

**THE EQUALITY ACT 2010: AUXILIARY  
AIDS AND SERVICES CONSULTATION  
ON COMMENCEMENT AND  
SECONDARY LEGISLATION**

**Consultation Paper**

**Scottish Government  
October 2011**

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17 October 2011

Dear Consultee

## **THE EQUALITY ACT 2010: CONSULTATION ON AUXILIARY AIDS AND SERVICES DUTY**

I am writing to invite you to respond to a consultation paper on the auxiliary aids and services duty within the Equality Act 2010. This consultation seeks your views 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 seeks your views on any issues which may arise over the commencement of the duty.

This consultation paper, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/Consultations/Current>.

Responses are required by 2 January 2012. The consultation questionnaire is provided at Annex A of the consultation paper. **Please send your responses with the completed Respondent Information Form (see “Handling your Response” below) also at Annex A to:**

[EqualityAct@scotland.gsi.gov.uk](mailto:EqualityAct@scotland.gsi.gov.uk)

If you have any queries contact Ross Trotter at: [ross.trotter@scotland.gsi.gov.uk](mailto:ross.trotter@scotland.gsi.gov.uk) or

Ross Trotter  
Support and Wellbeing Unit  
Scottish Government  
Victoria Quay  
Leith  
EH6 6QQ

General information about the Scottish Government consultation process can be found at **Annex B** of the consultation paper.

We would be grateful if you would submit electronic responses, using the consultation questionnaire provided at **Annex A** of the consultation paper, as this will aid our analysis of the responses received.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all

new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

A list of organisations that are being consulted is attached at **Annex C** of the consultation paper. Please feel free to alert any organisations or individuals that we have omitted, and you think should be consulted.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information** Form (attached at **Annex A** of the consultation paper) as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002, and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the Respondent Information Form), by early 2012. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and forwarded to the UK Government. We aim to issue a report on this consultation process by early 2012.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Ross Trotter

Address: Support and Wellbeing Unit, The Scottish Government, Victoria Quay, Leith, EH6 6QQ

E-mail: [ross.trotter@scotland.gsi.gov.uk](mailto:ross.trotter@scotland.gsi.gov.uk)

Yours sincerely



**TRACY O'HANLON**  
**Support and Wellbeing Unity**  
**Scottish Government**

**THE EQUALITY ACT 2010: AUXILIARY AIDS AND  
SERVICES CONSULTATION ON COMMENCEMENT AND  
SECONDARY LEGISLATION**

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# THE EQUALITY ACT 2010:AUXILIARY AIDS AND SERVICES CONSULTATION ON COMMENCEMENT AND SECONDARY LEGISLATION

## Introduction

1. This consultation paper seeks your views on proposed commencement date for the provision in the Equality Act 2010 (the Equality Act) relating to 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 offers the opportunity to highlight any issues which may arise over the commencement of the duty. The Equality Act covers England, Scotland and Wales – this consultation only covers Scotland.

2. Schedule 13 of the Equality Act requires schools to provide auxiliary aids and services to disabled pupils where it is reasonable to do so.

Responses are required by 2 January 2012. Your views will contribute to the decision making process on potential secondary legislation and on the commencement date. General information about the Scottish Government consultation process can be found at Annex B and a list of organisations that are being consulted is attached at Annex C. If you have any queries contact Ross Trotter at:

[ross.trotter@scotland.gsi.gov.uk](mailto:ross.trotter@scotland.gsi.gov.uk)

Or

Ross Trotter  
Support and Wellbeing Unit  
The Scottish Government  
Area 2-B (South)  
Victoria Quay  
Leith  
EH6 6QQ

Prior to discussing the specifics of the consultation, the consultation paper will commence with background information on the Equality Act and what this specific duty may mean in practice.



## **THE EQUALITY ACT 2010:AUXILIARY AIDS AND SERVICES CONSULTATION ON COMMENCEMENT AND SECONDARY LEGISLATION**

### **Background**

Under the Disability Discrimination Act 1995, schools were exempt from providing auxiliary aids and services for disabled pupils, such as sign language, interpreters or information in format such as Braille or audiotape. These reasonable adjustments for disabled children in relation to auxiliary aids would be provided under separate legislation – in Scotland the Education (Additional Support for Learning) (Scotland) Act 2004 and the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002.

### **Current Scottish Legislative Position**

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) does not specifically require the provision of auxiliary aids in schools, although local authorities do have a duty to make adequate and efficient provision for the additional support required for each child or young person with additional support needs for whose school education they are responsible for (s.4). This duty does not require local authorities to do anything which would result in unreasonable public expenditure being incurred (s.4(2)(b))

The Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 requires local authorities and owners of independent schools to prepare a strategy to increase the physical accessibility of the school environment and the accessibility of the curriculum for disabled pupils. The strategy must also provide for the improvement of communication with disabled pupils, and must have regard to the need to allocate adequate resources.

However, following recommendations from the Lamb Inquiry into parental confidence in the Special Educational Needs System in England a UK Government amendment was made to the Equality Act removing the exemption on schools and authorities in England, Wales and Scotland to provide auxiliary aids and services.

### **The Equality Act**

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 Relation 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, age, gender reassignment, pregnancy and maternity, and marriage and civil partnership.

### **Specific duty within Equality Act to provide auxiliary aids and services**

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 within 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.

In some cases the support a disabled pupil may receive under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) ("the ASL Act") may mean that they

do not suffer a substantial disadvantage and so there is no need for additional reasonable adjustments to be made for them. In other cases disabled pupils may require reasonable adjustments on top of the additional support they are receiving. There are also disabled pupils who do not have additional support needs under the ASL Act but still require reasonable adjustments to be made for them. These needs may also be addressed under the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 and therefore no reasonable adjustments may be needed for them.

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."

### **What this will mean in practice**

Certainly there is an expectation of the Scottish Government that this new duty will have limited impact on local authority supported schools and local authorities in Scotland based on the legislative position already held (as set out above).

The duty to make reasonable adjustment to provide auxiliary aids and services also applies to independent schools and grant aided schools. These schools are not in the same situation as local authority schools as they do not routinely have available to them the local authority's support services. However, the local authority duty to identify and address additional support needs of children and young people, for whose education they are responsible, who face a barrier, or barriers, to learning is there regardless of where that learning may take place (under the ASL Act). Indeed local authorities may place a child within an independent school if that school setting is deemed best for the child in question to support the additional needs they have. It is unlikely that the auxiliary aids duty would be relevant to these children as they will already have access to any aid that it might be reasonable to provide.

Grant aided schools are independent special schools funded by the Scottish Government. The auxiliary aids duty will apply to them as to other independent schools.

Whether schools and local authorities will be under a duty to provide auxiliary aids and services will depend on the facts of each individual case and the Scottish Government cannot give definitive guidance on what will be considered to be an auxiliary aid or service and when it will be reasonable to provide them. It would be for the Additional Support Needs Tribunals Scotland (ASNTS) to hear such claims if there was a dispute.

## **Question 1.**

**Is this duty likely to have any major implications for schools (in any setting) or any related bodies?**

### **Regulations**

Section 20(11) of the Equality Act provides that “an auxiliary aid includes a reference to an auxiliary service”, but there is no definition of auxiliary aid in law. There is also no legal definition of what is reasonable when making a reasonable adjustment. Section 22 and section 208(1) of the Equality Act give a power to a Minister of the Crown in the UK Government to make regulations to identify things to be taken into account in deciding what are “reasonable”; circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description (such as a school or a local authority) to have to take steps of a prescribed description; and things which are, or which are not, to be treated as auxiliary aids. The regulation making power in section 22 and 208 is already in force.

Such powers to make such Regulations have been available since the Disability Discrimination Act 1995 came into force but, so far, no Regulations have been made. Providers, such as early years providers, to whom the auxiliary aids duty has applied since that time have met the duty without having Regulations.

The Equality and Human Rights Commission Scotland will be producing a statutory code of practice for schools which will give examples of when it is likely that it would be reasonable for a school or local authority to provide an auxiliary aid or service. Schools and local authorities should have regard to the Code.

## **Question 2.**

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

**(b) If your answer to question (a) is yes, please offer comments and suggestions on what the regulations should provide for.** When responding to this question please bear in mind that the power to make regulations only permits the following matters to be prescribed:

- matters to be taken into account in deciding whether it is reasonable for a person to have to take a particular step;
- circumstances in which it is, or in which it is not, reasonable for a person (such as a school or local authority) to have to take steps of a prescribed description; or
- things which are, or which are not, to be treated as auxiliary aids.

### **When the duty will commence**

The Scottish Government is undertaking this consultation on behalf of the UK Government. The UK Government have proposed a commencement date of 1 September 2012 for this duty. This is to ensure local authorities, schools and related bodies have time to prepare for commencement.

**Question 3.**

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

**(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.**

# THE EQUALITY ACT 2010: CONSULTATION ON AUXILIARY AIDS AND SERVICES DUTY



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

  
  
  

Postcode

Phone

Email

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes  No

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

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

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

*Q3 (a) Do you think 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.*

## **Annex B    The Scottish Government Consultation Process**

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses<sup>1</sup>. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/Consultations/Current) (<http://www.scotland.gov.uk/Consultations/Current> )

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

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<sup>1</sup> <http://www.scotland.gov.uk/consultations>

## **Annex C      Consultation List**

Aberlour Child Care Trust  
Action for Children Scotland  
Action for Sick Children (Scotland)  
Action for Children's Arts  
ADES  
Additional Independent Living in Scotland Core Reference Group Members  
Additional Support Needs Tribunals for Scotland  
Advocacy for Education Scotland  
Administrative Justice & Tribunals Council  
AFASIC Scotland  
Alcohol Focus Scotland  
All Scottish MEPs  
All Scottish Schools  
Allied Health Professionals  
Anti-Bullying Network  
Army Welfare Services  
Article 12 in Scotland  
Association for Children with Heart Disorders  
Association of Scotland's Colleges  
Association of Scottish Colleges  
Additional Support for Learning Officers (ASLO)  
Barnardo's – West Lothian Family Support Team  
Barnardo's Scotland  
Big Lottery Fund  
BMA Scotland  
British Deaf Association Scotland  
British Museum  
British Red Cross Society  
British Stammering Association  
C.H.I.P Plus  
Capability Scotland  
Care Commission  
Careers Scotland  
Carers National Association (Scotland)  
Central Scotland Racial Equality Council  
Central Scotland Rape Crisis & Sexual Abuse Centre  
Centre for Racial Equality in Scotland  
Centre for Research on Families and relationships  
Chief Executives of Health Boards  
Chief Executives of Local Authorities  
Chief Executives of Special Health Boards  
Child Health Commissioners  
Child Guidance Clinic  
Child Poverty Action Group Scotland  
Childline Scotland  
Children 1st  
Children in Scotland  
Children's Parliament  
Cl@n Childlaw  
Clerk of the Parliamentary Committee  
CLIC Sargent



Collusion Theatre Company  
Commission for Racial Equality  
Community Council Liaison Officers  
Community Councils  
Committee Liaison Officers  
Community Link  
Contact a Family Scotland  
COSLA  
Council for Disabled Children  
Crossreach  
Deaf Blind Scotland  
Directors of Education  
Directors of Social Work  
Disability Rights Commission  
Down's Syndrome Scotland  
Drake Music Project  
Dyslexia Scotland  
Dyslexia Scotwest  
Dyspraxia Foundation  
Edinburgh and Lothians Racial Equality Council  
Education Authority Implementation Officers  
Education Equity Group  
Eke-Out Project  
ENABLE – Self Advocacy Groups  
ENGENDER  
Enquire  
Epilepsy Scotland  
Equal Opportunities Commission  
Equality Network  
Equity in Education  
Fairbridge Family Fund  
Fife Racial Equality Council  
Fife Rights Service  
for Scotland's Disabled Children and member organisations  
Further Education Establishments  
Govan Law Centre  
Grampian Racial Equality Council  
Health Implementation officers  
Hearing Impaired Service  
Higher Education Establishments  
Highland Children's forum  
Highland Society for the Blind  
I CAN  
Includem  
Inclusion Scotland  
Inclusive Play  
Independent Special Education Advice (ISEA)  
Kibble Education and Care Centre  
KIDS VIP  
Law Society  
Learning and Teaching Scotland  
Learning Disability Alliance of Scotland  
Legal Deposit Library Agency

Linking Education and Disability  
MELDI  
Mindroom  
National Autistic Society in Scotland  
National Deaf Children's Society  
National Playbus Association  
NCH Action for children Scotland  
NHS Health Scotland  
NHS Helpline Scotland  
NSPCC Centre  
One Parent Families Scotland  
Ouright Scotland  
PAMIS  
Parent Network Scotland  
Parent to Parent Tayside  
Parenting Across Scotland  
Parentline Scotland  
Partners in Advocacy  
Personalised Education Now  
Play Scotland  
Policy and Engagement Officers Network  
Project Ability, Centre for Developmental Arts  
Project Scotland  
RAMTRAQ  
Relationships Scotland  
RNID Scotland  
RoSPA  
Royal College of Paediatrics and Child Health  
Royal College of Speech and Language Therapists  
Royal National Institute for the Blind  
Royal National Institute for Deaf People  
Rudolf Steiner Schools  
San-Jai Chinese Project  
SATF  
Save the Children  
Schoolhouse  
Scotcen  
Scotland's Commissioner for Children and Young People  
Scottish Association for Mental Health  
Scottish Child Law Centre  
Scottish Childminding Association  
Scottish Children's Reporter Administration  
Scottish Civic Forum  
Scottish Consumer Council  
Scottish Council for Independent Schools  
Scottish Council for Voluntary Organisations  
Scottish Council on Deafness  
Scottish Disability Equality Forum  
Scottish Independent Advocacy Alliance  
Scottish Independent Special Schools Group  
Scottish Marriage Care/Stepfamily Scotland  
Scottish Mediation Network  
Scottish network for able pupils

Scottish Parent and Teacher Council  
Scottish Pre-school Play Association  
Scottish Refugee Council  
Scottish School Boards Association  
Scottish Sensory Centre  
Scottish Society for Autism  
Scottish Traveller Education Programme  
SCVO  
Sense Scotland  
SENSE Scotland  
Shaw Trust (Dunfermline)  
SHS Scotland  
Sign Bridge to Literacy  
SKILL Scotland  
Sleep Scotland  
Social Work Implementation Officers  
Society of Local Authority Chief Executives & Senior Managers (SOLACE)  
Special Needs Information Point  
SPICe Library  
Tayside Racial Equality Council  
The British Psychological Society  
The Butterfly Trust  
The Caledonian Award  
The Church of Scotland  
The Educational Institute of Scotland (EIS)  
The Family Fund  
The Fostering Network  
The ME Association  
The Place2Be  
The Princess Royal Trust for Carers  
The Salvation Army  
The Scottish Spina Bifida Association  
Visual Impairment Scotland  
VOCAL  
Voluntary Health Scotland  
West Lothian Youth Action Project  
West of Scotland Racial Equality Council  
YCSA  
Young People Speak Out  
Young Scot  
Youthlink Scotland



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