

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

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 14-EN), a Financial Memorandum (SP Bill 14-FM), a Policy
Memorandum (SP Bill 14-PM), a Delegated Powers Memorandum (SP Bill 14-DPM) and
statements on legislative competence (SP Bill 14-LC).**

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

[AS INTRODUCED]

An Act of the Scottish Parliament to require the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for disabled children and young people in the transition to adulthood; to require the Scottish Ministers to assign to a member of the Scottish Government, or to a junior Scottish Minister, special responsibility in relation to the exercise of their functions under this Act; and to require local authorities to introduce a transitions plan for each disabled child and young person.

PART 1

NATIONAL TRANSITIONS STRATEGY

1 National Transitions Strategy

- (1) The Scottish Ministers must, within one year of Royal Assent, prepare, publish and implement a strategy in relation to improving transitions to adulthood for disabled children and young people (“the National Transitions Strategy”).
- (2) The National Transitions Strategy must in particular set out—
- (a) the aims and objectives which the Scottish Ministers consider necessary to improve transitions to adulthood for disabled children and young people,
 - (b) the actions which the Scottish Ministers will take to meet the aims and objectives of the National Transitions Strategy,
 - (c) 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,
 - (d) 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,
 - (e) information about the support and assistance which will be available to disabled children and young people before, and during, the transition to adulthood, and
 - (f) such other matters as the Scottish Ministers consider relevant to the transition to adulthood for disabled children and young people.

2 Consultation on strategy

- (1) The Scottish Ministers must, in preparing the National Transitions Strategy—
- (a) publish a draft strategy,
 - (b) consult on the draft strategy, and
 - (c) take into account any views and information received by them by virtue of such consultation.
- (2) In preparing the National Transitions Strategy, the Scottish Ministers must consult such persons as they consider appropriate, and are likely to be directly affected by the National Transitions Strategy, or otherwise to have an interest in that strategy.
- (3) The persons consulted under subsection (2) must include—
- (a) disabled children and young people,
 - (b) the parents, legally appointed guardians or other carers, of disabled children and young people,
 - (c) organisations working for, and on behalf of, disabled children and young people, and their families,
 - (d) organisations consisting of disabled people,
 - (e) local authorities,
 - (f) Health Boards,
 - (g) Integration Joint Boards,
 - (h) Further Education Institutions,
 - (i) Higher Education Institutions, and
 - (j) the providers of other services to disabled children and young people and their families or other carers.

3 Publication and laying of strategy

- (1) Within one year of Royal Assent the Scottish Ministers must—
- (a) publish the National Transitions Strategy, and
 - (b) lay a copy of it before the Scottish Parliament.
- (2) As soon as reasonably practicable after complying with subsection (1), the Scottish Ministers must—
- (a) publish a report setting out—
 - (i) the consultation process taken in order to comply with section 2, and
 - (ii) the ways in which views expressed during that process have been taken account of in preparing the National Transitions Strategy,
 - (b) lay a copy of the report published under paragraph (a) before the Scottish Parliament, and
 - (c) make a statement to the Scottish Parliament in relation to the National Transitions Strategy.

4 Duties to comply with National Transitions Strategy

- (1) In exercising their functions under this Act the persons listed in subsection (2) must comply with the National Transitions Strategy.
- (2) The persons are—
- (a) the Scottish Ministers,
 - (b) local authorities,
 - (c) Health Boards,
 - (d) Integration Joint Boards,
 - (e) Further Education Institutions,
 - (f) Higher Education Institutions, and
 - (g) such other persons as the Scottish Ministers may prescribe by regulations.
- (3) Before making any regulations under subsection 4(2)(g) the Scottish Ministers must consult with—
- (a) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by regulations introduced under subsection 4(2)(g), and
 - (b) such other persons as the Scottish Ministers consider appropriate.

5 Review and publication of National Transitions Strategy

- (1) The Scottish Ministers must review the National Transitions Strategy before the end of each reporting period.
- (2) The reporting periods are—
- (a) the period of 3 years beginning with the day on which the first National Transitions Strategy is published under section 3, and
 - (b) each subsequent period of 3 years.
- (3) Following a review under subsection (1), the Scottish Ministers—
- (a) must prepare a report on the review, including in particular the Scottish Ministers' assessment of the extent to which the National Transitions Strategy has been complied with, and
 - (b) may revise the strategy.
- (4) If, following a review, the Scottish Ministers decide not to revise the National Transitions Strategy under subsection (3)(b), the report prepared under subsection (3)(a) must set out their reasons for not doing so.
- (5) When reviewing the National Transitions Strategy, the Scottish Ministers must consult the persons mentioned in section 2(2).
- (6) The Scottish Ministers must—
- (a) publish each revision of the National Transitions Strategy,
 - (b) publish each report prepared under subsection (3)(a) above, and

(c) lay before the Scottish Parliament—

- (i) a copy of each revision of the National Transitions Strategy, and
- (ii) each report prepared under subsection (3)(a).

6 Special responsibility

5 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.

PART 2

TRANSITIONS PLANS

10 7 Duty to introduce a transitions plan

- (1) A local authority must prepare and implement a transitions plan for each disabled child and young person within the local authority area to improve outcomes for each child or young person with a disability within the local authority area in the transition to adulthood.
- 15 (2) A local authority must, subject to subsection (3), start preparing the transitions plan under subsection (1) from the child's fourteenth birthday, and the transitions plan must be agreed by the local authority and by the child, and be put in place, no later than 3 months before the child's sixteenth birthday.
- (3) Where a child's disability is diagnosed after their sixteenth birthday and before their 20 eighteenth birthday, a transitions plan under subsection (1) must be agreed by the local authority and by the child, and put in place, before the child's eighteenth birthday.
- (4) A transitions plan agreed under subsection (2) or (3) must remain in place until—
 - (a) the child reaches their twenty sixth birthday, or such higher age as may be prescribed by regulations, or
 - 25 (b) until the transitions plan is ended under section 12(6)(c).
- (5) 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.
- 30 (6) A local authority must take action to raise awareness of—
 - (a) its duties to prepare and implement a transitions plan for each disabled child and young person within the local authority area, and
 - 35 (b) the rights of every disabled child and young person within the local authority area to have a transitions plan.

8 Other duties

- (1) The Scottish Ministers may prescribe by regulations duties in relation to a transitions plan on the following bodies or persons—
 - (a) local authorities,

- (b) Health Boards,
- (c) Integration Joint Boards,
- (d) Further Education Institutions,
- (e) Higher Education Institutions, and
- (f) such other persons as they consider appropriate.

(2) Before making any regulations under subsection 8(1) the Scottish Ministers must consult with—

- (a) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by regulations introduced under subsection 8(1), and
- (b) such other persons as the Scottish Ministers consider appropriate.

9 Delivery of a transitions plan

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

10 Contents of a transitions plan

(1) A transitions plan must contain—

- (a) a statement of the child's needs from before the child's sixteenth birthday, or a statement of the child's needs from when their disability is first diagnosed after their sixteenth birthday, until the child reaches their twenty sixth birthday or such higher age as may be prescribed by regulations, and
- (b) details of the care and support which must be put in place to address these needs.

(2) The Scottish Ministers may by regulations make provision as to—

- (a) such other information which is, or is not, to be contained in a transitions plan, and
- (b) the form of a transitions plan.

11 Preparation of a transitions plan

(1) In preparing a transitions plan under section 7(1), a local authority must, in so far as it is reasonably practicable, ascertain and have regard to the views of—

- (a) the disabled child or young person,
- (b) the parents, legally appointed guardian or other carers of the disabled child or young person,
- (c) any advocate or support agency instructed by the disabled child or young person, or instructed by the child's or young person's parents, legally appointed guardian or other carers to act on behalf of the child or young person,
- (d) any other local authority or persons providing care and support under the transitions plan,
- (e) such other persons, as the Scottish Ministers may prescribe by regulations, and

(f) such other persons as the local authority considers appropriate.

- (2) In having regard to the views of the child or young person, the local authority preparing the transitions plan must take account of the child's or young person's age and maturity.
- (3) In relation to any child or young person who lacks capacity to express a view, or to make a decision, for the purposes of preparing a transitions plan under section 7(1), a local authority must, in so far as it is reasonably practicable, ascertain and have regard to the views of the child's or young person's parents, legally appointed guardian or other carers.
- (4) In preparing a transitions plan under section 7(1), a local authority must have regard to the importance of communicating in an inclusive way.
- (5) In subsection (4), "communicating in an inclusive way" means communicating in a way that ensures disabled children and young people who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual's needs.

12 Management of a transitions plan

- (1) A local authority which has prepared, and implemented, a transitions plan for a disabled child or young person under section 7(1) must appoint an officer of the local authority to manage and to co-ordinate the transitions plan.
- (2) Subject to subsection (6)(c), a local authority which has prepared and introduced a transitions plan under section 7(1) must keep under review whether or not—
- (a) the needs outlined in the transitions plan are still accurate,
 - (b) the disabled child or young person is receiving the care and support necessary to meet their needs,
 - (c) the outcomes of the transitions plan have been achieved, or will be achieved, and
 - (d) the management of the transitions plan should transfer to another local authority.
- (3) In reviewing a transitions plan, the local authority must consult—
- (a) the disabled child or young person,
 - (b) the parents, legally appointed guardian or other carers of the disabled child or young person,
 - (c) 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,
 - (d) any other local authority or persons providing care and support under the transitions plan,
 - (e) such persons as the Scottish Ministers may prescribe by regulations, and
 - (f) such other persons as the local authority considers appropriate.
- (4) In having regard to the views of the child or young person as mentioned in subsection (3)(a), the local authority must take account of the child's or young person's age and maturity.
- (5) In relation to any child or young person who lacks capacity to express a view, or to make a decision, for the purposes of reviewing a transitions plan under section 12(2),

a local authority must consult the views of the child's or young person's parents, legally appointed guardian or other carers.

- (6) The local authority in consequence of the review may—
- (a) amend the transitions plan so as to revise any or all of—
 - (i) the needs of the child or young person,
 - (ii) the care and support to address these needs, and
 - (iii) the outcomes which the plan is intended to achieve,
 - (b) transfer the management of the plan to another relevant authority, or
 - (c) end the plan.
- (7) The Scottish Ministers may by regulations make provision about the management of transitions plans, including provision about—
- (a) when and how a transitions plan is to be reviewed in accordance with subsection (2),
 - (b) which local authority is to manage a transitions plan,
 - (c) when, and to whom, management of a transitions plan is to, or may, transfer under subsection (6)(b), and
 - (d) the keeping, disclosure and destruction of a child's or young person's transitions plan.

13 Dispute resolution

- (1) The Scottish Ministers may by regulations make provision about the resolution of disputes concerning a transitions plan, including the preparation, contents, management or delivery of a transitions plan.
- (2) Regulations made under subsection (1) shall apply to disputes between any local authority, or any other bodies or persons as may be prescribed by regulations, and
- (a) any child who has attained the age of 14 years and who the local authority is satisfied has capacity as respects views or decisions relating to the purposes of resolving such disputes,
 - (b) the parents or other carers of the child,
 - (c) any young person, or
 - (d) in relation to any child or young person who lacks capacity to express a view, or to make a decision, for the purposes of resolving such disputes, the child's or young person's parents, legally appointed guardian or other carers.
- (3) Before making any regulations under section 13 the Scottish Ministers must consult with—
- (a) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by regulations introduced under section 13, and
 - (b) such other persons as the Scottish Ministers consider appropriate.

14 Guidance

- (1) The Scottish Ministers may issue guidance about the operation of this Part to—
- (a) local authorities,
 - (b) Health Boards,
 - 5 (c) Integration Joint Boards,
 - (d) Further Education Institutions,
 - (e) Higher Education Institutions, and
 - (f) such other persons as Ministers may prescribe by regulations.
- (2) Guidance under subsection (1) may include, in particular, guidance about—
- 10 (a) the arrangements for the preparation and introduction of a transitions plan,
 - (b) the delivery of a transitions plan,
 - (c) the contents of a transitions plan,
 - (d) the management of a transitions plan, and
 - (e) any other matters relevant to a transitions plan.
- 15 (3) Before making any regulations under subsection 14(1)(f) the Scottish Ministers must consult with—
- (a) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by regulations introduced under subsection 14(1)(f), and
 - 20 (b) such other persons as the Scottish Ministers consider appropriate.
- (4) The bodies specified in subsection (1) must have regard to any guidance issued to them under this section.
- (5) Before issuing or varying guidance under this section, or before revoking guidance issued under this section, the Scottish Ministers must consult such persons as they
- 25 consider appropriate.
- (6) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance issued under this section.
- (7) The Scottish Ministers may at any time vary or revoke any guidance issued under this section.

15 Directions

- (1) The Scottish Ministers may issue general or specific directions about transitions plans under this Act to—
- (a) local authorities,
 - (b) Health Boards,
 - 35 (c) Integration Joint Boards,
 - (d) Further Education Institutions,
 - (e) Higher Education Institutions, and
 - (f) such other bodies as Ministers may prescribe by regulations.

- 5
- (2) Before making any regulations under subsection 15(1)(f) the Scottish Ministers must consult with—
- (a) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by regulations introduced under subsection 15(1)(f), and
- (b) such other persons as the Scottish Ministers consider appropriate.
- (3) Directions issued by the Scottish Ministers under subsection (1) may include directions about the need to co-operate with each other in relation to the efficient and effective use of their resources to provide, and to deliver, transitions plans under this Act.
- 10 (4) The bodies specified in subsection (1) must comply with any directions issued to them.
- (5) A direction under subsection (1) must—
- (a) be in writing, and
- (b) be published (as soon as practicable after it is communicated to the local authorities or to another body specified in subsection (1)), and
- 15 (c) set out the Scottish Ministers' reasons for making it.
- (6) The Scottish Ministers may revise or revoke a direction under subsection (1).
- (7) Subsection (4) applies to the revision or revocation of a direction under subsection (1) as it applies to such a direction.

PART 3

GENERAL

16 Annual report

- 20
- (1) At the end of each financial year, the Scottish Ministers must—
- (a) lay before the Scottish Parliament, and
- (b) make publicly available by such means as they consider appropriate,
- 25 a report on the progress made by the National Transitions Strategy, and by the transitions plans, in improving transitions to adulthood for disabled children and young people in that year.
- (2) The report is to contain—
- 30 (a) an assessment of the extent to which the aims and objectives, and outcomes of the National Transitions Strategy have been met in that year,
- (b) a statement, where the aims and objectives, and outcomes, of the National Transitions Strategy were not met in that year, of how the Scottish Ministers intend to ensure that these aims, objectives and outcomes will be met,
- 35 (c) an assessment of how the National Transitions Strategy has affected the circumstances of disabled children and young people, including improving their equality of opportunities,
- (d) details of any additional initiatives which the Scottish Ministers will put in place, or actions they will take, to support the aims and objectives, and outcomes of the National Transitions Strategy,

- (e) information about the numbers of transitions plans put in place by each local authority for disabled children and young people in that year,
 - (f) a summary of the actions taken by each local authority to increase awareness of transitions plans for disabled children and young people,
 - 5 (g) details of the action that each local authority took in fulfilment of its duties under this Act,
 - (h) details of the initiatives which Health Boards, Integration Joint Boards, Further Education Institutions, Higher Education Institutions and other bodies and persons have put in place, or actions they have taken, to support the aims and objectives of the National Transitions Strategy, and
 - 10 (i) such other information as the Scottish Ministers consider relevant to the National Transitions Strategy, and to improving transitions for disabled children and young people.
- (3) The first report under this section is to include a plan setting out the Scottish Ministers' intentions to collect and publish data for the purpose of monitoring equality of opportunity where existing data sources are not sufficient for the preparation of the report.
- 15

17 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, or transitory provision they consider appropriate for the purposes of, in connection with or for giving full effect to, this Act.
- 20 (2) Regulations under this section may—
 - (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).
- (3) Regulations under this section that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- 25 (4) Otherwise, regulations under this section are subject to the negative procedure.

18 Subordinate legislation

- (1) Regulations under sections 4(2)(g), 7(4), 8, 13, 14(1) and 15(1) are subject to the affirmative procedure.
- 30 (2) All other regulations under this Act are subject to the negative procedure.

19 Interpretation

In this Act—

“child” means a person under 18 years of age,

“disability” has the meaning given by section 6 of the Equality Act 2010 (c.15),

“Further Education Institution” means—

- (a) a body listed in schedule 2 of the Further and Higher Education (Scotland) Act 2005 under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council”, or
- 35

(b) a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act,

“Health Board” means a board constituted by an order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29),

5 “Higher Education Institution” means a body listed in schedule 2 of the Further and Higher Education (Scotland) Act 2005 under the heading “Institutions formerly eligible for funding by the Scottish Higher Education Funding Council” or under the heading “Other institutions”,

10 “Integration Joint Board” has the meaning given by section 1(4)(a) of the Public Bodies (Joint Working) (Scotland) Act 2014 (c.9),

“legally appointed guardian” means a person or office holder appointed under a guardianship order granted by the sheriff under section 58 of the Adults with Incapacity (Scotland) Act 2000 (asp 4),

15 “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“young person” means a person who has attained the age of 18 and is under the age of 26 years.

20 Commencement

This Act comes into force on the day after Royal Assent.

20 21 Short title

The short title of this Act is the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Act 2022.

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

[AS INTRODUCED]

An Act of the Scottish Parliament to require the Scottish Ministers to introduce, and to implement, a National Transitions Strategy to improve outcomes for disabled children and young people in the transition to adulthood; to require the Scottish Ministers to assign to a member of the Scottish Government, or to a junior Scottish Minister, special responsibility in relation to the exercise of their functions under this Act; and to require local authorities to introduce a transitions plan for each disabled child and young person.

Introduced by: Pam Duncan-Glancy
On: 20 April 2022
Bill type: Member's Bill

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