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

**Response of the Children and Young People's Commissioner Scotland**

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the human rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government and the Scottish Parliament.

## Introduction

Children and young people's rights are laid out in a broad array of human rights instruments, but the UNCRC, the UN Convention on the Rights of People with Disabilities (UNCRPD) and the European Convention on Human Rights (ECHR), are particularly relevant to this consultation.

The principles of universality and non-discrimination underpin all three treaties, making it clear that all rights contained within human rights treaties apply to everyone.

Article 4 of the UNCRPD outlines the General Obligation States have undertaken in ratifying the treaty, including:

> *a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;*
>
> *b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities1.*

Article 24 (1) of the UNCRPD outlines disabled children's right to an education requiring States Parties to:

> *…ensure an inclusive education system at all levels and lifelong learning directed to:*
>
> > *a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;*

[1] https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html

> *b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;*
>
> *c. Enabling persons with disabilities to participate effectively in a free society…*

These rights echo all children's right to an education (Articles 28 and 29) and specifically relating to disabled children's rights (Article 23) in the UNCRC[2].

In addition, Article 24 (5) of the UNCRPD requires states to:

> *…ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.*

The UNCRPD also provides, in Article 19, a right to for disabled people to live independently and be included in the community and a right "*for the opportunity to gain a living by work freely chosen or accepted*".

Disabled children and young people also have rights to health care (Article 24 UNCRC and Article 25 UNCRPD), to benefit from social security (Article 25 UNCRC) and to an adequate standard of living and social protection (Article 27 UNCRC and Article 28 UNCRPD). Transition planning must ensure not only that disabled children and young people's right to an education is supported but also that the totality of their rights are realised.

The current consultation on a Proposed Disabled Children and Young People (Transitions) Bill seeks to strengthen the legal protections which help realise these rights for disabled children and young people in Scotland as they transition to adulthood and as such the Commissioner's office welcomes this opportunity to explore how best to achieve this.

**Current Context**

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ("the ASL Act")[3] creates an obligation on education authorities to prepare and review a Co-ordinated Support Plan (CSP), where a child meets the criteria outlined in section 2 of the ASL Act.

In the *Additional support for learning: statutory guidance 2017,* Chapter 6, the Scottish Government outlines its expectations of education authorities when planning for a disabled child's transition to adulthood, whether it be to further or higher education or to employment. However, it locates the planning process for this within the non-statutory Child's Plan rather than a CSP. It is our view that when a child's transition is being planned, they are likely to meet the criteria for a CSP set out in s2 of the ASL Act due to the number of agencies involved and the resultant complexity

[2] https://www.cypcs.org.uk/rights/uncrcarticles
[3] http://www.legislation.gov.uk/asp/2004/4/contents

of support. However, the proportion of children with disabilities for whom a CSP is prepared is extremely low, amounting to only 1% of children with ASN[4].

The provisions of the ASL Act relate only to children aged under 16, or aged 16 or over if the education authority is still responsible for their **school** education (our emphasis)[5] and the legal duties contained within it relate only to education authorities and not to other service providers (or even the local authority in its other roles) involved in disabled children's transition to adulthood.

The ASL Act, as a result of its situation within education, does not address the social care (particularly if parents have been providing this care), employment support, or health supports required to ensure that disabled children and young people transition to adulthood in a way which enable them to fully realise the rights contained in the UNCRPD, for example in relation to independent living and freely chosen employment. There is limited scope for ongoing planning of transitions from further, higher or vocational education.

In particular, the social care support required for young disabled people transitioning to studying or living away from home is often dislocated from educational transition planning. Eleven years ago, we documented the experiences of one young disabled person attempting to study at university[6], but having to drop out due to a lack of social care support.

As a result, as the bill proposal identifies, disabled young people do not currently have a clearly defined right in domestic law to ongoing, multidisciplinary transition planning and support once they leave school, resulting in a failure to realise the human rights of many disabled children.

**This Bill proposal**

We welcome this proposal's focus on improving individual transition planning and in particular the potential introduction of legal duties upon the full range of public sector organisations involved in the health (including mental health) care, social care, support and education of disabled children and young people, together with a dispute resolution process where duties are not met. This represents a substantial opportunity to improve both delivery of transition support and the accountability for that support and thus improve the lives of disabled young people as they transition to adulthood.

We welcome the provisions in this bill proposal which aim to strengthen strategic planning for young people's transition to adulthood, in particular the potential to develop links between the different children's and adult services which support disabled people. Young people often report experiencing abrupt loss of support at the point they leave school or formal education, a concern which has been raised with our office by young people and their parents and was also highlighted by young

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[4] https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children/project-blogs/riddell-blog-csp

[5] http://www.legislation.gov.uk/asp/2004/4/section/2

[6] Ritchie, Lucy. 2008. *The Paper Hydra, My Transition Quest.* Edinburgh, Scotland's Commissioner for Children & Young People.

disabled attendees of the Activate summit held by Inclusion Scotland[7]. The fragmentation of current planning processes negatively impacts disabled children's rights. This bill proposal provides an important platform for broader discussions about the best legislative framework to ensure children's rights are met, including access to wider educational rights. Increased clarification of the roles of public and third sector organisations at a strategic level in supporting transitions should also contribute to a better realisation of disabled young people's right to, in the words of Article 3 of the UNCRPD, *"full and effective participation and inclusion in society"*[8].

[7] https://inclusionscotland.org/activate/
[8] https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-3-general-principles.html