

Report

Report to:	Education Resources Committee
Date of Meeting:	19 January 2021
Report by:	Executive Director (Education Resources)

Subject:	Response to Call for Views on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ update the Committee of South Lanarkshire Council's response to the call for views on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the response made on behalf of South Lanarkshire Council to the call for views on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill and to note the main elements of the Bill, be noted.

3. Background

3.1. The Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill is a Member's Bill introduced by Johann Lamont MSP to the Scottish Parliament on 30 September 2020.

3.2. The Call for Views opened on 16 November 2020 and will close on 11 January 2021.

3.3. The Bill aims to improve opportunities for children and young people as they grow up and would require:

- ◆ the Scottish Government to have a National Transitions Strategy explaining how they are going to improve opportunities for disabled children and young people
- ◆ a Scottish Government minister to be responsible for improving opportunities for disabled children and young people moving into adulthood
- ◆ local councils to have plans for each disabled child and young person as they move into adulthood
- ◆ Scottish ministers to review and submit a report to the Parliament every year to update on how the National Transitions Strategy and transition plans are working
- ◆ People and organisations named in the Bill (including Scottish ministers, local councils, health boards and integration joint boards) to follow the aims of the National Transitions Strategy

The Bill also enables Scottish ministers to give:

- ◆ Guidance to local councils about transition plans
- ◆ Directions about transition plans to local councils, health boards, integration joint boards and others named in the Bill

4. Response to the Call for Views

4.1. A working group comprising the following representatives was established to discuss and compile a response to the call for views:

- ◆ Quality Improvement Officer (Inclusive Education Service)
- ◆ Depute Principal Psychologist (Educational Psychology Service)
- ◆ Team Leader (Autism Resource Co-ordination Hub (ARCH))
- ◆ Head Teacher (Secondary school for young people with additional support needs (ASN))
- ◆ Depute Head Teacher (Mainstream secondary school with ASN base provision)
- ◆ Team Leader (Social Work Resources)
- ◆ Fieldwork Manager (Social Work Resources)
- ◆ Solicitor (Legal Services)

The response is attached as Appendix 1.

5. Next Steps

5.1. It is possible that between the closing date for the call for views and the Scottish Parliament election in Spring 2021, the Bill will not have completed all necessary stages. A decision will be made on 'next steps' following the closing date of the call for views.

5.2. Education Resources will monitor progress of the Bill in order to be agile and ready for the introduction of the new Act.

5.3. It is also worth noting that there is universal support for the aims of the Bill which is to improve outcomes for disabled children and young people as they transition into adulthood.

6. Employee Implications

6.1. There are no staffing implications

7. Financial Implications

7.1. There are no financial implications

8. Climate Change, Sustainability and Environmental Implications

8.1. There are no climate change, sustainability and environmental implications arising from this report.

9. Other Implications

9.1. There are no risk implications in terms of the information contained in this report.

10. Equality Impact Assessment and Consultation Arrangements

10.1. This report does not introduce a new policy, function or strategy or recommend a change to existing policy, function or strategy and, therefore, no impact assessment is required.

10.2. Consultation and engagement has taken place with children, young people, schools and educational settings and other agencies.

Tony McDaid

Executive Director (Education Resources Resources)

22 December 2020

Link(s) to Council Values/Ambitions/Objectives

- Improve achievement, raise educational attainment and support lifelong learning
- Ensure schools and other places of learning are inspirational
- focused on people and their needs
- working with and respecting others
- accountable, effective, efficient, and transparent
- ambitious, self-aware and improving

Previous References

None

List of Background Papers

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

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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Appendix 1

South Lanarkshire Council Response to Call for Views on Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill January 2021

Q 1. Do you agree with the overall aims of the Bill? If so, do you think the Bill can meet these aims?

We agree unreservedly with the intended aim of improving outcomes for disabled children and young people as they transition to adulthood.

Our view is that this is only achievable and successful if agencies involved with the child and family work in a co-ordinated and multi-agency way. Transition planning is an ongoing process that requires to start earlier for some children and young people depending on their level of need and complexity and will evolve over time. The role of lead professional should be the conduit for supporting the transition plan and for ensuring accountability from all services as the child or young person moves into adulthood. This would particularly focus on contingencies when agreed transitional plans falter or require to be adjusted. We would therefore not advocate a delineated approach as having responsibility lying with an officer in education whilst the child or young person is at school and then transferring to adult services when the child or young person leaves school.

To ensure consistency of post-16 transition planning and processes and to help ensure that all statutory requirements are met, a greater emphasis on multi-agency working and on building a shared understanding of the roles and responsibilities of the partners involved would be welcome. It is the experience of practitioners that the success of GIRFEC was built upon cross-sector training and planning involving education, social work, health and third-sector partners and this could provide a model for developing an understanding of standards in meeting the needs of young people for transitions. In addition to the sectors mentioned above, the provision of suitable post-school transition also requires the involvement of colleges, universities and employers. To ensure the success of any proposed improvements to the transitions process there needs to be a commitment on the part of all these sectors to inter-disciplinary approaches towards building this shared understanding, and on the part of the Scottish Government to provide the resources to facilitate this.

A National Transitions Strategy could have a number of benefits, however, it would be preferable if it complimented or drew together frameworks already in existence and supported a better co-ordination of delivery rather than a stand-alone statutory mechanism - a statutory framework for transition planning already exists within the Education (Additional Support for Learning) (Scotland) Act 2004, the Social Care (Self Directed Support) (Scotland) Act 2013 and the Children and Young People (Scotland) Act 2014. There is a therefore a high risk of duplication with the inception of the Bill.

The Bill in its current format does not address the different criteria use by Adult and Children Services to access a care package. The proposed Bill lacks detail on how the transition from a Children's Services assessed support plan based on the child's welfare principal to the adult priority-based framework which is common in many local authorities, would be managed by the introduction of this Act.

Transition planning cuts across a number of ministers' portfolios and aligning this may be advantageous to enhance accountability however, the danger is that a silo is created that then does not have the desired effect or achieve accountability.

Q 2. Is changing the law the only way to do what the Bill is trying to do? Would the Bill (as it is currently written) have any unexpected or unforeseen effects?

Creating additional legislation would potentially have unforeseen or unexpected consequences and still not achieve its primary aim of improving outcomes for disabled children and young people. The current range and duties imposed in current Scottish and UK legislation means that transitional support should be offered to those 'in need' between the ages of 14-24 as outlined in the Children and Young People (Scotland) Act 2014 which enshrines GIRFEC, but is not consistently applied in other important support provisions including; Self Directed Support (Scotland) Act 2013, Mental Health (Care and Treatment)(Scotland) Act 2003, Education (Additional Support for Learning)(Scotland) Act 2004, and Education (Scotland) Act 2016. We would advocate that there needs to be an alignment of support to enhance the understanding of the obligations of current legislation to ensure services including Community Mental Health provision, CAMHS, Youth Justice, Careers, Employment Support/Sure Start (Remploy in South Lanarkshire Council) and Social Work are all working within a common framework. The addition of this potential legislation could potentially add to the confusion that already exists.

Any new proposed legislation would benefit from awaiting the outcome of the pilot projects being run by the Scottish Transitions Forum which started in November 2020 and are wide ranging in their nature and ambition. The objective of these pilots is to improve the transition process for all children and young people across the country.

The issue of the availability of suitable post-school provision is one that should be addressed before the Bill can be enacted. A lack of suitable provision could have the unintended consequence of leaving local authorities, particularly those with large rural or widely distributed populations, in the position of being unable to meet their statutory requirements. Preceding the enactment of any further legislation with a comprehensive audit of post-16 provision would help to identify where there are gaps and may facilitate the sharing of good practice, and of resources, across agencies and local authorities.

A commitment to all current statutory duties being brought into alignment with GIRFEC and the UNCRPD/UNCRC would be welcomed.

South Lanarkshire Health and Social Care partnership has developed a transition policy underpinned by the Scottish Transitions Forum Principles of Good Transition 3. All partners are committed to addressing the challenges present in implementing this transition policy for improved outcomes for children and young people. With all agencies committed to achieving the best outcomes for children and young people by the implementation of existing legislation and policies, energies may be more productively used focusing on this activity to achieve good outcomes rather than the enactment of further complementary legislation.

The recent review of Additional Support for Learning, independently chaired by Angela Morgan and agreed between Scottish Government, COSLA and ADES produced a detailed action plan which included recommendations/actions that directly affect and link to the aims of this proposed Bill.

Recommendation 6.1.1 ASN Review Action Plan

Include a clear pathway on transitions for children and young people with additional support needs, in the context of learning for life, allowing parents and carers, children and young people and professionals to be informed and supported at key transition points”.

Actions identified include:-

- New policy and practice guidance on GIRFEC will include consideration of individual needs at key transition points.
- The “Principles of Good Transitions 3” provide a framework to inform, structure and encourage the continual improvement of support for young people with additional needs between the ages of 14 and 25 who are making the transition to young adult life. The Scottish Government

are working closely with ARC Scotland (the Association for Real Change) on the development and trial of Principles into Practice.

- As part of the refresh of the Code of Practice, the Scottish Government will seek to enhance and align the guidance within the Code on transitions. This will be done in full collaboration with stakeholders, including parents and carers.

Recommendation 8.2 ASN Review Action Plan

The planned review of Coordinated Support Plans must take the findings of this review into account.

Also, it must consider:

- planning mechanisms within a whole life perspective for children and young people with lifelong conditions including transitions between and beyond education settings.
- clarifying the interaction between CSPs and child's plan and GIRFEC
- the relationship between education and partners in health, social work and other agencies to identify where re- alignment is needed in the preparation and delivery of support.
- Where improvements are needed in the availability and accessibility of information and guidance about planning and its processes for all parents and carers and children and young people

Actions Identified Include:

- The Scottish Government have committed to review the use of coordinated support plans. In partnership with COSLA and ADES, we will establish a short life working group which includes all relevant partners to progress this work.
- The short life working group will take full account of the evidence heard as part of this review to inform the review of the use of co-ordinated support plans. It will also fully consider the areas highlighted by the recommendation to establish whether enhancements are needed in areas such as, the availability and accessibility of information and guidance about planning and its processes for children and young people, their families and those who support them.
- Under GIRFEC, the Scottish Government has also committed to revising policy and practice guidance, including a single planning process for children and young people. It will seek to align and clarify the relationship between statutory and non statutory plans and to align those plans.
- This revision will also include a focus on planning for transitions, with an initial priority on those transitions for young people leaving school

Both of these recommendations directly relate to what this Bill aims to achieve. It is unclear from the detail from the information available on the proposed Bill, where this would sit and fit within the outcomes of the ASL review. From an educational perspective a CSP is the only current statutory plan available. The Children and Young People (Scotland) Act 2014 proposed unsuccessfully to introduce a statutory child's plan. The ASL review has highlighted and it is generally accepted, that CSPs are not being consistently utilised effectively and are being somewhat overlooked in favour of well embedded local staged intervention planning processes. Given that there has been a commitment to implementing the action plan almost in its entirety, there is the potential for a further unintended consequence of creating a Bill that sits in a silo rather than compliments and positively enhances the existing legislative framework.

Q 3. The Bill would require the Scottish Government to introduce a National Transitions Strategy. Do you agree with introducing a national transitions strategy and a Scottish Minister to be in charge of it?

For a National Transitions Strategy to be effective it would have to reflect its component parts. A one size fits all approach will not be effective and the danger of this approach would result in inequalities to meeting individual need which would be counterproductive. A national strategy would need to reflect the needs of children and young people across Scotland and these will vary and be dependent on a number of other factors including geography, connectivity and access to opportunities. Transition planning and the identification of post school destinations for a child or young person in the central belt will look very different for a child or young person residing in the Highland and Islands.

There is now a commitment via the Additional Support for Learning review to consider the Scottish Transitions forum framework 'Principles of Good Transitions 3' to inform, structure and encourage the continual improvement of support for young people with additional needs between the ages of 14 and 25 who are making the transition to young adult life. This could form the basis of any strategy.

Q 4. The Bill places a duty on local councils to prepare and implement a transitions plan for each disabled child and young person within their local authority area (section 7-13). They would need also have to explain :

How plans are going to be prepared and managed

What would happen if there was a disagreement about what was in a plan or how it was working.

Do you agree with these proposals?

Within a GIRFEC context identification, planning and assessment for any child and young person throughout their educational journey and beyond should be contextual, set within a framework of staged intervention and ever evolving to meet the changing needs of that child or young person. The language/terminology used within the proposed Bill is perhaps not reflective of the more inclusive terminology we see used in other similar legislation, which tend to refer to the "need for support" or the lack of capacity.

The definition of "disability" in the Bill is taken from section 6 of the Equality Act 2010 ('a physical or mental impairment, which impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities'). However those in receipt of services and potentially in need of something akin to a transition plan may not all meet this relatively high test and we would be concerned of how this would sit and fit within the GIRFEC agenda. There is a risk to those who would not be considered under the definition of 'disability' not being able to access the support/service they require as they transition to adulthood.

Currently there are formal routes for dispute resolution in relation to post school transitions. This would be through mediation or reference to the Health and Education Chamber of the First -tier Tribunal for Scotland. Therefore, there is also potential for duplication or overlap in terms of the proposal in relation to dispute resolution. Our view is that given that there is a current framework in existence for dispute resolution it would be a better approach to align and take account of that. Additionally, inappropriate decision-making by a Guardian or Attorney already has a very clear legal framework and oversight provided for by the Adult with Incapacity(Scotland) Act 2000/Adult Support and Protection(Scotland) Act 2007 legislation, and the combined statutory roles of the Office of the Public Guardian, Mental Welfare Commission and Local Authority.

The Self-directed Support (Scotland) Act 2013 lays out a set of detailed instructions regarding the timescale for the completion of assessments. SDS is also clear about the need for these assessments to be coproduced in conjunction with the service user, acknowledging them as the experts in their own lives. There was limited information shared that would indicate that the proposed legislation would offer a substantial improvement on existing legislation and policies with regards to undertaking assessments and care planning through the process of transitions.

Q 5. What financial impact do you think the Bill may have, either on the Scottish Government, local councils or other bodies?

To deliver on this Bill within current financial resources or 'modest' additionality would not be possible and result in other unintended consequences. Mandatory legislation could have the unintended effect of diminishing support. Across many local authorities the eligibility criteria for access to supports from Adult services has been raised to 'critical', which means that the Bill could result in those with 'Low', 'Moderate' or 'Substantial' unmet support needs being excluded altogether from Self Directed Support provision or transition planning.

Q 6. Is there anything else you'd like the committee to know about this Bill? Do you have any comments on how the Bill will affect (for better or worse) the rights and quality of life of the people covered by the Bill?

The information currently available lacks detail in specifying how any 'statutory' transition plans would be first and foremost owned by the Young Person themselves, and how their full participation would be upheld.

Across Scotland there is limited availability of accessible alternative and augmentative communication (AAC) public information about existing provision via Additional Support for Learning, Self Directed Support and GIRFEC. There are many good examples such as the information produced by Social Security Scotland and The Independent Review on the Mental Health Act (IRMHA). A rights-based approach is only viable if users and carers are fully informed in a manner they can understand and apply in practice.

The proposed Bill has no definition of 'carers' but regards them as stakeholders whose views must be sought in the preparation and management of a plan. It also anticipates the incorporation of views of advocacy workers, which is not always appropriate. Aside from non-instructed advocacy, it is usually the role of the advocacy worker simply to present the view of their client.

The proposed Bill makes no mention of other proxy decisions makers provided for within the Adults with Incapacity (Scotland) Act 2000. It appears to hold Guardians, parents and 'carers' as equally legally competent substitute decision makers for an incapax Adult in respect of their transition care planning and management. The Social Work (Scotland) Act 1968 is very clear that a local authority may not take on steps to assist an Adult to benefit from a community care service if an Adult has a Guardian (or an Attorney) in place with appropriate power to do so.

The age at which a child is able to challenge his or her own plan in the Bill is at least 14. This appears to be arbitrary and not in line with the recent amendments to legislation made by the Children (Scotland) Act 2020. In the 1995 Act there was a presumption that children over 12 were presumed to be of sufficient age and maturity to give their views in relation to for example, court cases concerning contact. The use of this language had the unfortunate side effect that the views of children under that age were not always sought. The 2020 Act has amended all the relevant legislation, and it is expected that this trend will continue, as the policy intention is that children of almost any age can be supported in a variety of ways to provide a view in decision-making processes which concern them.

Following on from this, little to no account is taken of the recent incorporation into Scots law of the UN Convention on the Rights of the Child, which, among other things, will provide for a Children's Rights Scheme and enhance the role of the Commissioner for Children. It will give children a specific statutory framework and recourse to enforce their rights through the domestic courts. Also, in reference to the above point, the UNCRC states 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.