicians and third sector representatives has been working to produce a guideline document on best practice in respiratory transitions. This is in its final stages of drafting and will be published in the next few months.
- Our Diabetes Improvement Plan Refresh (2021-2026) contains a commitment to review and update the National Standards for Transition for young people living with diabetes. This work will be led by the Type 1 Sub-Group of the Scottish Diabetes Group.

In addition, in our publication Equality, opportunity, community: New leadership A fresh start, we have committed to helping all school leavers by 2026 to access the transition support they need to achieve their potential, and to ensuring every young person aged 16-24 can further their education or secure a job or training place. The employer led Developing the Young Workforce (DYW) programme continues to facilitate the engagement between employers and schools to support young people transition into the world of work. DYW school coordinators work within schools to align tailored, individual support for young people with the needs of employers, working collaboratively across a range of delivery partners. DYW’s third sector partners provide targeted provision for young people at risk of disengaging by offering work-based learning, work inspiration and mentoring while connecting educators and young people with a network of inspirational business leaders.

Skills Development Scotland support young people who are care experienced and/or disabled to take up Modern Apprenticeship opportunities by offering training providers/

employers the highest level of support available to support their training up to the age of 29 years. Skills Development Scotland have also worked with ARC Scotland to embed the principles of good transitions in their service delivery. This has included developing learning for practitioners and developing and delivering a joint webinar with ARC Scotland to support parents and carers to understand the principles, promote Skills Development Scotland career services and raise the aspiration of individual career choices. We will ensure that the principles of good transitions continue to be embedded in the delivery phase of the Skills System Review recently delivered by James Withers.

**Page 17: The Committee also asks the Scottish Government to set out what steps it will take to address current resource and staffing pressures in relation to transitions.**

Our workforce is at the heart of delivering health and social care services to the people of Scotland. We acknowledge the significant pressures that the workforce has faced, and that sustained actions are required from planning for and attracting into the workforce through to supporting and delivering recovery, growth and transformation of our workforce. This is critical to Scotland's recovery from the COVID 19 pandemic, within the wider context of addressing inequalities and making a continued shift to early intervention and prevention. We published our [Health and social care: national workforce strategy](#) in March 2022. This Workforce Strategy sets out a national framework to achieve our vision of a sustainable, skilled workforce with attractive career choices where all are respected and valued for the work they do. The strategy sets out a tripartite ambition to:

- create the conditions through which our workforce, and by extension our health and social care services, can successfully recover from the pandemic.
- Grow the health and social care workforce sustainably, in line with Scotland's population demographics, and the demands on our health and social care services.
- Transform the ways in which our workforce is recruited, trained, equipped and organised to deliver health and social care services, in order to achieve long-term sustainability through increased effectiveness and improved population health outcomes.

We acknowledge the significant pressurised workloads and low morale overall within the social work profession. We are committed to improving the experience of the social work workforce, ensuring it is more sustainable in the longer term. We have introduced measures to address the acute recruitment and retention challenges facing the social work profession, in collaboration with COSLA and other key stakeholders. We plan to address immediate and longer-term recruitment and retention challenges with initiatives such as: maintaining a reserve list of social workers; reviewing pay disparities aligned with a framework that remunerates qualifications and experience; international recruitment and improving access to social work education.

Regarding the education workforce, we are committed to protecting the number of teachers and support staff, including those who have a role in supporting disabled children and young people and those with additional support needs. We are providing £145.5 million for this purpose in 2023/24 and have set out measures to Parliament making it clear that we will withhold or recoup this funding from local authorities if teacher and support staff numbers are not being protected.

We also recognise that the third sector needs stability and the opportunity for longer term

planning and development. We are committed to developing a Fairer Funding approach for the third sector, however, the ongoing volatile economic circumstances present additional challenges. We will continue to build the case for multiyear funding and will explore the extent to which it could be secured within unpredictable economic circumstances, and the impact and long term benefits we would expect to realise. We will also further develop the other wraparound elements of the Fairer Funding commitment during 2023-24 including prompt notification of funding, outcome-based flexible funding, and proportionate administration around applications and reporting.

### **Existing policy and legislation- conclusions**

#### **Page 20- The Committee asks the Member in Charge and the Scottish Government to carry out detailed analysis of how the provisions in the Bill would interact with existing legislative provisions.**

We have raised our concerns earlier in this annex in relation to the legislative competence of Part 1 section 6 of the Bill as introduced which sets out a proposed duty for a Minister with special responsibility for transitions.

There was also a recognition from many respondents to the previous consultation and call for views that a considerable body of legislation and policy was already in place to support transition planning for disabled young people. We share these concerns about the duplication and overlap of key aspects of existing legislation and the additional complexity and confusion that this Member's Bill could bring to disabled young people and their families, as well as to professionals trying to navigate this landscape.

As we highlighted in our evidence to the Committee, the proposed duty within Part 2 of the Bill for a local authority to "prepare and implement a transitions plan for each disabled child and young person within the local authority area" would overlap with a number of existing statutory planning requirements, particularly the Education (Additional Support for Learning) (Scotland) Act 2004 for school aged children. For children and young people who are eligible, there is also overlap with support and planning under the Social Care (Self-directed Support) (Scotland) Act 2013, and, for care experienced children and young people, under the Children (Scotland) Act 1995 and The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003. We provide further detail of these below.

The proposed Bill would duplicate key aspects of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act), and secondary legislation made under that Act (such as the Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005). However, it should be noted that the personal scope of the 2004 Act is significantly wider than the proposed bill in that it covers children and young people who "for whatever reason" are or would be unable to benefit from school education without additional support, while its material scope is narrower as it only covers school education.

Section 4(1) of the 2004 Act requires education authorities to identify, provide for, and keep under review the additional support needs of children and young people for whose education they are responsible. In respect of some children and young people, the education authority further has a duty to prepare and regularly review a co-ordinated support plan, which may require the provision of support by "appropriate agencies", which includes health boards, integration joint boards, Skills Development Scotland, all further education colleges and higher education institution (section 9).

Section 12(6) of the 2004 Act makes specific provision in relation to a child or young person's transition out of school, and imposes a duty on the education authority to: (1) request no later than 12 months before the child or young person is expected to leave school information from such appropriate agencies as they see fit about the provision they are likely to make for the child or young person; (2) seek the views of the child or young person, or their parent; and (3) take account of any provision the authority (other than in its school education function) are likely to make, in determining the provision of additional support for learning in the period before the child or young person leaves school. In terms of section 13, the authority must further share relevant information with such appropriate agencies as it considers appropriate no later than 6 months prior to the child or young person leaving school. A competent child or young person, or their parent, may also make a reference to the First-Tier Tribunal in respect of the 2004 Act's transitions provision under section 18(3)(g) of the Act.

In our view, Part 2 of the proposed Bill would substantially duplicate the transitions provisions of the 2004 Act so far as school age children and young people are concerned, and it is unclear what the proposed Bill would add to the existing law which applies to those children. In some respects, the proposed Bill may risk introducing confusion about the precise nature of the duties placed on education authorities, and the enforcement mechanisms available to children, young people, and their parents.

Other aspects of the proposed Bill depart from existing law in a way which may raise questions about the applicable law at certain points. For example, section 13(2)(a) of the Member's Bill, in relation to dispute resolution, would permit children aged 14 and over who have been assessed to have capacity for that purpose to participate in their own right in any dispute resolution process for which the Scottish Ministers may make provision. Under the 2004 Act children aged 12 or over with assessed capacity may do so, including by way of a reference to the First-Tier Tribunal's additional support needs jurisdiction, or to the dispute resolution mechanism established by the Scottish Ministers under section 16 of the 2004 Act.

The Social Care (Self-directed Support) (Scotland) Act 2013 (the 2013 Act) is the law that tells local authorities what they must do to give access to self-directed support in a way that supports people's rights to choice, dignity and being able to take part in the life of their communities. From 1 April 2014, the 2013 Act placed a duty on local authorities to offer people who are eligible for social care a range of choices over how they receive their support. The 2013 Act applies to children, young people (including those in transition to adulthood) as well as adults who need social care services or support. The statutory guidance states that support planning covers a wide range of issues but will tend to include a discussion of: the choices available to the supported person; the main risks and how the supported person and others can manage those risks; and the resources that will help to deliver the person's support plan. If the supported person is a child, then the process should be part of a single plan for the child.

In addition to this Act, there is other existing legislation which provide the legal basis for assessing need and providing support:

- The duty to assess an adult's need for care and support: Section 12A of the Social Work (Scotland) Act 1968;
- The legal basis for support to children: Sections 22 and 23 of the Children (Scotland) Act 1995;

- The legal basis for identifying carers' needs and providing support: Parts 2 and 3 of the Carers (Scotland) Act 2016.

The proposed Bill could also bring duplication and confusion to the principle legislative duties for a local authority to ensure that a young person is supported on leaving care. These duties are currently set out in the Children (Scotland) Act 1995. Section 17 of the 1995 Act relates to the “Duty of a local authority to a child looked after by them” and subsection 2 specifies that local authorities have a duty to provide “advice and assistance with a view to preparing the child for when he is no longer looked after by a local authority.”

The regulations and guidance specific to pathway planning and coordination are central to The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003. This sets out the duties of a local authority to carry out a pathway assessment, including the identification of a pathway coordinator, ensuring that the young person is involved in this process, and the review processes. The 2003 regulations are accompanied by guidance: Supporting young people leaving care in Scotland: regulations and guidance; and the Pathways Handbook, which can be found on many local authority pages.

In addition to the overlap with existing legislative duties above, we also previously highlighted existing non-statutory forms of plans for children and young people. These include the child’s plan (GIRFEC), the anticipatory care plan (health) and the transition care plan (mental health).

### **The need for statutory transition plans and additional legislation- conclusions**

**Page 26- The Committee notes the Scottish Government review of Co-ordinated Support Plans, published in November 2021. The report recognised that it was widely accepted that Co-ordinated Support Plans were underused. The Committee requests an update from the Scottish Government regarding progress that has been made in addressing the conclusions of this report to date. The Committee acknowledges that quantitative data exists in relation to the destinations of disabled young people post-transition, but notes that there is currently no systematic collection of qualitative data on children and young people’s experiences of transitions to adulthood, and that this should be collected.**

#### **Review of Co-ordinated Support Plans**

In response to the first part of this question, the actions identified in the final report of the Short-life Working Group on Co-ordinated Support Plans (CSPs) is being taken forward alongside broader work set out within the action plan to enhance implementation of additional support for learning. Specifically, work is underway to refresh the Supporting Learners’ Code of Practice, which is considering any clarifications required around the decision-making process for the use of CSPs. Further, complementary work is being undertaken to develop and provide access to a suite of national relationship based professional learning approaches and resources applicable to education and multiagency partners. Progress with this work is due to be reported in May 2024.

#### **Collection of qualitative data**

As mentioned earlier, in 2022 the Scottish Government awarded the Diffley Partnership a short-term social research contract to support the development of a National Transitions Strategy. Qualitative findings from the research highlights common challenges and examples of effective practice in improving transitions to adulthood for disabled young people across a number of life courses, and found that many disabled young people

express optimism and excitement about this time in their lives. However, common experiences and challenges during this period of a disabled young person's life included:

- stress and uncertainty for the young person;
- difficulties transferring from child to adult services;
- changes in eligibility for services, and support arrangements;
- a sharp drop in support;
- inadequate transition-planning and a lack of clear information with regards to the transitions process;
- inadequate account being taken of young people's views, needs and aspirations;
- stress and difficulties faced by family members relating to the transition process.

There was also consensus across the Scottish, UK and international evidence that positive transitions are characterised by:

- early and sustained transition planning;
- holistic and co-ordinated wrap-around support;
- services delivered in partnership;
- designated keyworkers as a coordinating point of contact and continuity;
- person-centred support and preparation;
- family involvement in planning and decision-making;
- parental and familial support throughout the transition;
- the provision of clear and accessible information;
- adequate services, resources and staffing.

A focus of ARC Scotland's Principle into Practice trial programme was to review current approaches to data gathering and evaluation, as gathering feedback from young people, parents and carers consistently and at scale is essential to the Principles into Practice framework. Throughout the framework ARC Scotland have identified the most important feedback relevant to each of the seven principles of good transitions.

To enable gathering of this feedback, the web-based application 'Compass', which has been developed through funding from the Scottish Government to ARC Scotland, invites users to respond to key evaluation questions, thus helping to gather anonymous qualitative feedback on what is working and what could be better. With a data sharing agreement in place, this feedback can then be provided to help shape transitions services and policy in local authority areas. For example, Compass asks young people: Is anyone helping you work out what you want to do in the future? Does your plan include the things most important to you? Are you able to do the things most important to you? It also asks parents and carers to what extent they: Are satisfied with the support their young person is receiving to plan for their future? Know about the roles and responsibilities of the people

involved? Are satisfied with the support they are getting?

As previously stated, the Scottish Government is providing a further two years' funding to ARC Scotland to continue to implement Principles into Practice and the use of Compass more widely across Scotland. Further consideration will also be given to the collection of qualitative data on children and young people's experiences of transitions to adulthood, to ascertain the extent to which young people are experiencing a positive and supported transition to young adult life, as part of the development of the National Transitions to Adulthood Strategy.

### **Age - conclusions**

**Page 29- The Committee believes that transitions planning should start from an early age and be embedded in the support received by disabled young people. The planning process should evolve at a pace set by the young people themselves. The Committee encourages the Member in Charge and the Scottish Government to explore how flexibility could best be incorporated into transitions planning in future.**

We agree with the conclusions reached by the Committee in respect of transitions planning. These echo ARC Scotland's Principles of Good Transitions, which suggest that planning should begin early and continue up to age 25, as well as the evidence gathered from our published literature review which also found that that positive transitions are characterised by early and sustained transition planning.

The Additional Support for Learning legislation, and the approach under Getting it right for every child, offers flexibility to ensure that all children and young people get the right support at the right time, so that every child and young person in Scotland can reach their full potential.

As we have outlined earlier in our response, local authorities have a statutory duty to plan for the transitions of children with additional support needs (including those arising from disabilities). This includes pre-school, when changing school and post-school transitions. The Additional Support for Learning Act 2004 includes specific provisions relating to transitions. These set out the deadlines for transitions planning however education authorities have flexibility, and are encouraged, to begin planning for children and young people's transitions well in advance of these deadlines. These statutory deadlines are:

- Where a child or young person is expected to leave school (at the end of primary school or when leaving secondary school) the education authority has a duty to request from an appropriate agency or agencies as necessary, information about the provision that is likely to make for the child or young person on leaving school. This should take place no later than 12 months before the expected leaving date.
- Similarly, they must provide information to other agencies no later than six months before a child or young person is expected to leave school, provided the child, young person, or their parents agree.
- In both circumstances where a child or young person decides to leave unexpectedly this should take place as soon as reasonably practicable.

The Additional Support for Learning statutory code of practice acknowledges that for children and young people whose needs are identified at an early age, transition planning will build upon existing plans already in place for the child in question, whether a statutory Co-ordinated Support Plan, another support for learning plan or a child's plan. Children

and young people and their parents should also have the opportunity to input into the planning process.

The joint Scottish Government and COSLA additional support for learning action plan is focused on improving the implementation of the existing policy and legislative framework. This includes considering the findings of the ARC Scotland's Principles into Practice trial during updates to the statutory code of practice guidance on Additional Support for Learning. Further progress with this work is due to be reported in May 2024.

In addition to this, the Scottish Government is reinforcing our commitment to GIRFEC, and refreshing policy and practice materials, including effective planning for transitions for all children and young people. The Committee will be aware that following the UK Supreme Court ruling in August 2016, Parts 4 (named person) and 5 (child's plan) of the Children and Young People (Scotland) Act 2014 were not commenced, and both parts of the legislation will be repealed. The child's plan, albeit to be provided on a policy rather than legislative basis, remains an important part of supporting the wellbeing of children, young people and their families. The child's plan can offer families a simple planning, assessment and decision-making process which leads to the right help, at the right time. It should reflect the voice of the child or young person and include a clear explanation of why the plan has been created, the personalised actions to be taken and the expected improved outcomes for the child or young person.

As we have previously stated, we are also currently co-designing GIRFE, a proposed multi-agency approach of support and services from young adulthood to end of life care. This approach will help define the adult's journey through individualised support and services and will respect the role that everyone involved has in providing support planning and support. The place-based pathfinders helping to co-design GIRFE are aligned to five thematic areas, including families with multiple and/or complex needs, and young people in transition from GIRFEC to GIRFE.

### **Definition of disability and identification of eligible children and young people- conclusions**

**Page 32: The Committee shares the concerns expressed by some stakeholders that children with Additional Support Needs - particularly those with acute, short term ASN such as bereavement or homelessness - but not necessarily a disability, would be eligible for support as children under the existing legislative framework but would not be entitled to a plan under this Bill.**

**The Committee would welcome feedback from both the Member in Charge and the Scottish Government regarding this point.**

We agree with these concerns and have set out previously how the proposed Bill would duplicate key aspects of the Education (Additional Support for Learning) (Scotland) Act 2004 and secondary legislation made under that Act (such as the Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005). We have also highlighted that the personal scope of the 2004 Act is significantly wider than the proposed bill in that it covers children and young people who "for whatever reason" are, or would be unable to benefit from, school education without additional support.

Under the Education (Additional Support for Learning) (Scotland) Act 2004, support can be provided as soon as a need has been identified. No diagnosis is required in order to access support. The broad definition of an additional support need under the 2004 Act



(section 1) includes needs that can arise for 'whatever reason' irrespective of their duration. As set out in the Additional Support for Learning code of practice statutory guidance, transition duties under the 2004 Act would apply where a child or young person has a disability as defined by the Equality Act 2010. The 2004 Act's material scope is narrower as it only covers school education, however the benefit of additional statutory duties in this area for school age children remains unclear.

### **Impact on the parents and carers of disabled children and young people- conclusions**

**Page 36: The Committee asks the Scottish Government what it is doing or plans to do to ensure that parents, carers and legal guardians are provided with the support and resources they need to support their young person's transition to adulthood.**

Over the last 10 years, the Scottish Government has provided over £1.3m grant funding to ARC Scotland's Scottish Transitions Forum and is providing a further 2 years' funding between 2023-2025 to continue the work of the forum and support the wider implementation of Principles into Practice and Compass. Through the Scottish Transitions Forum, ARC Scotland provides information and networking for parents, young people and professionals around transitions in Scotland, including the facilitation of a parent carer network to support parents and carers of young people with additional support needs going through transitions.

As previously stated, through funding from the Scottish Government to ARC Scotland to trial Principles into Practice in ten Local Authority areas, ARC have also developed 'Compass'- a web-based application which has been developed with young people and parents and carers. There are three versions of Compass- for young people, parent carers and professionals, and the tool provides tailored information and advice to parents to help them navigate the transitions journey, signposting to tailored information and support. Compass was launched in June 2023 and is now freely available across Scotland. More information on Compass can be found [here](#).

We also working closely with parent carers through the National Transitions to Adulthood Strategy Strategic Working Group to consider the support networks around disabled young people, as part of support for disabled young people in the transition to adulthood. We are considering these views in the development of the strategy, to ensure all disabled young people can experience a supported and positive transition to adulthood.

In addition to this work, the Scottish Government also funds the Enquire service to provide advice to parents and carers on additional support for learning. This includes advice in relation to transition duties under the Education (Additional Support for Learning) (Scotland) Act 2004. In response to the recommendations of the 2020 review, the Scottish Government increased annual funding to Enquire to ensure that it continues to be effectively resourced to meet the needs of the families that it supports.

Parents and carers also have access to free advocacy and legal representation in relation to disputes under the Education (Additional Support for Learning) (Scotland) Act 2004 through the [Let's Talk ASN service](#) which is funded by the Scottish Government. The ASL action plan also includes actions aimed at improving the proactive provision of advice and support to families by schools and local authorities on additional support for learning. Further progress with this work is due to be reported in May 2024.

In line with GIRFEC principles and the principles of the Social Care (Self-directed Support)

(Scotland) Act 2013, children and their families should receive the support they need in order to help them to make the relevant decisions and manage their support. This may include independent advice and support or advocacy services.

The Support in the Right Direction (SiRD) programme is funded by Scottish Government and provides local independent support, advice and advocacy in line with Scottish Government's vision for Self-Directed Support. The organisations work with people and carers at every stage of their social care journey, providing independent support that is integral to social care. They ensure a person-centred approach and respond flexibly to individual circumstances to provide direct, end-to-end, independent support for all social care user groups.

The Children, Young People and Families Early Intervention and Adult Learning and Empowering Communities Fund (CYPFEI & ALEC) has provided core funding to third sector organisations since 2016 to deliver support that tackles inequalities, child and family poverty, improve learning and build skills. One of the organisations in receipt of funding via the CYPFEI & ALEC Fund is Contact. The work undertaken by Contact includes delivery of the Talking about Tomorrow transition website, a helpline and transitions workshops providing parent carers with advice and support.

In 2016, the Scottish Government funded a survey of families with disabled children and young people across Scotland to gather evidence about their information needs. Families said they would favour a centralised resource which signposts to relevant information and organisations. In response to these wishes, an online resource was published in 2019. This resource is being updated and aims to be as helpful as possible by providing signposts to existing sources of information on a range of topics including transitions. The Scottish Government and partners have also worked with Parent Club to publish a Family Support Directory which provides signposting for parents and carers to organisations, benefits and information across a range of topics including on additional support for learning.

In addition, all unpaid carers, including parent carers, have rights under the Carers (Scotland) Act 2016 to a personalised plan to identify what is important to them. Carers have the right to support to meet their eligible needs. If a parent carer is supporting a child who is approaching the transition to adult services, transition information and support can be considered as part of the process. This may allow for the carer to prepare for their child's transition and be in a better position to support their child through the process.

Section 34 of the Carers (Scotland) Act 2016 also requires each local authority to establish and maintain an information and advice service, covering a wide range of issues relevant to carers needs, including supporting carers with future care planning. Local authorities generally commission carer centres to deliver these information and advice services in their area. This is to ensure carers are able to access independent and comprehensive information and advice to assist them with decision making in relation to their caring role and access to appropriate support and services, at the right time.

### **Communications and advocacy- conclusions**

**Page 38: The Committee acknowledges the importance of access to independent advocacy, communication aids, languages such as Makaton, and interpreters for disabled children and young people going through the process of transitions.**

**The Committee recognises that disabled children and young people are the experts**

**in their own needs and that they should be at the centre of the transitions planning process. Any adaptations or support required by the young person in order to communicate must be provided to ensure a person-centred planning process.**

**The Committee asks the Scottish Government to set out how it ensures that these requirements are met.**

### Child centred approaches

The Scottish Government is committed to ensuring that the views of children are a primary consideration in decisions that affect them. Under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), every child and young person who is capable of forming their own views has the right to express those views freely in all matters that affect them, with those views being given due weight in accordance with their age and maturity.

As the Committee will be aware, the Scottish Government is absolutely committed to Scotland being the first UK nation to incorporate the UNCRC into domestic law, ensuring we are a country that respects, protects and fulfils children's rights. Following the Cabinet Secretary for Social Justice's Parliamentary Statement on 27 June, we are currently making arrangements to begin the process of Parliamentary Reconsideration of a revised UNCRC (Incorporation) (Scotland) Bill.

Under the Education (Additional Support for Learning) (Scotland) Act 2004, education authorities already have duties to identify, provide for and review the additional support needs of their pupils. This includes support for children and young people with specific communication needs. Authorities also have duties to seek and take account of the views of children and young people in relation to their transition.

In addition, GIRFEC policy and practice guidance materials set out that all practitioners should work together and alongside families to empower children and young people, ensure that their rights are respected, and that their views and wishes are fully considered and reflected in decision making about their own lives. Through GIRFEC, a young person's right to feel respected includes being involved in, and having their voices heard, in decisions which affect their life, with support where appropriate.

### Independent Advocacy

For many children and young people, particularly those who may be most at risk of not having their rights met, we know that advocacy can be fundamental in ensuring the realisation of their rights. We have increased support to Clan Childlaw, to enhance their capacity; to provide advocacy support for children and young people; to develop training and materials; to work with Scottish Government to help identify areas where children's rights are not being met, and to develop child-centred legal professional training.

We also fund a national children's service called My Rights, My Say made up of four elements - advice and information, seeking children's views, advocacy and legal representation - which together ensure that a child can be fully supported when exercising their rights under the Education (Additional Support for Learning) Scotland Act 2004, including in relation to transition planning. We also fund The Support in the Right Direction (SiRD) programme which, as described earlier, provides local independent support, advice and advocacy, ensuring a person-centred approach and responding flexibly to individual circumstances to provide direct, end-to-end, independent support for all social care user groups.

### Communication support and accessibility

The Equality Act 2010 requires service providers to make reasonable adjustments in circumstances where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. That requirement covers changing the way things are done including providing auxiliary aids and services. Section 149 places a duty on public authorities to: eliminate discrimination, harassment and victimisation; advance equality of opportunity; and to foster good relations between persons who share a protected characteristic and those who do not. This is known as the Public Sector Equality Duty (PSED). Although the 2010 Act is largely reserved, Scottish Ministers have supplemented the general duty by placing detailed requirements on Scottish public authorities through the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 which are aimed at supporting Scottish public authorities to improve implementation of the PSED. Responsibility for complying with the requirements of the Equality Act 2010 rests with individual organisations.

In addition to existing legislation, the Scottish Government is committed to introducing a new Human Rights Bill during the current parliamentary session, giving effect to a wide range of internationally recognised human rights - including the United Nations Convention on the Rights of Persons with Disabilities (CRPD) - within the limits of devolved competence. Incorporation of CRPD will place greater impetus on public bodies to remove barriers and support disabled people to participate, access services and live independently. The Bill will also provide mechanisms to ensure equal access to the rights in the Bill for everyone and embed dignity into the decision-making of those delivering public services.

We know that communication equipment and associated technical support (frequently referred to as Augmentative and Alternative Communication (AAC) can make a real difference to those people without speech, making sure they have a voice to be heard. We are continuing to work with our partners to support the ongoing delivery of the duty and to improve AAC provision where needed.

Though Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, NHS boards in Scotland already have a duty to provide communication equipment and support to use that equipment. This duty applies to children, young people and adults, who have lost their voice, or have difficulty speaking, and in the main is delivered through Speech and Language Therapists.

The Scottish Government also funds the Contact Scotland BSL, an online interpreting Video Relay Service, which enables Deaf and Deafblind British Sign Language (BSL) users to telephone, via video relay interpreters, private sector numbers as well as statutory and third sector numbers, 24 hours a day, 365 days a year. The service is provided by Sign Language Interactions (SLI) on behalf of the Scottish Government and it offers BSL users the means to communicate in real-time, with services and family and friends. The service is also accessible to Deafblind BSL users, by making use of braille displays and speech synthesizers.

### Who manages the transitions plan?- conclusions

**Page 41: The Committee is of the view that in order to deliver effective transitions planning, those carrying out the planning would require additional resources and that this would need to be factored into the costs set out in the Bill's Financial Memorandum. In the absence of additional resources being provided, the**

**Committee is aware that this may mean existing resources will have to be reallocated. The Committee asks the Member in Charge and the Scottish Government to set out how they see the provisions in the Bill operating, in the absence of additional resources being provided.**

**The Committee asks the Member in Charge and the Scottish Government to respond to the findings relating to the management of transitions plans.**

#### *Operation of Bill provisions in absence of additional resources*

We share the committee's concerns regarding under estimations made in the Financial Memorandum accompanying the Bill regarding the work, time and complexities involved in delivering effective transitions planning.

For example, the Financial Memorandum suggests that transitions plans may no longer be needed or wanted by young people who enter a 'positive destination' such as higher education or employment immediately after school. However, transitions are not about a single move to a positive destination, but the gradual transition from childhood to a young adult life. In our response to the call for views and through the evidence provided previously to the Committee, we highlighted other aspects of the Financial Memorandum that were likely to be underestimated. Similar concerns were raised by COSLA. In addition, all the Local Authorities and Joint Health and Social Care Boards which responded to the call for views from the Finance and Public Affairs Committee, noted that the Bill would have a significant financial impact.

We recognise that additional resources would be required to meet the proposed duties set out within the Bill, most notably for the requirement for Local Authorities to prepare and implement individual transitions plans for all disabled young people post school in a local authority area. The Committee will be aware that the current financial landscape is challenging, and we are having to take difficult decisions across the board. Against this backdrop, it is crucial that any new statutory duties are clearly defined, targeted and likely to have the intended impact. Given the evidence heard, and questions raised by the Committee, we believe that focusing on improving and further embedding the existing policy and legislative framework may be more effective than introducing new duties.

#### *Management of transitions plans*

Alongside our concerns around the current underestimation of resources required for the Bill, we also have concerns about how this Bill could be practically implemented, and whether it would have its intended impact. There are many considerations that are important to young people and their parents and carers beyond achieving a single positive destination. We believe that further consideration and clarification is required to identify who would be responsible for planning post-school, and how is it proposed to make sure that planning is an ongoing process, not a single event, and that the plan becomes a reality, ensuring the needs, outcomes and dreams identified by the young person are met, achieved and reviewed.

Young people themselves have stressed the importance of transitions support taking a holistic view, to help them achieve personal goals and aspirations, such as moving into their own home, as well as more traditionally understood positive destinations such as gaining entry to further education or employment. Some young people are likely to continue to require support to move on from initial employment, or further study; and to support other aspects of their transition to adulthood. Any planning or transitions support

needs to be person centred, consistent and relationship based. It is not clear that the planning requirement within the Bill could address these concerns. It is also not clear how a single individual within a local authority could take responsibility for the management of the transition plans post school, which could span a number of life-course and institutional transitions for which a local authority representative may not have the knowledge and/or the responsibility for.

As we have already set out, there are already frameworks for planning and support under existing legislation and policy. In addition to this, the Scottish Government supports transitions planning through the Independent Living Fund (ILF) Transitions Fund. The ILF Transition Fund offers one year grants up to £4000 to young people aged 16 to 25 with a disability or impairment as defined by the Equality Act 2010, to support their move into adulthood and independent living. The Transition Fund gives young disabled people flexibility in how to use the money. ILF also offer a Person Centre Planning Grant to help young people look at the goals that they want to achieve and the support that they will need to achieve them. This service can be provided by professionals who have been trained to help young people plan for their future and can help with person centred planning.

As we have previously stated we have also funded by ARC Scotland to develop Compass. Compass was launched in June 2023, and is now freely available across Scotland to provide tailored information and advice to young people, parent carers and professionals to help them navigate the transitions journey. The young person's version helps young people to work out what matters to them and share their views with others.

These flexible, demand led and person-centred approaches to transitions support complement statutory and policy frameworks to ensure those that require greater support can access it. We do however recognise though that some young people are not yet receiving the support that they need, and we need to do more. Through the development of Scotland's first National Transitions to Adulthood Strategy, we will consider, with our partners, what further actions are needed to ensure all disabled young people can experience a supported and positive transition to adult life.

### **Communications and information sharing across agencies- conclusions**

**Page 43: The Committee notes the national roll out of Compass, the online tool developed by ARC Scotland, scheduled for April 2023 following a trial of two years.**

**The Committee acknowledges that transitions are often complex and require coordination between a large number of people, organisations and agencies. There can also be multiple transitions for a young person that do not necessarily take place in tandem. The responsibility to facilitate communication between different agencies and coordinate highly complex transitions must not fall to parents, carers and young people alone.**

**The Committee asks the Scottish Government and Member in Charge to respond to the conclusions set out above.**

We recognise this complexity and agree that information sharing is a key challenge and that it should not fall to young people, parents and carers to facilitate alone. We are also aware that the Information Commissioner's Office have highlighted data sharing and General Data Protection Regulation considerations raised by the Member's Bill in its response to the Committee's call for views, particularly the requirement to develop

individual transitions plans for all disabled children and young people.

We have also heard from disabled children, young people and their families about how frustrating, and at times, distressing it can be to have to repeat their stories and experiences to different agencies and services. The Scottish Government has supported the development of a number of person-centred tools for young people and their families such as; the “My Communication Passport” (Compass), which is available on [Education Scotland’s resource hub](#); the [PAMIS Digital Passport](#) which has been developed to support families caring for people with profound and multiple learning difficulties and more recently ‘Compass’, which was developed with young people and parents and carers to help navigate this complex landscape. The three versions of Compass help those with a role in transitions to understand the professional duties required at each stage of transition, and provide the tailored information and advice young people and parent carers receive to help them navigate transitions.

In addition to the development of Compass, the Committee also heard of the wider successes of ARC Scotland’s Principles into Practice Trials in 10 Local Authority areas. The trial [impact report](#) which has now been published, highlights the different ways in which local authority areas sought to facilitate better communication between agencies, and a more co-ordinated approach to transitions.

Approaches varied across areas and included: dedicated transitions leads from children’s and adult services and, in one instance, a third lead from education; establishing transitions forums; cross-sector learning exchanges; and trialling joint commissioning between children’s and adults services. In one instance, a Local Authority area appointed a dedicated transitions co-ordinator to support the transitions process across the local authority area and to act as a point of contact for young people, their families, and partners from other services, for information and support around transitions. Another area appointed a transitions development worker. Key learning from the trials is now being considered as part of the development of Scotland’s first National Transitions to Adulthood Strategy.

As we have also previously set out, the Education (Additional Support for Learning) (Scotland) Act 2004, already includes specific provisions relating to transitions. Where a child or young person is expected to leave school (at the end of primary school or when leaving secondary school) the education authority has a duty to request from an appropriate agency or agencies as necessary, information about the provision that is likely to be made for the child or young person on leaving school. This should take place no later than 12 months before the expected leaving date. Similarly, they must provide information to other agencies no later than six months before a child or young person is expected to leave school. As set out in the code of practice statutory guidance, transition duties under the Act would apply where a child or young person has a disability as defined by the Equality Act 2010.

[In addition, GIRFEC already provides Scotland with a consistent framework and shared language for promoting, supporting, and safeguarding the wellbeing of children and young people, and building a flexible scaffold of support: where it is needed, for as long as it is needed, including at the point of transitions.](#) This is delivered through the core components of:

As part of the publication of GIRFEC policy and practice guidance materials in September 2022, [information sharing practice guidance for practitioners](#) was produced to provide practitioners with confidence, clarity and practical support to carry out lawful, fair and

proportionate information sharing to ensure a child or young person's wellbeing, which complies with all relevant legal requirements. Associated charters for services to share with children, young people and families were also published. The GIRFEC information sharing charters explain how children, young people and families can expect organisations to manage their personal information and respect their rights under the data protection legislation.

As we have already highlighted, we are also currently co-designing GIRFE, a proposed multi-agency approach of support and services from young adulthood to end of life care. This approach will help define the adult's journey through individualised support and services and will provide a national practice model to embed inter-agency working, respecting the role that everyone involved has in providing support planning and support. One of the draft GIRFE principles is around joined up working/information sharing, which is ultimately about people and services being enabled to work together in a coordinated way to meet specific needs and improve wellbeing. Furthermore, through information sharing provisions of the NCS Bill and the Integrated Social Care and Health Record we will develop a nationally consistent, integrated and accessible, social care and health record. The record will allow safe, secure and efficient sharing of social care and health data across relevant care settings, including with the individual.

### **Delegated powers- conclusions**

**Page 51: The Committee notes the recommendation in the DPLR Committee's report that guidance provided for in the Bill should be subject to parliamentary scrutiny under the negative procedure.**

**The Committee notes the Member in Charge's response to the recommendation and asks the Scottish Government to provide its views on the matter.**

The Scottish Government wrote to the Convener of the DPLR Committee on 9 December 2022, setting out our view on the point raised. A copy of this letter can be found here. In this letter to the DPLR Committee, we set out that the Committee appear to have overstated the extent of a legal duty to "have regard" to guidance issued by the Scottish Ministers. Section 14(1) of the Bill currently provides that the bodies must have regard to such guidance, with the DPLR Committee observing that the guidance would need to be followed in all but exceptional circumstances. To clarify, having regard to guidance issued by the Scottish Ministers certainly requires those on whom the duty is imposed to consider the guidance, but it does not require it to be considered as the only or top priority, which may only be departed from in "exceptional" circumstances.

Moreover, there does not appear to be anything out of the ordinary about the guidance that may be issued under section 14 of the Member's Bill, or about the manner in which the power is to be exercised, which would render it necessary or appropriate to make it subject to parliamentary procedure. Making this specific guidance subject to negative procedure, when there is nothing unusual or exceptional about it, is unnecessary and could have an unhelpful impact on future legislation. Making standard guidance, which could be expected to be amended from time to time, subject to parliamentary procedure would also have a potentially unhelpful impact on implementation, as any revisions to that guidance would also be subject to the same parliamentary procedure.

There are potentially other more appropriate methods to achieve transparency and scrutiny of guidance that do not involve the negative procedure. For example, the laying of a draft of guidance before Parliament in advance of it being finalised, with Parliament



having the opportunity to consider the draft guidance before it is issued. Another example requires the Scottish Ministers, as soon as reasonably practicable after issuing guidance, to lay a copy of the guidance before the Scottish Parliament.

### **Letter from the Member in Charge of the Bill to the Convener – 4 August 2023**

Dear Convener

Response to Committee letter and annexe in regard to the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill

Firstly, thank you for taking the time to write to me and for outlining the extensive work the Committee undertook to consult on the Transitions Bill. Like you, I want to thank those that contributed for sharing their vast experiences with transitions and commenting on the proposals.

I know and very much welcome the fact that your Committee and the Scottish Government shares my view that something must be done about the transition experiences of young disabled people.

You asked, among other things, that I liaise with the Government and COSLA specifically, to consider what should be done, and the issues highlighted in the letter and annex you sent. I am pleased to say that I have done that, and will set out below, where I think we've got to and respond to your Committee's comments.

The first thing I would say is that my proposal for the *thing, or things*, which must be done is to pass legislation that addresses the shortcomings in current law and improves practice.

During my discussion with the Minister, it appeared that the Government's proposed solution is to continue to do what it is currently doing, but to involve me more closely in that. I welcome the invitation to work with the Government in this area. Indeed, I understand the privileged position that that puts me in, and I am grateful for their offer.

However, I remain of the view that a continuation of the current approach cannot be the answer. I and others are concerned about the timeline for developing and introducing the Government strategy which has been in the pipeline for many years. I and others are also concerned about the limitations and effectiveness of a non-statutory strategy. For example, A Fairer Scotland for Disabled People: delivery plan is understood to have had limited impact.

Furthermore, the various other guidance documents and pilots that are ongoing are helpful, and I am happy to offer any support I can in their progress, however, we have taken a guidance and non statutory approach for some years and it hasn't worked.

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Against this background, I believe that the best solution available to these young people lies in a combination of both working to improve current practice and to embed strategies, whilst also addressing some of the legislative confusion and gaps including to ensure any strategy introduced would be statutory. This combined approach, I believe, would ensure that approaches to transitions are not only dependent on short term good work or intention but are future proofed.

The Bill, as proposed, is fundamental to this and does it in a variety of ways. It puts a national transitions strategy on a statutory footing, ensuring it cannot, and does not, come and go with Ministers or even Governments, easily, and that it applies consistently across Scotland. Having a Minister with special responsibility over transitions would help ensure that the Scottish Government remains accountable for this often-forgotten area of disabled peoples' lives. The statutory requirement for organisations to work together to improve outcomes for young disabled people will help remove the burden from families and young people who end up being 'Project Managers' in their own lives at a time when they should be planning for, and enthusiastic about, the future, not mired in chasing systems or bureaucracy. And, finally, that having a statutory right to national transitions plan will give every young disabled person a basis on which they can begin to build their future, distinct from a Coordinated Support Plan, which serves a different purpose, and which so far has not delivered consistently for this group of people.

As your Committee notes, and as is almost always the case, if the Bill was passed, resources, as well as practice change, will be needed to implement the Bill effectively. As I said in my own evidence to Committee on the Financial Memorandum (FM) that accompanies the Bill, it is my intention to provide as accurate a picture of the costs as possible. Organisations who would need to implement it must have the resources to deliver it, not least local authorities. It is in this vein and spirit that I have engaged COSLA, and I continue to do so. I am committed to ensuring that the scope of spend, as well as the amount of spend outlined in the FM is as close to an accurate prediction as any good legislation can have at this stage.

Since your Committee's letter, my team and I have worked closely with COSLA and through them, ADES, to do three main things in this regard: to take better account of the views of COSLA and ADES over the amount of staff time required to deliver the transitions plans as proposed; to ensure the cost of that staff time is accurately calculated on the basis of current pay awards; and to ensure that eligibility for the plans is clearer and figures are updated to reflect that. It is worth noting at this point that the number of staff hours required to implement plans should not be zero at present, and so it is not necessarily accurate to consider that the comparative cost would be nothing. Nor is it reasonable to believe that the Bill should not have costs attached. The scale and pace of the challenge to support these young people is huge. This is as much a question of how much will it cost, as it is a question of whether we are prepared to continue to accept the status quo or to spend as we do now but with little expectation of change.

Our discussions with COSLA are ongoing and, from my perspective, are productive. I hope to be able to provide the Committee with an updated FM in the coming weeks. I'm sorry that it is not provided with this fuller and broader response to the Committee, but I assure you my team and colleagues in COSLA are working at pace to make the necessary amendments to the FM. I thought it better to provide you this response within your deadline of the 16<sup>th</sup> without the updated FM, rather than to delay this reply, or share the FM when it is incomplete. I reiterate, though, that the updated FM will be with you shortly (and by the time we return from recess) and I thank you for agreeing that was ok.

Lastly, Convenor, I want to end my preamble with this: my Bill was created by disabled people for disabled people, who all have a stake in how this would be implemented and with valuable lived experience of what it is like to have a poor transitions experience. It was developed through consultation with parents, carers, legal guardians, disabled young people, organisations representing disabled young people, schools, and many more, to ensure it is comprehensive and well-founded, and to ensure it is ready to be rolled out

once the legislation passes the Parliamentary process. I honestly believe, as do many who responded to the consultations in sessions 5 and 6 of the Scottish Parliament, that we must act now if we are to give the next generation of young disabled people a fighting chance at a decent future. We cannot afford to lose the potential of any more disabled people because of poor transitions planning. It is for that reason that I am hugely sceptical about simply relying on current approaches. We do not really have time to wait and see whether the approach that relies on guidance and/or best practice, refreshed as it may be, or, as the Angela Morgan Review noted, relies on the good intentions of many. Successive strategies based on the current legislative landscape have failed to deliver the scale or pace of change needed. It is time to recognise that and act.

I want to reassure the Committee that I will work with the Scottish Government on any and all areas necessary to ensure the outcomes for young disabled people are improved, both within the scope and passage of this Bill so that, if it is passed, it does what it is intended to do, and to work with them on matters out with it, or indeed on other non-legislative approaches. But, for the reasons set out above in short, and in the following pages in detail, I still believe we need statutory changes to make this work to deliver an approach to transitions that disabled children and young people, their families, and those that support them, can all have faith in.

I will now go through the substantive points in the letter and the annexe that you sent on behalf of the Committee, and I hope what follows provides the answers you seek. As always, I would be happy to discuss further any, or all, of it.

#### Conferring duties onto public bodies under a National Transitions Strategy with limited Parliamentary oversight

The Bill introduces duties that are subject to Parliamentary oversight and scrutiny.

Firstly, the reporting duties conferred on the responsible Minister and in particular, the duty to report to Parliament, progress on the strategy provide a level of scrutiny as yet not given in this field. However, the current approach by the Government, to produce a strategy, does not do this. My Bill offers stronger scrutiny in that regard.

In addition, several sections of the Bill require regulations to set out requirements of the various bodies that will have responsibilities, which as the Committee will know, require parliamentary scrutiny and/or oversight. These include those at Sections 8, 10, 12 and 16 of the Bill.

It is worth noting that the Parliamentary oversight of Section 8 is confirmed in Section 18 ('Subordinate legislation') of the legislation. Section 18 confirms that any new duties introduced by regulations under Section 8 will be subject to the Affirmative Procedure. The Committee will be aware that the requirement to use the Affirmative Procedure means that any regulations introduced under Section 8 must be approved by the Scottish Parliament before they can come into force.

Furthermore, all of the points raised by the Delegated Powers and Law Reform Committee in Session 5 in relation to Parliamentary oversight and consultation were fully addressed, and reflected, in the wording of the Bill I introduced in Session 6. Lastly, any Committee of Parliament or indeed any Member of Parliament, will under my Bill, be able to hold the Minister with responsibility for Transitions to account, as per the reporting responsibility set out above, and by using the usual parliamentary processes. They will also, of course, be able to hold Ministers responsible for covering the other bodies which have a role to play

to account in this way also.

Contrary to this, the current strategy proposed by the Government does not include such oversight. My Bill provides additional Parliamentary Scrutiny to Transitions than there is just now, which is very little.

Minister with special responsibility: legislative competence and limiting the scope of accountability

### *Legislative Competency*

The Committee has requested my response to the concerns of the Scottish Government that section 6 of the Bill would be outside the legislative competence of the Parliament.

The purpose of this Bill is, effectively, a consequence of sections 47 and 49 of the Scotland Act 1998 and is not intended to modify them. If, and when, the First Minister chooses to appoint Ministers, as per the powers conferred on them under the 1998 Act, then this Bill requires special responsibility to be assigned to one of those Ministers. In the highly unlikely instance that the First Minister chooses not to create Ministers, then section 6 of the Bill would not take effect. I am open to amending section 6 to provide clarity over its intended effect.

### *Limiting the scope of accountability*

I would like to acknowledge another point raised by the Scottish Government and ARC in relation to the broad remit of transitions, and how selecting one Minister to be accountable may be unwise. I disagree with their position. While it is the case that transitions is relevant to a range of Government portfolios, one individual alone must be assigned responsibility to ensure there is accountability, and to ensure it is implemented as effectively as possible. In fact, the lack of accountability over transitions may be why transitions strategies have been so ineffective and under-implemented to date. It is not unusual for a subject area for which a Minister has overall control, also crosses over with another area of policy. This is likely the case for all Ministerial roles and should not be a reason to not appoint a Minister with overall control. Indeed, something of the complexity and cross cutting nature of transition would like benefit from one overall lead. At an individual level, the cross-policy work is stressful when there is no lead and has led to people falling through the cracks. The same could be said of a National Ministerial approach. A responsible Minister could help mitigate that.

Special responsibility provides the accountability that organisations like the Royal College of Occupational Therapists, The Health and Social Care Alliance Scotland and the Scottish Commission for People with Learning Disabilities have all commended the Bill for. I would like to reiterate what I said to the Committee before: I believe nothing sharpens a Minister's mind more than them having to stand up in the Chamber and speak to something on which they have led.

I would also argue that young disabled people and their families feel forgotten and invisible, a theme consistent across the evidence in both session 5 and 6. Assigning responsibility to a Minister could provide that much needed leadership and show of recognition and support families are crying out for.

With section 6 being within legislative competence, and the need for accountability in transitions, it is my view that this provision remains a vital component of this Bill.

How the Bill will achieve its aims of improving transitions without specific measures to address wider issues

This Bill is designed to address specific gaps in legislation and clear the complexity where legislation does exist in this space. It would effectively tidy the law up and confer legal rights where gaps leave people with nowhere to turn. The key aims of this Bill are (1) the requirement of the Government to introduce a National Transitions Strategy, (2) the requirement of a statutory transitions plan, (3) the requirement for a Minister to be appointed with special responsibility over transitions, and (4) the requirement for the relevant organisations to work together to support the desired outcomes of disabled young people.

My Bill does not intend to introduce new organisations or services.

There is, undoubtedly, a myriad of practice concerns, that go far beyond the scope of this bill. For example, this bill does not seek to address the significant shortcomings in social care, create the enlightened employers prepared to give young disabled people a job or solve already existing issues of complex requirements that need addressed in classrooms. Nor does it though, deny that all of that needs addressed. As the committee will well know though, the route to addressing wider systemic concerns is rarely a Members' Bill and would in fact be out with the scope of the bill before committee. To be clear, these concerns exist, they worry me deeply as I believe they do the committee, but my bill does not and cannot seek to sort the entire system. In the immediate term I gently suggest that that could be partly addressed in the upcoming ASN inquiry the committee is about to undertake and which I look forward to engaging with.

The Scottish Government has of course indicated a plan to introduce a National Transitions Strategy, which I and many others welcome. But it will not be on a statutory footing. My bill seeks to build on that good intention by ensuring it has statutory backing and is implemented with the support of legislation, building on, not removing, and strengthening, the approach.

I would also suggest that if the Government is not already looking at measures to address wider issues, it should do so urgently, because at the very least, if it aims to introduce a Strategy of its own, even without a legislative basis, it will be ineffective without broader action. Arguably, both the Government's and my proposals to address the issue of transitions rely on that same wider transformation. My request, as part of the Strategy, is that there is a statutory transitions plan that every disabled child and young person is entitled to following from it. This is an easy addition to the Government's present plan, whatever that will look like, and reflects the possible joint and complimentary approach of us both.

Lastly, aim 4 of my bill, is simply intended to guide the relevant organisations clarity on what to do and to work together to provide the support that disabled children and young people need in transitions. If the Government is serious about introducing a viable National Transitions Strategy, this is an area that it will need to introduce new measures to ensure and so my Bill again helps with that.

Conduct detailed analysis of how the provisions within the Bill interact with existing provisions.

It is important to consider the scope of this bill again here. It does not seek to remove, or indeed add to the support plans that are in place to support the additional needs of young

people with ASN as they progress through school. It therefore does not seek to replace CSPs, or Childs Plans. My bill is intended to provide clarity on when a transitions plan for some of those pupils should be considered, and how it should be implemented. There is no provision at present for a plan that is for a) disabled pupils, or b) that supports them specifically with their transition, as distinct from any ongoing support they may have to meet their ASN.

Where a CSP is in place, they provide a different role, and are not specifically focussed on transitions. Nor are they specifically focused on disabled people. CSPs are also widely underused. All children who have ASN and who additionally are disabled to the extent that it has a significant impact on their life, arguably should have one for their ongoing support. My Bill does not undermine or replace this mechanism. Although I would point out at this point that their underuse suggests the committee might like to consider their role, purpose and implementation more closely in its wider ASN inquiry. My Bill intends to add a plan for transitions, which could be built on a CSP. In addition, my may help encourage the use of CSPs for young disabled people throughout their education as well, as a helpful unintended consequence of the statutory need to provide a plan for transitions.

Set out how the provisions will be fully implemented, given other legislative provisions have been under-utilised.

As above, there is no other legislative provision that is specifically focused on the group of people the Bill seeks to support, at their point of transitions.

There is, however, some practice in place. This practice is piecemeal, under-performing in terms of outcomes for disabled people, places undue weight on the good intentions of good people, is over-reliant on people project managing various systems and services, and is on unclear, if at all, legislative footing. So, I would reiterate that the status quo is insufficient, which I know your committee has recognised. I believe that legislation drives practice and at present, both practice and legislation in this space is not delivering.

As outlined, filling the legislative gap is part of the answer, and my Bill does that. In addition, there are mechanisms in my Bill that seek to give it the best chance of succeeding on implementation.

Section 16 of the Bill will ensure there is a process of measuring progress in implementing the National Transitions Strategy, with the Scottish Ministers being responsible for it. That is the iterative process by which the progress of implementing the Bill's provisions will be assessed, which is different to other under-utilised provisions.

The National Transitions Strategy being on a statutory footing ensures this procedure under the Bill is respected and observed and is less reliant on good will or intentions of various governments.

Beyond ministerial accountability and the strategy being on a statutory footing, the Bill also includes mechanisms for Parliament to scrutinise progress on the Bill, via the reporting requirements in section 3(2).

Responsibilities over the practical operation of transitions are conferred on various authorities, bringing together key players in the delivery of effective transitions on local level in clear and thus accountable ways.

The clear delegation of responsibilities in this Bill should ensure it is easier to follow, compared to other provisions that have been implemented and that do not have clear

legislative direction. This Bill sets out a clear path toward implementing an effective National Transitions Strategy, with the Scottish Government held accountable for its success. Address concerns relating to content of plans.

### *Who owns the plan?*

Plans are not owned, they are adopted and improved. They are codeveloped, and while the plan is most relevant to the young person, its continued development relies upon the young person, their parents, or carers, as well as the local authority and relevant organisations. The Bill confers duties on bodies to collaborate to do this.

### *What type of information will a plan include?*

Section 10 of the Bill outlines the content of a plan. Section 10(1) stipulates that a statement of the child's needs before their 16<sup>th</sup> birthday, or after depending on when they were diagnosed, up until their 26<sup>th</sup> birthday, or later if regulations prescribe such. Additionally, details of the care and support that is required to be in place in order to address these needs will also be included. Section 10(2) provides that plans must also include any information that the Scottish Ministers consider necessary, as well as the form of a transitions plan. This is drafted in this way to take account of the fact that plans could be complex and setting out the entire contents in legislation may be unreasonable.

### *How will the planning process put the young person at the centre?*

Section 7 of the Bill provides that the young person will be expected to provide their views in the formulation of a transitions plan, and it is absolutely necessary that these views are respected. I echo the evidence provided by disabled young people to the Committee, that their views have been undervalued and disrespected. This Bill is intended to empower those young people to construct the transitions plan that will allow them to achieve their dreams.

The Bill will place young disabled people at the heart of the transition planning process. This is reflected in the following provisions in the Bill:

- Disabled children and young people will be consulted about the National Transitions Strategy: Section 2(3)
- Young people will have to agree to their transitions plan; Section 7(2) and (3)
- Local authorities must have regard to the views of disabled children and young people in preparing their transitions plans; Section 11(1)
- Local authorities must use inclusive communication when preparing transitions plans; Section 11(4)
- Local authorities must consult disabled children and young people when reviewing their transitions plans; Section 12(3)

### *How can a plan meaningfully cover the period between the young person being aged 16-26, given potential changes of aspirations in that time?*

A person's transitions plan is designed to ensure their experience of life can be as similar to others' as is possible. That also means ensuring disabled people are able to change their minds, and to change the trajectory of their lives. Disabled peoples' lives are already

restricted because of their condition, but I hope this Bill can put the power back into the individual's hands, and with some additional planning, there can be room to manoeuvre.

Indeed, that is why the Bill sets out that the time period of the life of a plan is up until age 26, it is intended that it can be changed to reflect ongoing changes in aspirations. I would also point out that the same concern could be levied at the current approach. By Bill at least attempts to address this by being in place and flexible over a longer period of time.

*How can the education focus in planning be reduced?*

Unlike the current situation which is limited as outlined, where any route to a plan does exist, it is education focussed. The Bill I have proposed includes provisions in Section 12(1) placing a duty on local authorities to "appoint an officer of the local authority to manage and to co-ordinate the transitions plan". The appointment of a local authority officer may include a teacher, but is not limited to that. As such, any disabled young person that continues to work on their plan beyond an education setting should be allocated a local authority officer that reflects that.

Furthermore, sections throughout this Bill (namely sections 1, 4 and 8) seek to confer duties on not only educational institutions, but also on other organisations that the Scottish Ministers may deem relevant, and that is to provide a multi-agency approach, which ensures the transitions plan is not overly education focused.

*How can this Bill work given the ongoing discrimination and structural inequalities that exist? Can the plan be on an opt-in basis?*

Discrimination and inequality are no excuse not to act. It is because of this discrimination and inequality that we need to change the current system. The Bill is designed to provide that local authorities and the Scottish Government see past discrimination and inequality, and recognise the voice of disabled young people, where they are best suited to convey what they want their lives to look like. In fact, by focussing on disabled people as a group of people with a protected characteristic, the Bill seeks to provide an avenue to address their inequality by taking an active approach to mitigating it.

Concerns with fixed ages for a plan. Explore possibility of incorporating flexibility into future transitions planning.

I recognise the need for flexibility when it comes to transitions, as some may be ready to kickstart their transitions at one age, whereas others are ready to do so at another.

Transitions must be person-centred. We have chosen the age of 14 as it was the age at which people felt transitions planning must start. It is also the point at which the career support from Skills Development Scotland begins its enhanced support for those who require it most, recognising the importance of one to one, more intensive support at that point offers a greater opportunity to encourage young people and their parents/carers to consider earlier the full range of post-school options.

We extended until 26 to recognise the additional time disabled people may need to get to a positive destination. We drew on other legislation (including for Care Experienced young people) to arrive at the age of 26.

Who would be entitled to a plan, how would they be identified and who will identify them?

Our Bill expressly seeks to support a group of people with the protected characteristic of



being disabled as defined in the Equality Act i.e., having an impairment or condition that has a substantial impact on daily life. This specifically refers to disabled people, as distinct from the wider ASN categories.

I think some of the confusion has also come because people are conflating approaches/ plans to address the wider and overall additional support needs a pupil (including a disabled pupil) may have through their school journey; with our Bill's intention to ensure a plan is in place to help young disabled people specifically at the point when they leave school, when they transition from school. That is not to say that all school support is not crucial. It is but that is not the focus of this bill. There is an obvious and urgent need to address the wider ASN of pupils, including disabled pupils, and I hope that the committee and government in the upcoming ASN inquiry can do this, I will work with them to do so.

However, when we look at employment, economic activity, educational outcomes and more, disabled people perform below others. Their discrimination and inequality are well documented. First the Disability Discrimination Act and then the Equality Act recognised this and sought to address it. My Bill provides a mechanism to help, in one finite area, to do this.

I appreciate concern that asking teachers to make a judgement on which of the young people they identify as having an ASN, are 'disabled'. However, there is obvious judgment of a sort required in the current system. Just now, the population of people who might access ASN support don't need a diagnosis (a good thing), so teachers, parents, pupils, and other relevant parties are making judgements on who to provide additional support to already. My argument is that too few pupils are then identified for support and that this is largely disadvantaging disabled people and that even fewer get the support they need at the point of transition.

We are working with COSLA to amend our costings on the basis this and of the best available data, including census data and our FM will set out clearly how we do that.

I acknowledge that a reliance on judgement of sorts is imperfect, but all definitions of disability where diagnoses are not used (and they are rightly not at present) are thus. We are not unique in this challenge, and it is my view that the Equality Act definition gets us closest, as I think it represents the most likely number of people that teachers, families and pupils will reasonably conclude need a plan.

Outline how the provisions in the Bill improve the positions of parents, carers, and legal guardians, given the availability of services and resources presents barriers.

Previous strategies have failed because there has been no effective accountability, with parents, carers, and legal guardians having to step in and project manage transitions to ensure the young person has the best possible chance. This Bill alleviates the pressure that parents, etc, have had placed on them, and ensures the Scottish Government, local authorities and the relevant organisations play their part in providing transitions. It links everything together, and I see it as them simply having to do what they should always have been doing, but now with a clearer focus and a helpfully clearer legislative basis.

Having a plan that recognises the needs of young disabled people also empowers them and their carers as it is a tool they can use to advocate for what they need. It provides an external validation of a young person's requirements and alleviates the burden of having to continually fight, from parents and young people themselves.

Comment on whether the Bill, as drafted, will address issues raised to the Committee in

evidence on communication and advocacy support.

I accept the view of the Law Society of Scotland regarding the language used in section 7(5) of the Bill, and I will introduce an amendment to the Bill to address that – one that removes the term “lack capacity” and replacing it with “unable to express a view”.

I agree with the Partners in Advocacy Scotland’s concern that ‘not all young people have positive relationships with the name professionals in their lives’. The Bill provides mechanisms through guidance, to set out dispute resolution, including the person who is involved in developing the plan. I think this in part addresses their point. I do, however, take the point about advocacy. I agree with the views of Partners in Advocacy Scotland and the National Autistic Society Scotland, that there should be advocacy services provided, in any event, to disabled children and young people. Advocacy and communication issues relating to transitions are not unique to the provisions of this Bill, so, regardless of the strategy that is pursued, the Scottish Government must ensure advocacy services are provided to disabled young people and their family.

This Bill does however provide the need to observe the views of the young person, where they can. Young people need to be taken seriously, and we need to change the tone of discussions where we realise that disabled people, of all ages, are just as capable of knowing what they want as anyone else at their age. My Bill introduces an effective structure that means planning starts early, and that nothing falls through the cracks, so I would hope that this means there is less of a rush to ‘give disabled people what they need’ rather than what they want. Additionally, if enough time is taken to start planning, that planning can include contacting the disabled young peoples’ desired next destination, such as universities, colleges, and employers, and finding out for sure if the goals, of the disabled young person is achievable. Following my plan outlined in this Bill, there will be far more time to conduct due diligence on prospective destinations, which also provides more time for things to go wrong, and for solutions to be found.

Attitudes need to change, and while they will not change overnight, this Bill will set the standard as to the level of respect and weight that the views of the young person are due when undergoing transitions. This Bill aims to set the statutory basis on which disabled children and young people are able to articulate their own views, and for as long as this remains non-statutory, the existing attitudes that override the needs and views of disabled young people will continue. I would hope that any communication barriers, whether in terms of language or aids, are provided and that efforts are made to ensure individuals are able to express their situation in any event, whether this Bill becomes law, or not.

Respond to findings relating to the management of transitions plans.

I recognise the differing views on who manages a plan. Firstly, I think the person themselves will want to have a pivotal role in developing it, shaping it, including in it what matters to them. The ongoing work from the Government on the Compass initiative has potential to support the young person in this role.

In terms of the professional and systemic management of the plan, too often young people and their families are expected to be ‘Project Managers’. As you have noted in your letter to me, there is “no clear person to take the lead on transitions, leading to parents and young people having to advocate for themselves”. This, is, as recognised in the evidence on the Bill stressful at a time where all energies should be on imagining the future for the young person.

For that reason, the Bill seeks to address this by identifying that, at school, the professional best placed and most likely to know the young person best is a teacher, likely a Guidance Teacher. After school, it is likely that this role could be taken on by a variety of professionals.

Depending on the support the young person needs. In my view, it is most likely to be a Social Worker, but could be another person. The bill recognises that flexibility in who it is will likely be helpful and is drafted to take account of that.

We have worked closely with COSLA and ADES to discuss this and as set out later in this response, we are working on taking account of this in the FM that accompanies the bill.

Responsibility to facilitate communication and coordinate highly complex transitions cannot fall to parents, carers, and young people. Respond.

I agree, this responsibility cannot fall solely to parents, carers, and young people. That is the reason for this Bill. When I held by Transitions sessions in the summer of 2022, I constantly heard how parents, carers, and disabled people are sick of project managing their own lives, particularly in terms of transitions. That is what makes this Bill essential. It ensures the relevant organisations work together, and that there is a Minister that is held accountable for when things go wrong. Having the National Transitions Strategy and statutory transitions plan that my Bill aims to provide means parents, carers, and disabled young people have a start, and that they can spend more time focusing on aspirations, and less time trying to do the jobs of authorities.

Provide updated figures, considering Financial Memorandum/COSLA calculations disparities.

Engage with the Government on calculations, given the requirement of a Financial Resolution.

As noted above, we are working with COSLA on figures and will have them for the committee very soon. We have undertaken to clarify the numbers of people who will get a plan, the number of hours and amount of work involved in developing one and the cost of staff time to do so and work is ongoing to produce these figures and update the FM.

### *Conclusion*

In conclusion, Convenor, I would like to thank you and your committee for the work you have done on this Bill. I am committed to finding a workable way forward because, as your committee have agreed, the status quo is not satisfactory. My solution proposed is the Bill in front of you, for reasons previously outlined, and further expanded here. At this moment in time, the Government appear to want to engage in good faith, and I am grateful, but their approach is still heavily reliant on the current one, which is not working. I remain open to the possibility of discussing options further to this letter, both with the Government and the committee. In the meantime, I strongly urge the committee to consider the value of statutory change, be it with the Bill as drafted, amended or some other mechanism in statute that you might propose. Getting this right for young disabled people is my motivation and giving them a fighting chance at a future, is my goal, one, I believe, we all share.

Yours sincerely

Pam Duncan-Glancy MSP

Member of the Scottish Parliament for Glasgow Region (Scottish Labour Party) Shadow  
Cabinet Secretary for Education and Skills.

# Annexe C - Further written evidence from the Member in Charge

## Letter from the Member in Charge to the Convener - 25 September 2023

Dear Convener

Further information on costings, etc, in relation to the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill

There have been significant developments in terms of the Transitions Bill's costings, and in terms of the efforts I have made in recent months to engage with the Scottish Government to work together and I wanted to take this opportunity to update the committee again. I will set out in this letter what those developments are, and I hope you share the view that those developments only strengthen the case for my Bill. Lastly, I restate my determination to see significant progress on statutory obligations in transitions and improved accountability and remain open to doing that by whatever means necessary including through my bill, or indeed by mechanisms suggested by the government or others, to do so.

As I have said before, I know and welcome the fact that your Committee and the Scottish Government shares the view that something must be done to improve the transition experience of young disabled people. I have tried to engage the Scottish Government on transitions and have always tried to maintain a degree of flexibility over the form a solution will take. However, I stand by my position that there is a need for transitions plans and a strategy on a statutory footing, and accountability mechanisms for parliament and others, on these, and I hope the Committee will share that view.

Plan after plan has failed, and that is because there has been no clear statutory framework that has held the Government to account. That is also why I continue to believe there must be a Minister with special responsibility over transitions – accountability is essential to any national transitions strategy, that is what disabled people and their families, up and down the country, are telling us. We must listen.

The Government hopes to rely on tried, tested, and sadly to date, failed approaches to address transitions in Scotland. I do welcome efforts to improve the current situation, but I do not believe much progress will be made unless the framework my Bill proposes is implemented. A statutory solution is, in my view, the way forward, as it is the only solution that has not yet been explored.

The recent Programme for Government was an opportunity for the Scottish Government to make good on its assurances to your Committee, and to outline its plans for a national transitions strategy. But there was nothing. How are disabled people supposed to rely on the Government's assurances that it has a plan for a national transitions strategy, when the one opportunity it had to lay that plan out was not taken? I think to wait any longer without a statutory national transitions strategy would be a catastrophic failure on the Government's part, for young disabled people, and that is why my Bill commits the Government to publishing a strategy within a year of it receiving Royal Assent. This is the statement of intent on action that disabled young people, and their families, are waiting on.

The Scottish Government, itself, has currently relied on pilots to improve transitions, but

the trend in those pilots have shown that, when push comes to shove, the priority of transitions is shoved into the rear-view mirror. It is clear: without statutory duties on transitions plans, it is difficult to ensure they remain a priority. At best they become lost in a sea of other plans or priorities, and at worst, they don't happen at all.

The Government is yet to publish its strategy on this, a strategy this government first set out in a manifesto in 2016. A statement of intent to scope a strategy, on a date as yet unknown, is the Government's best suggestion for now, but this still leaves disabled people in the lurch that bit longer.

I am happy to continue working with the Government to discuss how we can address these concerns, and give young disabled people a fighting chance at a future. I am happy to consider all options but as yet the Government has only really put forward more of the same, with more time to see if it will eventually work. This delivers neither the pace nor scale of action needed. My bill attempts to do that. I hope that they can see that and if they other suggestions, or indeed amendments to my bill they believe will do what's needed and that meets the scale and pace needed, I'm here to discuss them when and if they are prepared to do so.

My commitment is to the disabled children and young people, their families, and those that support them, to ensure they have a clear basis, in law, with accountability built in, that is reliable, encourages accountability and that will stand up for them as they pursue their dreams and aspirations.

#### Key changes in relation to the Bill's costings

As the Committee requested, I have worked with COSLA and ADES to update the costing associated with the Bill since the Financial Memorandum was originally submitted. While I understand that parliamentary process does not allow me to publish an updated Financial Memorandum at this stage, I wanted to set these out to the Committee to help with its deliberations.

The costings associated with my bill have been updated to include the costs of guidance teachers and pastoral care support in undertaking transitions planning meetings; attrition; and the on costs (non-contact time etc.) associated with salaries.

I have amended the costs to reflect that an additional £110,000 of funding would be required from the Scottish Government to fund that.

Moreover, attrition has been considered in reassessing the costs of the Bill, and it is now attributable to a likely year-on-year decrease in school leavers that are seeking or receiving support.

In addition, I have increased the assumed pastoral care staff salary, with an hourly rate of £53.85, as well as an additional 30% on-costs calculation, as per COSLA's recommendation. This has increased the projections in the original Financial Memorandum by, around, £33 per hour.

I have also updated the expected costs of transitions plans on local authorities, which calculations now project are in the region of £3,446,400 per year for all local authorities, or

£107,700 per year, per local authority. Attrition is also responsible for, after a year-on-year rise, and a 1,200 meetings per year.

The overall cost changes from the original Financial Memorandum are: £135,000 for preparing and implementing a national transitions strategy (up by £12,000), £102,000 for reviewing the national transitions strategy every three years (£30,833 per year) (up by £9,500), £200 for all publishing costs, and £1,217,280 cost for local authorities to implement and revise plans in year 1, which will rise to £6,086,400 by year 10. The total cost for schools and local authorities, by year 10, is now projected to be £12,979,200.

I hope the information I have provided in this letter is helpful to the Committee. I want to work with the Committee and the Government to make this work, it is imperative that we do that so that disabled people have the support they need.

I continue to appreciate the work your Committee is doing to consider my Bill, and I hope we can work together to see it becomes law, in the interests of disabled children and young people across Scotland.

Yours sincerely

Pam Duncan-Glancy MSP

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- 1 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.

