

The Equality Act 2010:

Consultation on Auxiliary Aids and Services Duty Analysis Report

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Analysis Report:

The Equality Act 2010: Consultation on Auxiliary Aids and Services Duty.

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Introduction

This document reports on the consultation exercise held between 10 October 2011 and 2 January 2012 entitled 'The Equality Act 2010: Consultation on Auxiliary Aids and Services Duty'. The consultation document sought views from respondents on proposed commencement date for the provision of auxiliary aids and services in schools maintained by local authorities and independent schools and the need for any associated Regulations. It also sought views on issues arising over the commencement of the duty.

Definitions of terms used in this analysis

Within this analysis the term 'few', 'less than half', 'majority', 'most', 'almost all' and 'all' refer to specific percentage values as follows:

Definition of terms used in this analysis	
All	100%
Almost All	90-99%
Most	75-89%
Majority	50-74%
Less than Half	15-49%
Few	Up to 15%

The term 'Key Stakeholders' refers to a select group of respondents. This group has been compiled from the responses of voluntary organisations, professional organisations and non-departmental public bodies.

Background

The Equality Act which received Royal Assent on 8 April 2010 aims to strengthen the law to support progress on equality. The Act consolidates and harmonises a range of equality legislation, replacing familiar laws such as the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995.

The Equality Act provides protection from discrimination, harassment and victimisation based on a range of 'protected characteristics'. These characteristics are defined in the Act as race, sex, disability, sexual orientation, religion or belief, gender reassignment, pregnancy and maternity, age and marriage and civil partnership. Only the latter 2 characteristic does not apply to schools.

Schedule 13 of the Act requires schools to provide auxiliary aids and services to disabled pupils where it is reasonable to do. It covers pupils who come with the definition of disabled persons in the Equality Act. Those pupils must, for the provision of an auxiliary aid or service, be at a 'substantial disadvantage' in comparison with non-disabled pupils. It must be reasonable for schools and local authorities to take steps to avoid that disadvantage by providing the auxiliary aid or service. Cost would be a consideration in deciding whether it is reasonable to take such steps.

The specific provision being commenced is paragraph 2 of schedule 13 to the Equality Act in so far as it relates to the third requirement. The third requirement is provided for in section 20(5) of the Equality Act and is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to, take such steps as it is reasonable to have to take to provide the auxiliary aid.

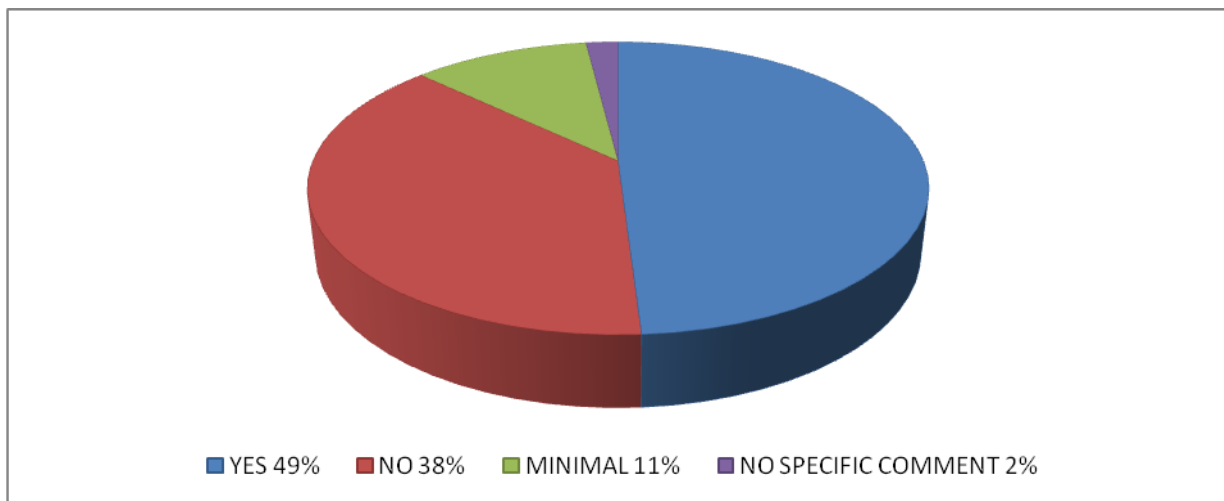
The consultation process involved the Scottish Government undertaking a consultation in Scotland on behalf of the UK Government, seeking views from key stakeholders on proposed secondary legislation. A commitment was made to work in partnership with UK Government to achieve a mutually acceptable outcome for all.

We received 47 responses from a broad range of consultees, including 21 of the 32 Scottish Local Authorities. Those responses for which consent to publish has been received have been published on the Scottish Government's website, and can be viewed at: <http://www.scotland.gov.uk/Publications/2012/02/1453>

Consultation Report

The following report summarises the consultation findings. While the majority of respondents were broadly content with the proposals contained in the consultation paper, there were a few occasions when key stakeholders disagreed with the overall findings. Where appropriate, this report highlights such occasions and the views provided by key stakeholders.

Q1. Is this duty likely to have any major implication for schools (in any setting) or any related bodies?



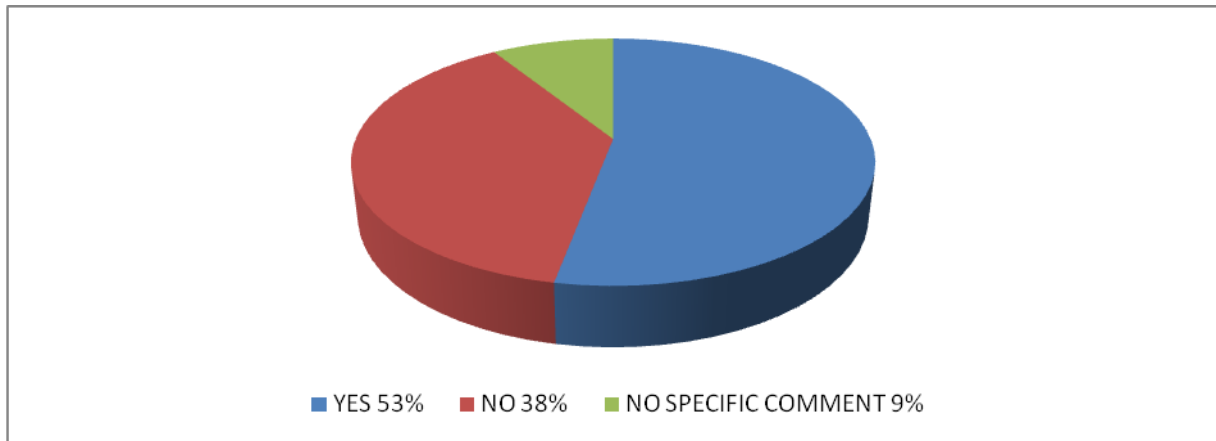
As evidenced by the chart above, less than half of respondents felt that the duty would have major implication for schools (in any setting) or any related bodies. The majority of local authorities who responded agreed that there are likely to be implications for schools, specifically independent schools.

Less than half of the respondents, including School Leaders Scotland, felt that the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) could be seen to cover this duty given that they have “been responding to meeting the needs of young people for some time and are experienced at dealing with these issues”. East Renfrewshire Council felt that the Additional Support for Learning Act is “very comprehensive around legislation/procedures etc”, Argyll and Bute Council also commented that “the current legislation (ASL Act 2004) ensures that the needs of children and young people with additional support needs are met.”

However, The Equality and Human Rights Commissions commented that “a disabled pupil may need reasonable adjustments to be made in addition to the additional support arrangements made for them. Some disabled pupils do not have additional support needs but if they experience a substantial disadvantage for a reason related to their disability the school will have a duty to make reasonable adjustments.” Dundee Education Department highlighted “the element of unpredictability and open ended interpretation of a reasonable adjustment” as a concern that the duty is likely to have major impact on schools.

Most respondents who answered yes to question 1 highlighted a concern about a lack of definition of auxiliary aid and the lack of a definition of what can be considered to be reasonable.

Q2 (a). Should Regulations be made in respect of the new auxiliary aids duty on schools and local authorities?



The majority of respondents felt that clear regulations should be made in respect of the new auxiliary aids duties on schools and local authorities. The majority of those who answered “no” felt that guidance and a Code of Practice would be sufficient. For example, Falkirk Council Educations Services Additional Support for Learning Team felt that regulations “should not be necessary if the government could interpret, through it’s Codes of Practice, the levels of need requiring additional support.”

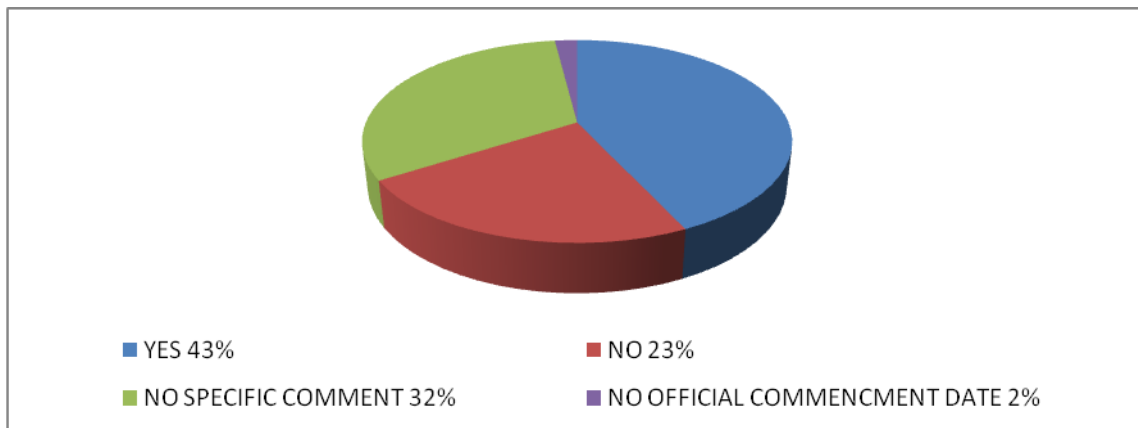
Q2(b). If your answer to question (a) is yes, please offer comments and suggestions on what the regulations should provide for.

Overall, respondents felt that the regulations should consider a high number of criteria. However, again, almost all respondents who answered yes to question 2(a) highlighted a need for a clear definition of auxiliary aid and a definition of what steps can be considered to be reasonable. For example, The Moray Council felt that “greater clarity and appropriate examples of what does or does not constitute an auxiliary aid would assist authorities and provide protection for individual pupils with disabilities”.

Less than half of the respondents who answered “yes” felt that the cost of an aid or service should be provided for in regulations. Relating to this point, Shetlands Islands Council suggested that regulations “should provide for Health Services to contribute some of the cost when the aid is to be used with school.”

Additionally, the “age, stage, development and additional support need of the individual”, the “impact of the additional support need” and what should “never be considered to be an Auxiliary aid or service” were also similarly identified by less than half of respondents.

Q3 (a). Do you think 1 September 2012 is the right commencement date for the new auxiliary aids duty?



As evidenced by the chart above, responses on this question are varied. Less than half of all respondents answered yes, no or offered no specific comment. Only few suggested that no specific commencement date was required. However, it should be noted that the highest volume of respondents felt that the 1 September 2012 is the right commencement date for the new auxiliary aids duty.

Q3 (b). If you think that the commencement date should be later than September 2012, please state when you think the earliest commencement date should be and the reasons why having a later commencement date would be appropriate.

Overall, the responses of those who did not think that 1 September 2012 is the right commencement date for the new duty were split in their opinion of when the best date for commencement would be. Of those who answered “no” only a few, including East Dunbartonshire Access Panel, thought that the proposed date for commencement should be moved forward to August 2012 to “coincide with the beginning of the school term in Scotland”.

Additionally, less than half of those who responded “no” felt that early 2013 would be a more appropriate date. Angus Council Education Department felt that “if draft regulations and guidance are unlikely to be available until August 2012 then there needs to be a longer period to enable schools and authorities to familiarise themselves with documentation and roll out any training in staff.”

Finally, less than half of those who responded “no” felt that it should be appropriate for schools to be given a year to plan for any commencement date. Justification on this is evidenced by the response from Scottish Schools of Independent Schools (SCIS) who suggested that “there may be need to be adjustments to policies and prospectuses but also, there are possibly implications for the setting of fees for some schools which may entail consultation with parents and a notice period of at least one term.”



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