

**Disabled Children and Young People (Transitions to
Adulthood) (Scotland) Bill**
27 October 2022

**NASUWT evidence to the Scottish Parliament Education,
Children and Young People Committee**

The NASUWT's submission to the Scottish Parliament Education, Children and Young People Committee sets out the Union's views on the key issues which should be explored by the Committee in its scrutiny of the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill. The NASUWT's evidence is informed directly by serving teacher and headteacher members and also by the work of its representative committees and consultative structures, made up of practising teachers and school leaders working in the education system.

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1. The overall aims of the Bill and whether the Bill can meet these aims

The NASUWT supports the overall aim of the Bill to improve outcomes for disabled children and young people in the transition to adulthood: in particular, the strong focus on including young adults is very welcome.

The Union notes that the intention would be to assign to a member of the Scottish Government, or a junior Scottish Minister, special responsibility in relation to the exercise of these functions under the legislation and to require local authorities to introduce a transitions plan for each disabled child and young person, to ensure that each disabled child and young person receives appropriate care and support before, and during, the transition to adulthood.

It is foreseeable that there will likely be some challenges in marrying up current practice within schools and local authorities to support children and young people and the framework identified to meet aims of the Bill. 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. It 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.

As the Education, Children and Young People Committee will be aware, there has been a year-on-year increase in the number of children across Scotland with identified ASN: in 2018, 30.9% of children and young people in Scotland's schools had an identified ASN. It requires to be addressed

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directly how the proposed Bill will dovetail with the existing policy framework in relation to ASL and ASN in schools.

As further context, the evidence from the Additional Support for Learning (ASL) Review, led by Angela Morgan, was that ASL is not visible or equally valued within Scotland's education system. The NASUWT fully agrees that additional support provision should not be viewed as a minority area of interest, nor should it continue to be considered separately within the framework of Scottish education. Nevertheless, the situation remains that across Scotland there is great variability of ASN provision, a variety of approaches to cost saving at local authority budget level which have affected ASN provision, including reductions to support staff, and an absence of openness and transparency from local authorities and the Scottish Government on spending allocated for ASL. The Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill must be viewed through this lens and the Union would suggest it is explicitly set out:

- how the framework will dovetail with ASN legislation and policy;
- the mechanisms which will be in place to support equity of support and provision across Scotland; and
- a clear outline of the investment and training being provided to support implementation.

2. If changing the law is the best way to do what the Bill is trying to do

Effective strategies to address and deal with discrimination require concerted action across all spheres of society. The Scottish Government must recognise the challenges and barriers that disabled people face in education, in the labour market and during transitions, focussing on measures which will reduce the disability-related employment gap.

The NASUWT would suggest the following key areas require further critical reflection by the Scottish Government as they are not adequately addressed within the proposed bill:

- In addition to setting positive aims to support disabled people in the labour market, and specifically in the public sector, the Scottish Government must ensure that significant investment is given to the public sector as a whole.
- The statutory Public Sector Equality Duty (PSED) was introduced to ensure that schools and colleges play their part in advancing equality and tackling discrimination faced by staff and learners. However, independent NASUWT research shows that the majority of schools are unaware of their duties and obligations under the PSED.
- Greater transparency in terms of disability reporting could create the conditions in which employers are expected to demonstrate that they value disabled workers in terms of their pay and rewards practices.
- It is clear that a lack of robust data on employment levels for disabled people in individual public bodies creates a challenge for the setting and monitoring of targets. Many teachers, for example, report fear of being victimised and excluded at work, that they will not get a job or promotion, or that they will be targeted for capability or disciplinary procedures if they reveal their disability to a prospective employer. The Scottish Government should be actively promoting the positive contribution that disabled workers make in the workplace.
- The *A Fairer Scotland for Disabled People: employment action plan* contains a number of actions to support Young People and Transitions. Published in December 2018, the NASUWT recognises that it includes many positive aims; however, the NASUWT considers that without stringent accountability structures, such commitments cannot effect real and long-lasting change.
- In addition to consistent structures of accountability, the Scottish Government must ensure the aims underpinning the Fairer Scotland for Disabled People Employment Action Plan are mainstreamed within all

political decisions. The positive effect of political visibility, alongside a commitment to fiscal resource, can be seen in the import given by teachers, schools, local authorities and wider education stakeholders to closing the poverty-related attainment gap.

3. Any unexpected or unforeseen effects of the Bill (as it is currently written)

As a teachers' trade union, the NASUWT clearly has concerns not only for the impact on a pupil's learning, but also for the wellbeing of the teachers who deliver that learning. The issue of reduction in ASN support has been consistently raised at our local/national conferences and the impact on teacher workload is clear.

Teachers report that the failures of the school system in providing adequately for vulnerable children and young people, and worsening provision for pupils with ASN, are stoking up problems for society in the future, when these children and young people will become adults. Provision for violent, autistic or mentally ill pupils is at crisis point.

The downward turn in investment in ASN, and education more generally, shows no signs of improving and therefore the current inability of the system to best support the policy of mainstreaming/inclusion shows no sign of positively changing.

Teachers and schools will always strive to do their best for every child they teach, but it is unacceptable for them to be expected to meet the needs of pupils without the necessary resources. Supporting children and young people with ASN, including disabilities, requires renewed investment in tailored services and education settings to ensure there is equality of opportunity for all.

The teaching workforce want to work within an education system which will enable all children and young people to get the support they need to reach

their full learning potential. But sole responsibility for ensuring barriers to learning are overcome and how the policy intention behind Getting It Right For Every Child (GIRFEC) is achieved should not be shouldered by classroom teachers.

Without the addition of funding, resources and support for the education workforce, the current ASL policy rhetoric appears to the profession little more than an attempt to pass the buck to schools and teachers.

Within this context there are, therefore, significant risks that the proposed arrangements to support transition within the Bill will create further bureaucracies and workload burdens on the various players, but particularly on schools: it is essential that steps be taken to ensure that this does not happen.

Transition is a particularly difficult time because it exposes many of the weaknesses in the education, health and social care systems. Communication, effective and efficient sharing of information, along with effective joint working, are key to improving practice: however, these are also the areas which present the biggest challenges. Where communication and joint working are not effective, it often falls to schools to provide the support as best they can. It is not appropriate for the burdens to fall on schools. Particular attention needs to be paid to the roles and responsibilities of other players, especially those in health and social care.

Investment in, and collaboration between, wider children's services is critical. The last two years have highlighted and deepened pre-pandemic concerns about the fragmented nature of children and young people's services in some parts, particularly in the areas of special and additional needs. The Scottish Government must support action in this area through significant investment in these services. The real-terms cuts in spending in the children's services sector experienced over the past decade must be reversed, with additional resources made available to meet recovery-related priorities.

4. If the Bill adds to or duplicates any existing legislation

There also needs to be clarity surrounding the interaction with a child's Coordinated Support Plan (CSP). The proposal does not address the current variety of approaches being undertaken in relation to the completion of the CSP, which is also a statutory document. The Scottish Government should not be blind to the considerable variation in planning documents used on the ground, and greater time and effort is needed to build for this consistency with the use of better communication and training before adding further tiers of planning documentation. While the policy memorandum to the Bill acknowledges that very few CSPs are actually put in place, the Union remains concerned that the drivers for this variability have not been adequately acknowledged or addressed and therefore a similar local variability might be anticipated should the Bill be enacted.

5. The financial impact of the Bill on the Scottish Government, local authorities or other bodies

It will be insufficient to merely enact a Bill: there is a need for much more than legislation and guidance. What measures will be taken to ensure that the requirements are appropriately resourced? If it is not resourced, then it is likely to fail.

6. How the Bill will affect (for better or worse) the rights and the quality of life of the people covered by the Bill

The intentions of the Bill are well founded, but the devil will be in the detail and currently, as outlined above, there is insufficient information provided to guarantee that legislation on its own would improve the quality of life for people covered by the Bill. Indeed, there are risks that in order to tick the box for a statutory requirement, local authorities may need to cost-cut other

measures, adversely impacting longer-term strategic decision-making and resourcing for schools so that they can meet the needs pupils with ASN.

7. The Bill would require the Scottish Government to introduce a National Transitions Strategy (sections 1 to 6 of the Bill). Do you agree with introducing a strategy, and that a Scottish Minister should be in charge of it?

The Union agrees that the families of disabled children and young people are experiencing real difficulties in transitioning from children's to adult services and are feeling isolated fighting for services with their own local authority. It is accepted that genuine concerns have been raised around transparency and accountability of decision-making. Rather than push responsibility for securing successful onward transition onto schools, might it not be more straightforward to overhaul and standardise across Scotland the provision and access to adult services for disabled young people? Creating graduation within the current system and ensuring every young person is fully included in decision-making and experiences a positive, collaborative person-centred approach to their support could be done without enacting the provisions of the Bill. If the reticence to overhaul and review adult services within Scotland is due to an unspoken acceptance that this would require considerable investment which is not able to be guaranteed, then we are designing a system which is destined to fail: schools cannot be responsible for fixing all societal ills.

8. The Bill places a duty on local councils to prepare and implement transition plans. These would plans would be for each disabled child and young person within their local authority area. They would 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 the proposals relating to transition plans?

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The NASUWT agrees that partnership working is critical. Agencies with responsibility for the transition of disabled children and young people must be able to collaborate effectively. Collaborative working has to be supported and facilitated and requires the investment of time and financial resources.

It is critical that this collaboration is organised in a way that allows each children's service to discharge their distinct functions effectively and in a way that minimises practitioner workload. The principal contribution made by schools in enhancing the life chances of children and young people relates to their work in providing high-quality learning experiences.

Multi-agency working is too often subject to excessive and unjustifiable local variation in the form that collaboration is expected to take, the way that collaborative arrangements are overseen and managed, as well as the ways in which responsibilities are distributed between different services and agencies. There needs to be a consistent and coherent national approach. Disabled children and young people should be able to benefit from common, minimum expectations of how agencies will work, regardless of locality or postcode.

Cultural differences between education and health and social care should also not be ignored and these would need to be addressed before transition plans could successfully be embedded. The NASUWT does not subscribe to an automatic assumption that schools should be responsible for the Named Person or for co-ordinating planning processes.

Indeed, it is worth revisiting the inescapable problems which remain with information sharing and the Named Person role in Scotland as one example of the barriers to effective collaboration and the embedding of a national system or entitlement. As far back as December 2016, the NASUWT met with Scottish Government ministers to discuss the Supreme Court's decision in the case of *The Christian Institute and others v Lord Advocate*. At this meeting, the Union suggested that, in the absence of any clear proposals from the

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Scottish Government as to how it would address the concerns of the Supreme Court, proposals around information sharing breached the right to privacy and a family life under the European Convention on Human Rights, and that it was time to reconsider this policy and look at developing an alternative approach. Providing legally sound information-sharing guidance has been a challenge the Scottish Government has not been able to meet yet and the NASUWT has been clear that attempting to move forward this matter without legislative support and by shifting the burden for making difficult judgements about information-sharing onto schools, teachers and others who work with children and young people remains wholly unacceptable. As well as the unseemly passing of the buck, this places another intolerable workload burden on staff in schools.

9. Who do you think should coordinate the transitions plan?

The NASUWT would argue that no teacher should be compelled to take on the role of coordinating the transition plans, despite the suggestion that this should fall within the remit of guidance/pastoral staff in secondary schools. There are clear implications in terms of additional workload and distraction for teachers from their core role of teaching and learning.

Whoever ends up coordinating the plan faces a significant addition to their workload, given collaboration and discussion with the child, their family and other agencies, as well as always making children and families aware of their rights around information-sharing, not to mention existing responsibilities around wellbeing and GIRFEC. As mentioned above, the NASUWT does not believe that it is possible or desirable for a teacher to fulfil the role of the Named Person.

The NASUWT notes the key role of the Lead Professional, where children and families require the help of two or more agencies for support. It is also the strongly-held view of the NASUWT that teachers would not have the time nor the appropriate training to take on the role of the Lead Professional without

there being a negative impact on their responsibility for all of the other children they teach.

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