



Law Society  
of Scotland

# Written Evidence

Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill- detailed call for views

October 2022



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Education, Children and Young People Committee's call for views on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill.<sup>1</sup> The sub-committee has the following comments to put forward for consideration.

## General Questions about the Bill

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### What are your view on the overall aims of the Bill and whether the Bill can meet these aims?

The aim of the Bill is to improve outcomes for disabled children and young people in the transition to adulthood. We support the aim of the Bill.

We note that transition from child to adult services for children and young persons with disabilities is a complex and sensitive task. The challenge of transition to adulthood has been widely recognised. In the mental health context, the Scottish Mental Health Law Review has recently considered inconsistencies in access to CAMHS by 16 and 17 year olds, and has recommended that:

*“There should be a programme of improvement to transitions between CAMHS and adult services, to ensure that transitions are well planned, maintain relationships which are important to the young person, and reflect the developing capacities and needs of the young person.”<sup>2</sup>*

The Bill should seek to ensure continuity and stability in the transition period, and that services or treatment are not disrupted because the child, young person or adult has reached a certain age.

<sup>1</sup> [Disabled Children and Young People \(Transitions to Adulthood\) \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

<sup>2</sup> Scottish Mental Health Law Review, Final Report (September 2022), recommendation 12.12 at page 622. Available at: [Consulation \(mentalhealthlawreview.scot\)](#)

## **Do you think that changing the law is the best way to do what the Bill is trying to do?**

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.

## **Could there be any unexpected or unforeseen effects of the Bill (as it is currently written)?**

The Bill must be clearer regarding the definitions of “child” and “young person”. We note that section 19 defines a child as a person under 18 years of age, and a young person as a person aged 18 to 26 years. We would suggest that the Bill must take into account the fact that a person over 16 years of age is treated as an adult for many legal purposes, including the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). The Bill should address the fact that once a “child” turns 16, they are considered an adult for purposes including the 2000 Act and thus to specific extent subject to both the child and adult regimes.

The proposals set out in the Bill may interact with a number of other current legislative developments, specifically the proposals for a National Care Service, the Scottish Government’s plans for a Human Rights Bill, the UN CRC Bill, and any legislation arising following the recommendations of the Scottish Mental Health Law Review. Care must be taken to avoid any inconsistency or duplication in legislation.

## **Does the Bill add to, or duplicate, any existing legislation?**

We are not aware of any duplication, but see our comment above regarding other current legislative developments. It is important that the Bill should take account of, and where appropriate coordinate with, all existing legislation affecting children and young people, including in the fields of mental health, capacity and incapacity, children’s hearings, education, health and social service provision.

## **What do you think the financial impact of the Bill on the Scottish Government, local authorities or other bodies could be?**

We believe that the wider costs of inaction would be greater in comparison to the costs of implementation. Early intervention and appropriate planning have benefits not only to the child or young person with a disability but to the wider community.

## **How will the Bill affect (for better or worse) the rights and the quality of life of the people covered by the Bill?**

The proposals set out in the Bill may have a positive impact on the rights and the quality of life of the people covered by the Bill, in particular by contributing to fulfilling 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.

## National Transition Strategy

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### **Do you agree with introducing a strategy, and that a Scottish Minister should be in charge of it?**

Yes. Such an appointment is, on the basis of experience, likely to ensure that the requirements are driven forward in a way unlikely to happen without such an appointment.

We would stress the importance of full and effective consultation with all of those listed in section 2(3).

It is not clear how any failure to comply with a National Transitions Strategy by the persons listed in section 4(2) would be addressed. The dispute resolution provisions in section 13 would appear to apply to transitions plans only. Where statutory duties are created, there should be clear, effective and accessible mechanisms for disadvantaged persons to seek redress or remedy.

## Transition plans

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### **Do you agree with the proposals relating to transition plans?**

Section 7(2) provides that a transition plan must be 'agreed'. Where there are disputes about transitions plans, a form of redress and remedy should be available, alongside the ability to challenge the local authority in an identified forum as a last resort. Whilst Section 13 would allow Scottish Ministers to make arrangements for dispute resolution by regulations, we would suggest that a clear and robust mechanism for dispute resolution is essential if the Bill is to achieve its aims.

We would recommend that the availability of a mediation service be facilitated and promoted in the context of developing transitions planning.

Section 7(4) confusingly refers to a "child" reaching a 26<sup>th</sup> birthday.

Section 7(5) refers to a child "lacking capacity to express a view". There should be a presumption in favour of all children, young people and adults having the ability to express a view. This presumption should only be rebutted with evidence to the contrary. In terms of the Adults with Incapacity (Scotland) Act 2000 and the UNCPRD there is an obligation to consider past views, present views, and the rights, will and preference of the person with disability. We would suggest that this section should not state "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. The obligation to form a best interpretation of the child, young person or adult's will and preference should also

be included in this section. There must also be an attributable obligation that any necessary technical or other supportive measures for the formulating and/or expressing of a view are made available.

Section 7(5) also places a duty on local authorities to ascertain and have regard to the views of the child's or young person's parents, legally appointed guardian or other carers. We suggest that the Bill generally should include references to attorneys as people who are required to be consulted. Guardians and Attorneys may have express powers to exercise the rights of the child or young person over 16 years of age on their behalf. The legal status of Guardians and Attorneys must be respected in the Bill. We would also suggest that the term "nearest relative" should replace parents in line with section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Sections 11 and 12 should similarly refer to attorneys and nearest relatives (replacing the word parents) as persons who require to be consulted in preparing and reviewing a transitions plan.

Sections 11 and 12 should allow for an independent professional, such as a Safeguarder, to be appointed in order to ascertain views, in so far as ascertainable, and should be accompanied by an attributable duty to ascertain views.

Section 11 includes a duty to ascertain and have regard to the views of "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". Section 12 includes a duty to consult any such advocate or support agency. We would suggest that these duties are both unnecessary and inappropriate. The purpose of advocacy and other provisions of support is to facilitate formulation and expression of the person's own views, and an essential part of the professionalism required of people in such roles is to set their own views entirely to one side. Sections 11 and 12 contain separate duties relating to both the disabled child or young person, and the parents, legally appointed guardian or other carers of the disabled child or young person, and we would suggest that the role of advocacy is to support these individuals in conveying their views to the local authority.

Section 12 makes provision for review of the transitions plan. Section 12(6) provides that the local authority may, in consequence of the review, amend the transition plan, transfer to the management of the plan to another relevant authority, or end the plan. We note that there is no requirement for such changes to the transition plan to be 'agreed', in contrast to the terms of sections 7(2) and 7(3). We would suggest that it is equally important that changes to a transition plan proposed by a local authority are agreed by the child or young person.

## **Who do you think should coordinate the transitions plan?**

We have no comments.



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