

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

SUBMISSION FROM SOCIAL WORK SCOTLAND, *22 January 2020*

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the draft Bill, which is intended to improve the outcomes for children and young people with a disability in the transition to adulthood.

Social Work Scotland also welcomes the attention brought to the experience of many young people with disabilities and their families in transitions, including the phase approaching and following school leaving age.

1. What challenges do you think children with a disability face in the transition to adulthood?

Transitions in this context are a process, rather than an event that is sealed by a professional plan. The chemistry and degree of challenge depends on the nature of the disability/disabilities; the interaction of factors in the young person's home or transitional environment; and the strengths and concerns in their wider world, including relationships and interaction with services.

The success of interactions with services depends not only on the knowledge, skills and values of relevant professionals, but also upon local structures and resource availability. There are some common themes in the nature of challenges. For example:

- It is a challenge if key services do not work with an appropriate degree of holistic understanding of the young person's needs in **context**. This includes understanding of cultural context and response to additional barriers some young people face.
- When there is a combination of need requiring continuity of co-ordinated approach between services, it is a challenge if there is insufficient **continuity** from of a **co-ordinating professional** during transitional phases.

- When discussion and advice and support are needed, the **tone** as well as the **practicality and expertise** of professional response (meaning the approachability and pro-activity of key professionals) is significant. This entails respect, honesty, encouragement and support for young people, parents and carers who may find themselves in adversarial positions.
- Early, guided access to **information** about processes, resources and timelines is essential for young people and their families. The adequacy/inadequacy of budget allocation in relation to all wellbeing needs may be a challenge.
- Successful transitional support for children with additional support needs often depends on creative **bridging** of gaps for individuals through partnerships between family, third sector and statutory services.

2. Do you think that children and young people with a disability should have a statutory right to a transitions plan?

Attention to strategic improvement in this area is welcome. However, the recent unsuccessful attempt to establish a single, statutory Children's Plans (through the Children and Young People (Scotland) Act 2014) suggests to us that caution should be taken about a statutory transitions plan.

Moreover, we would be concerned about a uniform layering of legislation for a group that seems both variously defined and specific within the terms of the Bill, which blankets a range of existing requirements (summarised at the end of this submission), and which leaves out others with comparable needs (but no recognised disability or chronic condition).

We also have a concern that such a blanket entitlement might be inflexibly and superficially applied as part of *procedure*, rather than, as a plan should be, part of a continuous, evolving process involving all relevant people and organisations.

Indeed the current range of legislation and planning obligations that applies can already be confusing. Enhancing practitioner understanding and service delivery on existing obligations could be more productive than splinting in new requirements. A flexible approach supported by national guidance, clarifying and connecting existing legislative requirements would seem a helpful option in the first instance. This could be supplemented by clear indicators and examples of effective practice during key transitional phases (not only before/during/after leaving secondary school). Guidance on Children's Services Plans (Scottish Government 2020, para 174) emphasises the need for service and strategic plans for transitions.

Transitional support should be proportionate to need. Needs unfold from an interaction of circumstances which may or may not include disability. The statutory guidance to the

Education (Additional Support for Learning) (Scotland) Act 2004 as amended provides for a range of expectations in relation to content, co-ordination and timing of transitions planning – and not only around school leaving age; and not only around disability.

Transitions to adult life and services are multi-dimensional and go beyond endings and bridging to adult services. For some there may be significant relationship loss alongside new opportunities with their own challenges. Deep, long term emotional challenges may not easily be captured or moulded in to a transitions plan. The toughest personal and inter-personal transitions may begin long after service/professional/resource related transitional tasks are completed.

3. Why do you think that a transitions plan would be helpful or unhelpful?

Transitions plans, when needed, should help clarify (with a young person and those most significant to them) purpose, steps, responsibilities and timescales for action and review. We support the use of a rights based, holistic developmental/ecological approach to such planning, including the using the GIRFEC Wellbeing Indicators in transitional planning processes across services.

We recommend the use of the ARC Scotland / Scottish Government *Principles of Good Transitions*, about which further implementation guidance is under development ('Principles in to Practice'/ARC Scotland 2020). This resource has been developed in collaboration between families, practitioners and managers across sectors, with Scottish Government support. It could provide a standard point of reference transitions across all statutory and voluntary sector transitions services.

We think proportionate, co-ordinated and collaborative transitions planning is helpful when it is connected to sufficient continuity of support and sufficiency of resource – not only in relation to further education and employment opportunity. It could be confusing, bureaucratic and unhelpful if this forms one of multiple strands of parallel planning processes with overlapping intent. It could also cause frustration and loss of confidence if it plans raise expectations that cannot be matched by resources.

4. Will a National Transitions Strategy assist disabled young people to achieve independent living?

And

5. What do you think the advantages and disadvantages would be of a National Transitions Strategy?

Independent living may not be a priority objective for all; or realistic for some with profound and complex needs. The general objectives in relation to wellbeing and achievement of potential could be assisted, if such a strategy were to:

- support local authorities in adequate provision of co-ordination and sufficient continuity of service;
- assist in development of opportunities and resources including those in employment and further education;
- leads to development of pre and post qualifying inter-agency training modules in relation to transition
- encourages the role of inspection in continuous attention and improvement in this area; and
- connects existing principles and rights (e.g. in terms of participation, best interests, non-discrimination, co-production) and concepts (such as wellbeing) with practice approaches (e.g. person centred planning) and practical opportunities.

Families have been sequentially consulted about experiences of transitions. It would seem helpful to capitalise on what is known.

6. Do you think it is necessary for there to be a Minister in the Scottish Government with special responsibility for ensuring that children and young people with a disability receive appropriate levels of care and support in the transition to adulthood?

The way that this area of concern cuts across portfolios indicates the need for a ministerial solution to ensure co-ordinated accountability. However, there may be different ways of achieving co-ordinated purpose without creating a new ministerial portfolio, which would necessarily overlap with many others. Consideration of the options goes beyond the scope of this consultation. For the present it is not automatically obvious that a new Minister is the most efficient solution. Indeed there is a risk of creating another silo of activity rather than building shared understanding about how most of the intransigent challenges across portfolios relate to transitional phases in the lives of individuals and families that require a collaborative approach across sectors in culture, systems and practice.

There are other forms of transition which present great social and policy challenges for Scotland at present. A ministerial responsibility that looked at the common threads in effective transitions (for all people, regardless of needs, age or circumstances) would be creative, and could have significant impact across a range of concerns shared by separate portfolios. Strategic roles in local partnerships concerned with transitions – would increase the chance of the political initiative taking root through mirrored co-ordination of transitions strategy locally.

7. Do you have any other comments?

- a. If this were to progress as tabled, timescales (within one year of Royal Assent) are very tight for effective implementation. Although this may feel like a relatively simple technical solution to a technical problem (i.e. the absence of a plan), research from

across many different human services (e.g. education, health, social work, social care, etc.) has established that there are no simple changes. Implementation of any change in a system, requiring humans to work differently, requires careful planning and consideration, and then time and meaningful support (such as training, coaching, peer feedback, etc.) to make it real.

- b. Plans should relate to reasonable expectations. This comes at a **cost for resourcing**, not only staff co-ordinating additional assessment and planning, but also supplementing those the range of initiatives, college places and supported work opportunities that exist.
- c. We support the argument for **continued improvement in access to information** about resources and processes. Information about local pathways is needed to help individuals, parents and professionals navigate local systems and to signpost support.
- d. **Training:** There is scope for a pre-qualifying and cross-service training module covering effective support for transition, for example in social work, nursing and housing. There is scope for development of introductory, interactive training materials online. The Scottish Government and other partners should consider the feasibility of developing such a resource.
- e. **Outreach:** It could be argued (so long as this is not at odds with developing core services) for creative consideration by Scottish Government, local authorities and health boards to developing an 'outreach' role. This would be designed to reach (a) those with additional support needs who may be at significant risk and (b) those who have not been well known to services because they have not been at known risk but who may become isolated and exhausted without proactive contact, signposting, networking and support as needed.
- f. **Structures:** the cut off for social work, education and health services for children within the same age bands creates a fracture zone that is hazardous for those with complex needs of multiple services, who lose all key professional supports at once. This loss is sometimes combined with reduction or loss in close family support.
- g. **Planning in Partnership:** Forms of collaborative, practical and person-centred planning with individuals and family members or those most important to the wellbeing of the young person should be supported
- h. **Resourcing:** In transitional ages some respite or short break arrangements are cut because a young person turns 17, rather than because of change in need. For some families in survival mode and individuals with complex disabilities this can add significant stress.

EXAMPLES OF CURRENT APPLICABLE LEGISLATION

Part 3 of the [Children and Young People \(Scotland\) Act 2014](#) requires local authorities and health boards to prepare a children's services plan, which outlines their plans for the provision of all children's services over a 3 year period. The aim of children's service plans is to ensure that services best safeguard, support and promote the wellbeing of children. Further, the Act requires that action to meet needs should be taken at the earliest

appropriate time and that action should be taken to prevent needs from arising, where appropriate.

The [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) defines the responsibilities of education authorities to assess the needs of and provide support for, pupils with additional support needs. This includes duties of education authorities specific to post-school transition planning. This includes requesting information on service provision from appropriate agencies which are likely to be involved with the young person upon leaving school. The education authority should request information from appropriate agencies no later than 12 months before the young person is expected to leave school. The education authority is also required to pass on information to appropriate agencies, about the expected leaving date and any other information related to provisions that the authority thinks will help the appropriate agencies to support the young person. This should take place no later than 6 months before the young person is expected to leave school. Examples of appropriate agencies in this context are health services, colleges, universities, social work services, voluntary agencies, Skills Development Scotland and training providers. No information should be passed on to other agencies without the consent of the young person or their parent.

As stated in the [Supporting Children's Learning: Statutory Guidance on the Education \(Additional Support for Learning\) Scotland Act 2004 Code of Practice](#), education authorities are not required to provide post-school transition support for all leavers with additional support needs. The duties are specific to pupils who:

- have a co-ordinated support plan;
- are in a specialist placement such as a specialist unit or a special school;
- Have additional support needs arising from a disability within the meaning of the Equality Act 2010; or
- are otherwise at risk of not making a successful transition such as looked after children and young carers.

The Act defines a young person as a person who (a) is aged 16 years or over, (b) is a pupil at a school, and (3) has, since attaining the age of 16 years or over, remained a pupil at that or another school.

The Act defines a child in line with the [Education \(Scotland\) Act 1980](#), where a child means a person who is not over school age. A person is of school age if he/she has attained the age of five years and has not attained the age of 16 years

Part 2 of the [Children \(Scotland\) Act 1995](#) sets out the duties of local authorities to safeguard and promote the welfare of children in need in their area. Children are defined as in need of care if they are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health and development unless the local

authority provides a service for them. This may be due to their own health conditions or disabilities, or because they are adversely affected by the disability of their family members.

[The Children \(Scotland\) Act 1995 Regulations and Guidance](#) states that when local authorities receive referrals, they should assess the nature of a child's needs and decide what services, if any, should be provided in order to promote or safeguard the child's welfare.

Part 2 places duties on local authorities to prepare young people for leaving care or ceasing to be looked after. This includes providing advice and assistance to young people who have ceased to be looked after on or after their 16th birthday, providing aftercare support until the young people turn 19, and to assess their needs for aftercare support until they turn 26 (or beyond in some cases). Part 2 also provides for continuing care, allowing young people looked after in foster, kinship or residential care to remain in their current care placement until the age of 21, as inserted by the **[Children and Young People \(Scotland\) Act 2014](#)**.

The **[Social Work \(Scotland\) Act 1968](#)** makes provisions for promoting social welfare in Scotland. Section 12A of the Act lays out the duties of local authorities to assess the community care needs of adults, defined as those who are not under the age of 18 years, and to decide whether they are eligible for any services. How services should be provided is laid out in the **[Social Care \(Self-Directed Support\) \(Scotland\) Act 2013](#)**.

The **[Social Care \(Self-Directed Support\) \(Scotland\) Act 2013](#)** places a duty on local authorities to offer people who are eligible for social care a range of choices on how they receive their support. It allows children, young people and adults, their carers and families to take greater control over the support provided to them. **[The statutory guidance for the 2013 Act](#)** offers specific information relating to children and families. Paragraph 7.12 states that the social care assessment and support planning process should feed into a single plan for the involved child, in line with the GIRFEC approach and the child's plan. The guidance states that the authority should seek to ensure that the assessment process is fully co-ordinated between adult and children's services, including any other relevant departments, such as education

The **[Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)** sets out the legislative framework for integrating health and social care. It requires integration of the governance, planning and resourcing of adult social care services, adult primary care and community health services and some hospital services. Integration of children's services is not required, but integration authorities may choose to do this.

Section 4 of the Act states that the main purpose of integrated services is to improve the wellbeing of service users. Services should be integrated from the point of view of service users and take account of their needs, rights, dignity and participation in the community. Services should be planned and led locally in a way which engages service users, their carers and all others those involved in the provision of health or social care.

The [Equality Act 2010](#) provides a framework to protect the rights of individuals across nine protected characteristics: age, religion and belief, race, disability, gender, sexual orientation, gender reassignment, marriage and civil partnership, and pregnancy and maternity. The Act provides protection for people with protected characteristics across employment, education, and in the provision of goods, services and public functions against direct and indirect discrimination, harassment, and victimisation. Specifically in relation to disability, the Act provides protection against discrimination arising from disability and lays out duties on organisations to make reasonable adjustments.

The [Adults with Incapacity \(Scotland\) Act 2000](#) lays out arrangements that can be put in place to safeguard the welfare and manage the finances of an adult who is incapable of acting, making decisions, communicating decisions, understanding decisions or retaining memory of decisions, by reason of mental disorder or of inability to communicate because of physical disability. A person does not fall within this definition if their communication deficiency can be made good by human or mechanical aid.

Arrangements include applying for guardianship in order to manage the adult's property and financial matters or personal welfare, including health.

The Act defines an adult as a person who has attained the age of 16 years

The [Carers \(Scotland\) Act 2016](#) makes provision about carers, including the identification of carers' needs for support through adult carer support plans and young carer statements. It makes provision for support to carers, the enabling of carer involvement in certain services, the preparation of local carer strategies and the establishment of information and advice services for carers.

Section 30 of the Act states that local authorities must take account of the views of the carer when assessing the needs of a cared for person, in so far as it is reasonable and practicable to do so

Health and Social Care Standards describe both the outcomes and the standard of care a person can expect. Health and Social Care Standards in their draft form (18) have a focus on transition as a move between services (Revised draft Health and Social Care Standards, Scottish Government, November 2016 s2.9) "If I need or want to move on and start using another service, I will be fully involved in this decision and helped to find a suitable alternative. If I am moving from a service for children to one for adults, I am helped with this transition." The Standards have been prepared to support delivery of a range of legislation and Scottish Government policy that relates to health and social care, such as: • Scotland Performs: National Performance Framework • Getting it Right for Every Child and the wellbeing indicators • The Public Bodies (Joint Working) (Scotland) Act 2014 and the National Health and Wellbeing Outcomes • The Social Care (Self-directed Support) Act 2013 • The Carers (Scotland) Act 2016 • Social Services in Scotland: a shared vision and strategy 2015-2020 • A National Clinical Strategy for Scotland

National Health and Wellbeing Outcomes and clear read across to Principles of Good Transitions 3: There are also opportunities for **scrutiny bodies such as the HealthCare Improvement Scotland and Care Inspectorate** to evaluate the extent to which integration principles are locally evident in transition policy, process and practice The Doran Review underlined the role of inspection agencies in supporting continuous improvement in this direction.

References

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For further information, please do not hesitate to contact:

James Cox

Children and Families Lead, Social Work Scotland

james.cox@socialworkscotland.org