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Consultation – summary of responses

Auxiliary aids and services for children with disabilities

Date of issue: October 2012

Auxiliary aids and services for children with disabilities

Audience	Local authorities, schools, parents/carers and other interested parties.
Overview	<p>The consultation sought views on commencing the provision within the Equality Act 2010 which places a duty on schools and local authorities to provide auxiliary aids as part of their duty to make reasonable adjustments for disabled children.</p> <p>This document summarises the views received in response to the consultation.</p>
Action required	None – for information only.
Further information	<p>For further information: Additional Learning Needs Branch Support for Learners Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 3003 Fax: 029 2080 1044 e-mail: AdditionalLearningNeedsBranch@wales.gsi.gov.uk</p>
Additional copies	Both this document and the consultation documents can be accessed on the Welsh Government's website at www.wales.gov.uk/consultations

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Introduction

The consultation was held to take views on the implementation of the duty on schools and local authorities, imposed by section 20 of the Equality Act 2010 (“the 2010 Act”), to provide auxiliary aids as part of the duty to make reasonable adjustments to prevent disabled children being put at a substantial disadvantage. “Auxiliary aids” covers both auxiliary aids and services.

The 2010 Act makes a Minister of the UK Government responsible for commencing the new auxiliary aids duty, making any regulations under section 22 of the 2010 Act and for undertaking any consultation regarding these matters in relation to Wales. Welsh Ministers had agreed however to consult in relation to Wales on the UK Minister’s behalf under section 83(1) of the Government of Wales Act 2006.

The consultation asked whether:

- the duty should be commenced on 1 September 2012 and, if not, why the respondent felt it should be earlier or later;
- the Equality and Human Rights Commission’s Code of Practice for Schools would provide sufficient guidance and, if not, what more would be needed or what could usefully be prescribed in Regulations and
- in what circumstances children are currently missing out on the provision of auxiliary aids and how many children.

The consultation ran between 11 November 2011 and 3 February 2012 and a total of 199 responses were received. The breakdown of the respondents was as follows:

Local authority	8
Maintained special school	1
Professional association/organisation	8
Union	3
Charity	6
Parent/Other	173

162 of the responses were part of a campaign which the Welsh Government understands was promoted by the National Deaf Children’s Society. These responses were represented in the “Parent/Other” category.

This document provides: 1) an overview of responses; 2) a summary of responses to individual questions; and 3) the Welsh Government’s response. The Annex provides a list of the organisations who responded, excluding those who asked for their response to remain confidential.

Overview

The responses have been analysed and a snapshot of the key views is provided as follows.

- The campaign responses strongly supported the duty and for it to commence no later than 1 September 2012.
- Whilst all local authorities accepted the principles of the duty, there was a divide among this group on whether the duty should be commenced in September, with many suggesting that it should be commenced in 2013 to coincide with maintained schools financial year. Others suggested a later start at the new academic year in 2013.
- The maintained special school was against the duty being commenced in September 2012, highlighting concerns around funding provision.
- The majority of professional associations, organisations, charities and parents were in favour of the duty being commenced in September 2012. However, one association did say that September was too early, suggesting that there would be a financial impact on schools and local authorities.
- Two-thirds of the responses from unions supported the commencement of this duty but one third agreed with many local authorities, suggesting that time needs to be given to assess the financial impact that the new duty will have on schools and local authorities.
- Although the campaign responses did not comment on questions 2, almost two thirds of the remaining respondents felt that the Equality and Human Rights Commission's statutory Code of Practice would sufficiently address concerns about the implementation and operation of the new duty. The remaining respondents either suggested that the Code of Practice would not suffice or that they would not be able to comment until they had seen the content of the guidance. Only a small number of respondents said that prescribed regulations would be required.
- There was limited information provided that gave a clear picture about the circumstances, and number, of children who might currently be affected by the absence of the auxiliary aid requirements as part of the reasonable adjustments duty. Some did acknowledge that the numbers would be small whilst more respondents gave examples of auxiliary aids but not the circumstances in which children might not be provided with them. A third of respondents were did not provide an answer to this question.
- There was a general consensus that there was a need for clarity about definitions of auxiliary aids and who has responsibility for funding auxiliary aids. There were fears about the financial impact this would have on school budgets. Some respondents suggested that the changes proposed by the Welsh Government in relation to alternatives to Statements of SEN may impact on this duty. Others highlighted the importance of the role of Health and the need for schools to take specialist advice from professionals when considering auxiliary aid provision.

Summary of responses

1. a. Do you think that 1 September 2012 is an appropriate commencement date for the new auxiliary aids duty?

96% Yes 4% No

Excluding the campaign responses the results were:

74% Yes 26% No

Respondents recognised the importance of commencing the duty with the vast majority agreeing that the duty should be commenced on 1 September 2012.

1. b. If you think that the commencement date should be earlier or later than September 2012, please state when you think the earliest commencement date should be and the reasons why having a later commencement date could be appropriate?

A few respondents suggested the commencement date could be later to help better prepare schools and local authorities in assessing their budgets. Suggestions were also made about the need for clarity on what auxiliary aids are and when it would be reasonable to provide them, the possible effect on school budgets and the possible expectation on schools and local authorities to make health and social services provision.

2. a. The Equality and Human Rights Commission will be producing a statutory code of practice and guidance for schools about the operation of the reasonable adjustments duty, including the requirement to provide auxiliary aids and services. Do you think this is likely to sufficiently address concerns about the implementation and operation of the new duty?

Excluding the campaign responses who did not address this question, the results were:

48% Yes 22% No 30% Not sure

Many respondents felt that the guidance needed to be clear about what auxiliary aids are and when it would be reasonable to provide them.

2. b. If your answer to a) above is No, do you think that there are additional matters that could be prescribed in regulations that would then sufficiently address your concerns?

Only a small number of respondents said that prescribed regulations would be required, suggesting that these could provide a clear definition of an auxiliary aid, clarity on circumstances in which it is, or not, reasonable to provide them.

3. We welcome any specific information that can be provided to us about the circumstances, and number, of children who might currently be affected by the absence of the auxiliary aids requirement as part of the reasonable adjustments duty. In particular we would be interested to know about the potential number of children affected and the types of reasonable adjustments that a school does not currently make, but could be required to make after the new requirement was commenced.

As the overview explains, some respondents gave examples of auxiliary aids but not the circumstances in which children might not be provided with them. A few did acknowledge that the numbers would be small whilst a third of respondents were unable to provide an answer to this question.

4. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them

Many suggested that there was a need for clarity regarding the definitions of auxiliary aids and who has responsibility for funding them. Linked to this was the importance of Health's role in providing support as there were concerns about the financial impact this would have on school budgets.

A few respondents suggested there was lack of reference to the Additional Learning Needs reform agenda and how the changes proposed by the Welsh Government in relation to alternatives to Statements of SEN may impact on this duty. It was questioned what practical implications these changes will have.

The Welsh Government's response

The Welsh Government welcomes the responses it has received to the consultation and has carefully considered them. While the overall response was in favour of commencing the duty on 1 September 2012 there were some concerns about the effect commencement of the duty on that date will have on schools. However on balance, those concerns have not persuaded the Welsh Government to depart from its proposed intention to commence the duty in Wales on 1 September 2012.

Consultation responses acknowledged that it is likely that only a small number of children who require auxiliary aids to prevent them from being substantially disadvantaged in the school context are not receiving those aids. We believe that it is important to commence the duty at the earliest opportunity to ensure that no disabled child misses out.

Considering the small numbers, we believe that the cost to schools and local authorities will be minimal. The Welsh Government is unaware of other education providers, who are subject to the duty to provide auxiliary aids, being challenged financially by this duty. It is also considered that in many cases schools or local authorities will already be providing auxiliary aids and services (i.e. where a child has special educational needs) and will, therefore, remain unaffected by commencement of the new duty in September 2012. Accordingly, within the context of a schools budget, the Welsh Government does not believe it is necessary to make special financial support available for the commencement of this duty. However, in light of the concerns that some respondents have expressed about the cost of compliance, the Welsh Government will keep this position under review.

The Welsh Government shares the UK Government's view that there is not a good reason to delay implementation of the duty and believes that the beginning of the next academic year, September 2012, is the appropriate time to commence the duty. Schools and local authorities have had sufficient time to prepare for the commencement of the new duty as the Equality Act received Royal Assent in April 2010. In early, 2011, the Equality and Human Rights Commission consulted on a draft Code of Practice for Schools which alerted schools to the new duty and advised that the duty would not come into force before September 2011. The commencement of the duty should also be seen in the context of the duty schools and local authorities have already been under since 2002 to plan to increase access for disabled children to school premises and to the curriculum and to make adjustments to provisions, criteria or practices that disadvantage disabled pupils.

It is unclear at this point in time what, if any, implications the Welsh Government's ALN reform agenda will have on the new auxiliary aids duty. Any legislative change as a result of the ALN Reforms would not be in place for a numbers of years.

In light of the consultation responses the Welsh Government takes the view that there is no need for regulations relating to the reasonable adjustment duty to be drawn up to coincide with the commencement of the auxiliary aids duty.

The Welsh Government is mindful of the concerns expressed in the consultation responses that schools and local authorities would like greater clarity about what auxiliary aids are, when it is reasonable to provide them and other matters in relation to the duty. Further information on how to comply with the duty should be available from the Equality and Human Rights Commission by the time the duty is commenced. Whilst such information will help schools understand the duty, it needs to be borne in mind that it will not be possible to provide guidance to take account of every eventuality. Each case will depend on its own facts and particular circumstances.

Annex

St Christopher's School, Wrexham
Specialist Children's Services, Gwynedd County Council
Sense Cymru
NUT Cymru
RNIB Cymru
Estyn
Blaenau Gwent County Borough Council
Association of Teachers and Lectures;
Achievement Service, Cardiff County Borough Council
Dr Sue Hurrell
Rhondda Cynon Taff and Merthyr Tydfil Community Equipment Service Partnership
College of Occupational Therapists
Children in Wales
Contact a Family
Children's Commissioner for Wales
Ele Hicks
Carmarthenshire County Council
Wrexham County Borough Council
CYDAG Uwchradd
NASUWT Cymru
ASCL Cymru, NAHT Cymru
NDCS Cymru; and
172 campaign responses.