

Analysis Report:  
Consultation on the Additional  
Support for Learning Amendment Bill

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## **Introduction**

1. This document reports on the consultation exercise held between 9 May 2008 and 19 June 2008 entitled '**Consultation on the Education (Additional Support for Learning) (Scotland) Act 2004 – Amendment Bill 2008**'. The consultation document contained detailed proposals on amendments to the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) and a draft version of the Education (Additional Support for Learning) (Scotland) Bill (the Bill).
2. This report also sets out what impact the consultation findings have had on the draft Bill.
3. The Bill will be introduced to the Scottish Parliament during the week commencing 6 October 2008. The Bill will be accompanied by a Policy Memorandum and Accompanying Documents (which includes Explanatory Notes and a Financial Memorandum). The **Policy Memorandum** explains the policy objectives of the Bill, the alternative options considered, the consultation process and the effect of the Bill on human rights, island communities, local government, sustainable development and equal opportunities. The **Explanatory Notes** provide a section-by-section description of what the Bill does, to help the reader understand the provisions of the Bill. The **Financial Memorandum** sets out the estimated costs which will fall to the Scottish Government, to local authorities and to other organisations and individuals as a result of the proposals in the Bill.
4. We **recommend** that the Bill is read along with these documents to give a fuller picture of what is being proposed and why. Both the Bill and its accompanying documents can be obtained from the Scottish Parliament website at <http://www.scottish.parliament.uk/>

## **Definitions of terms used in this analysis**

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

<u>Definition of terms used in this analysis</u>	
Almost All	Over 90%
Most	75-90%
Majority	50-74%
Less than Half	15-49%
Few	Up to 15%

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

interest in education or additional support needs and have been selected in order to cover as wide a spectrum of expertise as possible while avoiding over emphasis on any one specific specialist area.

7. While there were other responses from stakeholder groups which have been highly instructive, it has not been possible to include these responses in the statistical analysis due to the fact that they did not provide a definitive answer to the consultation questions and were more general in nature.
8. The responses included in the 'key stakeholders' group are from: the Association of Directors of Education in Scotland (ADES), the Association of Directors of Social Work (ADSW), Education in Scotland (EIS), the President of the Additional Support Needs Tribunals for Scotland (ASNTS), Govan Law Centre, the Scottish Consumer Council, Scotland's Commissioner for Children and Young People, Independent Special Education Advice (ISEA), Learning Teaching Scotland (LTS), the National Autistic Society, the National Deaf Children's Society, Down's Syndrome Scotland, the Special Needs Information Point, the Scottish Traveller Education Programme, the Scottish Division of Educational Psychologists, the European Human Rights Committee and Barnardo's Scotland.
9. Stakeholders provided a wide range of views to this consultation. While not all these views have been included in this report, all responses have been carefully considered by the Scottish Government. The sample views provided throughout the report have been included to give a flavour of the most commonly expressed views. All published consultation responses can be viewed on the Scottish Government's website:  
<http://www.scotland.gov.uk/Publications/2008/07/16110426>.

## Background

10. Her Majesty's Inspectorate of Education (HMIE) conducted a 2 year inspection programme into how local authorities are implementing the 2004 Act. An interim report of their findings was published on 31 October 2006 and their final report was published on 14 November 2007. Key issues arising from these reports include the need for better information to parents and young people, inter-authority arrangements and better engagement of health and social work services. They also raised some issues over arrangements for preparing CSPs.
11. Adam Ingram, Minister for Children and Early Years, wrote to all local authority Chief Executives on 21 December 2007 asking them to ensure that their authority's procedures are in line with the requirements of the 2004 Act and the associated "supporting children's learning code of practice."
12. Additionally, recent Court of Session rulings have highlighted the need to amend the current legislation to reflect the original policy intention. The first of these was a decision by Lady Dorrian in the case *Deborah Gordon against a decision of an Additional Support Needs Tribunal dated 25 August 2006* (2006 CSOH 45) on the jurisdiction of an ASNTS to hear placing request appeals. The second was a decision given by Lord Macphail in the case of *WD v Glasgow City Council* (2007 CSIH 72) on an ASNTS's jurisdiction in relation to

out of authority placing requests identified that clarity was required to enable parents of children with CSPs to make out of area placing requests to any authority in Scotland and secondly that a right of appeal against the refusal of such a request should lie with an ASNTS.

13. The process of consulting on the proposal for change began in May 2008 with the publication and distribution of the 'Consultation on the Education (Additional Support for Learning) (Scotland) Act 2004 – Amendment Bill 2008'. 4319 copies of this document were circulated around a wide range of stakeholders including all local authority education and social work departments, health boards, all Scottish schools, colleges and universities, community councils and relevant voluntary organisations. In addition to this, the document was publicised in the Moving Forward newsletter which is circulated to 10,000 professionals. The Minister for Children and Early Years met with various stakeholders to discuss the proposals contained in the consultation document. The consultation document sets out the reasons for reviewing the current legislation, and outlines the proposed legislative changes (including consultation questions). Additionally, Children in Scotland, supported by the Scottish Government, hosted a series of nine consultation events throughout Scotland during the week commencing 2 June 2008.
14. The 13 questions contained in the consultation paper were designed to cover the areas in which the Scottish Government was proposing to amend the 2004 Act. The amendments aim to strengthen the rights of children with additional support needs and their parents and include:
  - the rights of young people and parents of children with additional support needs to make out of area placing requests;
  - parental and young people's access to mediation and dispute resolution from the host authority following a successful out of area placing request, and
  - increased parental and young people's rights in respect of access to an Additional Support Needs Tribunals for Scotland (ASNTS) regarding failures by the education authority
15. We received 165 responses from a broad range of consultees including 23 out of the 32 Scottish local authorities. Those responses where consent to publish was agreed have been published on the Scottish Government's website and can be viewed at:  
  
[www.scotland.gov.uk/Publications/2008/07/16110426/0](http://www.scotland.gov.uk/Publications/2008/07/16110426/0).
16. Both through the consultation events and the responses submitted to the consultation document, a wide range of views were expressed. These views have been essential in informing the policy direction of the Bill. We would like to thank all those who took part in the consultation process for allowing the Scottish Government the benefit of their opinion, as well Children in Scotland for organising the consultation events.

## Consultation Report

17. The following report **summarises the main issues that were expressed by respondents** to the consultation as a whole. The report is divided into seven key areas:
- Placing requests – Timing
  - Placing requests – Home & Host Authority
  - Mediation and Dispute Resolution
  - Home & Host authority: reviewing a CSP
  - CSP timescales – references to an ASNTS
  - ASNTS – reviewing decisions
  - Enforcement of a restricted reporting order or an award of expenses
18. The report aims to provide a summary of the main points of agreement, concerns and recommendations made by all those who responded and to indicate where changes have been made to the draft Bill as a result. **It should be noted that comments made in red text are made by the Scottish Government and not respondents.**

### **Placing requests – Timing**

Q1. Should the legislation relating to an ASNTS’s jurisdiction regarding placing requests be amended to allow an ASNTS to consider any placing request appeal where a CSP is involved or is being considered, at any time before the final determination by the appeal committee or sheriff?

Q2. Can you foresee any problems with amending the legislation as suggested in Q1 above? If so, what are they?

19. **Q1** proposed that the 2004 Act legislation relating to an Additional Support Needs Tribunal for Scotland (ASNTS) regarding placing requests be amended to allow an ASNTS to consider any placing appeal where a coordinated support plan (CSP) is involved or is being considered, at any time before the final determination by the appeal committee or sheriff.

Sample responses:

“Yes – Otherwise there is a discriminatory situation.” [local authority]

“Enables a logical overview of CSPs.” [national health board]

“This Change will clarify the procedure for placing request appeals where a CSP is involved and is to be welcomed.” [university]

“It is the child’s best interest to have any appeals settled as quickly as possible.” [further education college]

“More time for parents to gain advice from tribunal before appeal.” [school]

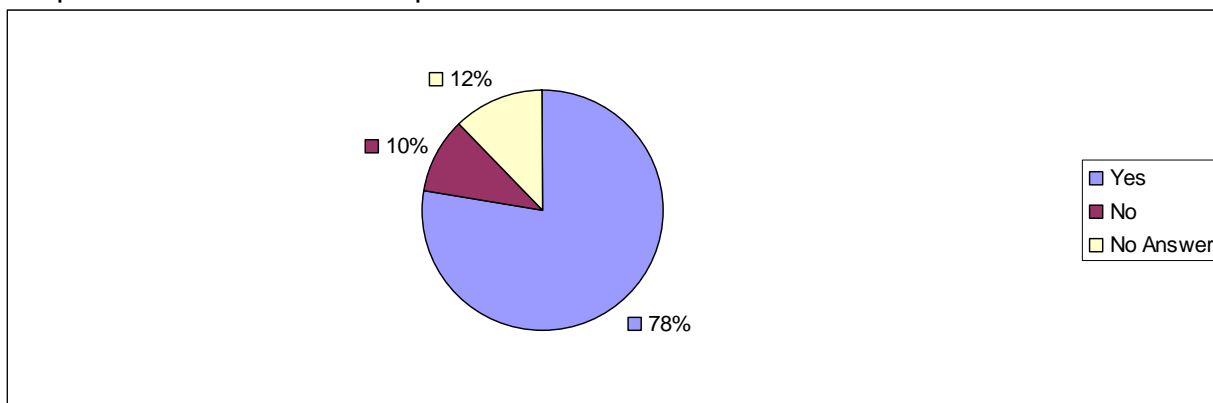
“The time delays involved in what can be a lengthy process is detrimental to the child’s wellbeing and disproportionate to the time given to educating and supporting the child.” [national voluntary organisation]

“Equality demands this.” [an individual respondent]

“This amendment to the Act will be welcomed I am sure.” [community council]

20. The proposed changes outlined by **Q1** were generally welcomed by the respondents. Overall, a majority of respondents were in favour of making the proposed amendments.
21. The current situation is that the 2004 Act makes provision for the transfer of a placing request appeal from the Education Appeal Committee or Sheriff to an ASNTS only in respect of one set of circumstances; namely , where the education authority has decided that no CSP is required and that decision has been referred to an ASNTS.
22. This amendment will allow an ASNTS to have jurisdiction to consider any placing request appeal where a CSP has been prepared or is being considered, whether directed to the home or host authority, at any time before final determination by the appeal committee or sheriff, for example where the education authority is in the process of establishing whether a CSP is required.
23. Of the local authorities who responded to this question, the majority of them signalled that they favoured making the amendment. Among those local authorities opposed to making the amendment, the reasons most commonly cited were that it would give undue complexity to the process of appealing an authorities decision and that it could result in frivolous requests by parents to have their child assessed for a CSP.
24. In **Q2** the paper also asked respondents to highlight any problems that they could foresee with amending the legislation as suggested in **Q1**. Less than half of all respondents offered any kind of answer to this question.
25. Having considered the responses to questions **Q1** and **Q2** of the consultation, the Scottish Government propose to amend the legislation to allow an ASNTS to have jurisdiction to consider any placing request appeal where a CSP has been prepared or is being considered, whether directed to the home or host authority, at any time before final determination by the Education Appeal Committee or sheriff.
26. In light of the concerns raised about frivolous claims being made to avoid the normal routes of appeal through the Education Appeal Committee or Sheriff, the legislation will also provide that cases can be transferred from an ASNTS back to the Education Appeal Committee of Sheriff if it is decided that no CSP is required.

Responses to Q1 from all respondents:



### Placing requests – Home & Host authority

Q3. Do you agree that the parents of children, with ASN, with or without CSPs, should have the same rights in respect of making out of area placing requests as parents of children without ASN?

Q4. If you do not agree with Q3 above, why not?

Q5. Are you content that in instances where a CSP is involved or is being considered, a decision to refuse an out of area placing request should be referred to the ASNTS?

27. Questions Q3 – Q5 of the consultation proposed that parents of children with additional support needs should have the power to make out of area placing requests whether or not they have a CSP and that where a CSP has been prepared or is being considered, an appeal against a decision to refuse such a request should be referred to an ASNTS.

Sample responses:

“In the name of fairness & equality.” [local authority]

“As a result of Lord Macphail’s ruling this change is necessary. It is needed to ensure that parents of children with ASN and young people with ASN themselves have no fewer rights to out of area placements than those children and young people without ASN.” [university]

“There should be no disparity of rights.” [further education college]

“If we agree with the philosophy of inclusive education these rights should hold for all.” [school]

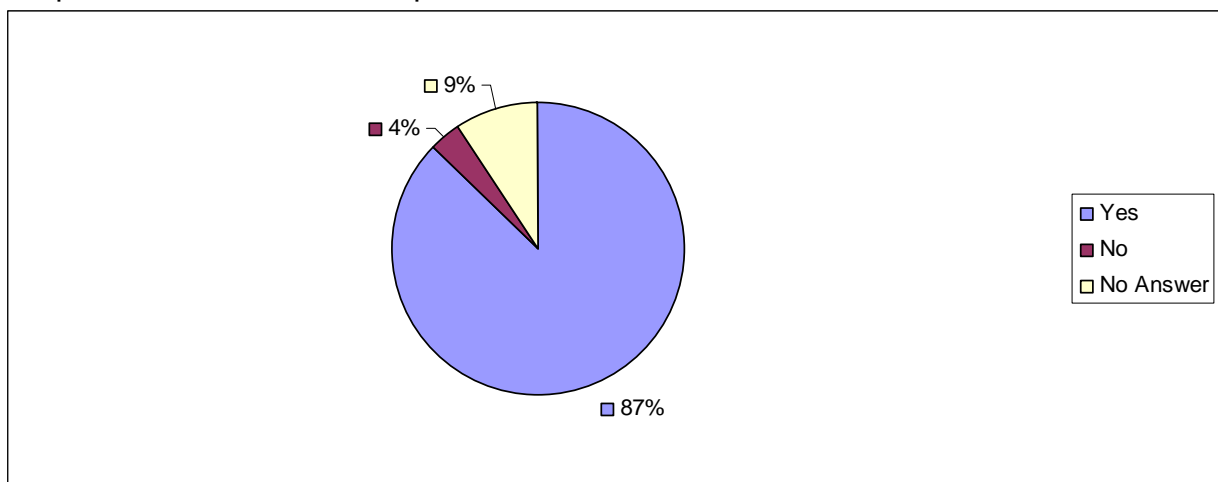
“We agree with this proposal and think it was the policy intent behind the legislation.” [national voluntary organisation]

“Children with ASN should be treated the same as those without ASN.” [individual respondent]



28. Most respondents agreed with the proposition outlined in **Q3**, that parents of children with additional support needs should have the same rights to make out of area placing requests as those without additional support needs. While 17 local authorities indicated that they agreed with the proposals, of the 6 responses that signalled their disagreement, 4 were from local authorities.
29. **Q4** asked respondents for their reasons for disagreeing with the proposal in **Q3**. The reasons given varied substantially and there was no specific theme emerging from these responses. The reasons included concerns about the financial burden on authorities, possible adverse effects upon authorities ability to make mainstream provision and the possible motivation underlying a parental placing request. It should be noted that only a few respondents gave a response of any kind to **Q4**.

Responses to Q3 from all respondents:



30. While most respondents agreed with the proposals outlined in **Q5** (that where a CSP is involved or being considered, a decision to refuse an out of area placing request should be referred to an ASNTS), a few opposed the amendments.

Sample responses:

“In many cases, the expertise of the Tribunal makes it better placed than the Sheriff Court to address issues pertinent to Additional Support Needs.” [local authority]

“Children with needs should not be treated differently from other children.” [school]

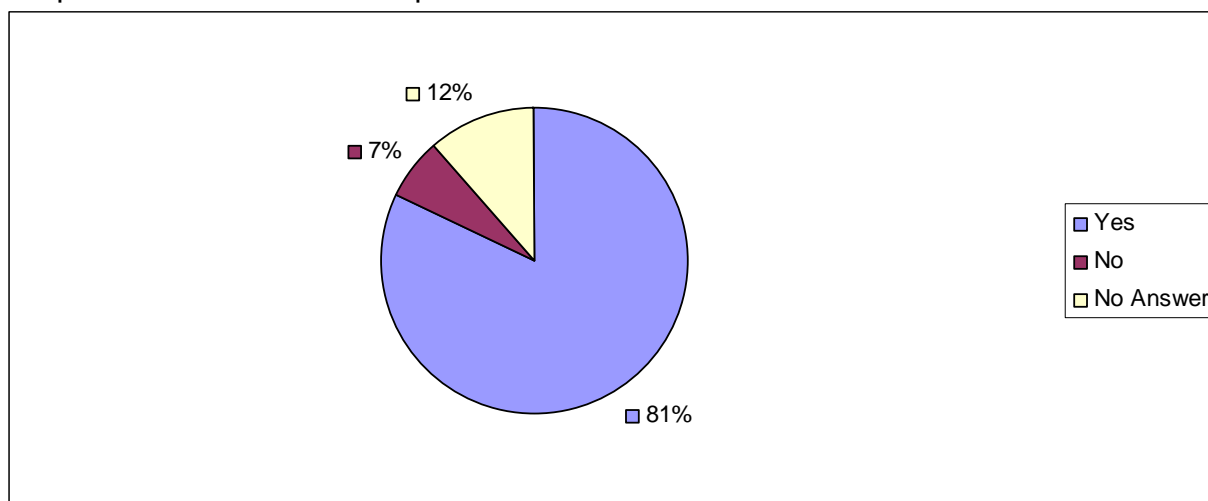
“Yes. I agree with this proposal.” [professional organisation]

“This would respect the rights of pupils and parents to have their case considered in full by a neutral party.” [university]

31. Among the reasons given from those who disagreed, was the concern that the implementation of such proposals might make the process of appealing the refusal of a placing request unduly bureaucratic.

32. One local authority stated:
- “This will not work if the CSP is at the very beginning of the process...”  
[local authority]
33. Where a parent or young person had submitted an out of area placing request to a potential host authority, it was considered that the only party involved at the very beginning of the CSP process (subsection 1(5)(ba) of the draft Bill included in the consultation paper) would be the parent; as it would be the home authority that would be responsible for considering the CSP request under 6(2)(b). Therefore, this would create the expectation that a parent or young person should know to inform any potential host authority about the request for an assessment for a CSP. This raises questions about how it could be ensured that the host authority would be aware that such a request to have a child assessed for a CSP had been made.
34. Since the aim of the amendments proposed by **Q5** are intended to extend parental rights, placing additional duties upon them was not considered to be a desirable outcome and the decision was made to drop subsection 1(5)(ba) from the Bill. The dropping of subsection 1(5)(ba) does not affect the policy intention of the Bill.
35. The transfer of an out of area placing request appeal from the Education Appeal Committee or Sheriff to an ASNTS will now be initiated by the home authority issuing their proposal (under section 11(2)(a) of the 2004 Act) to establish whether a CSP is required. This proposal letter will explain that the parent or young person should notify any potential host authority that an assessment for a CSP is currently being conducted.
36. Many key stakeholder groups emphasised the importance of enabling parents of children with CSPs or young persons with CSPs to make out of area placing requests.
37. Having considered all the responses to these questions, the Scottish Government intend to amend the legislation to allow young persons with additional support needs and parents of children with additional support needs, (including those with CSPs), to make out of area placing requests and for those who have a CSP, or where a CSP is being considered, to make a subsequent reference to an ASNTS on refusal of such request.

Responses to Q5 from all respondents:



## Mediation and dispute resolution

Q6. Do you agree that in instances where a child or young person is attending a school outwith his/her home authority area, as a result of a placing request, responsibility for providing mediation and dispute resolution should rest with the host authority?

Q7. In the situation described in Q6 above, do you agree that a contribution in respect of a host authority's provision to parents or young people of mediation or dispute resolution services should not be recoverable from the home authority under section 23(2) of the Education Scotland Act 1980?

38. **Q6** asked respondents whether they agreed that in instances where a child or young person is attending a school outwith his/her home authority area, as a result of a placing request, responsibility for providing mediation or dispute resolution should rest with the host authority.

Sample responses:

"The provision of mediation and dispute resolution should lie with the authority responsible for the educational provision which is the subject of the dispute." [local authority]

"As the host authority would provide the CSP, any dispute would be with the host authority so they should be responsible for providing the mediation and dispute resolution." [further education college]

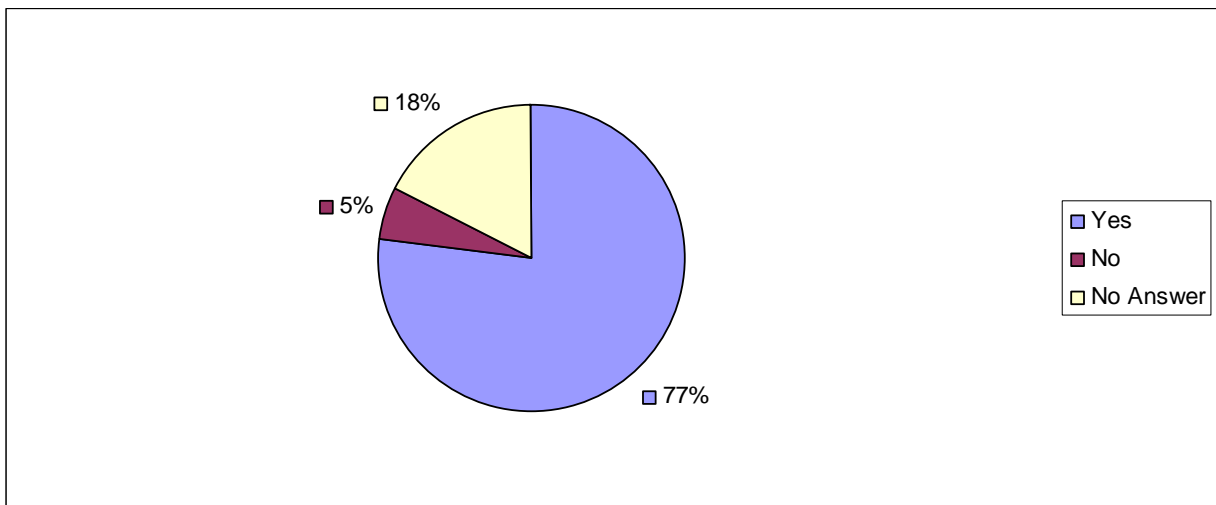
"Where child/young person is in attendance at a school outwith home authority it is most appropriate that responsibility rests with host authority on matters of mediation and dispute resolution." [community council]

"As the child affects the school in the host authority, they should offer mediation as it is issues related to the school in that authority or the authority themselves. The home authority would not know the reasons, etc." [individual respondent]

“Funding for any aspect of support for a child/yp should follow the child.” [national voluntary organisation]

- 39. Most respondents agreed that in the circumstances outlined in the question, responsibility for providing mediation and dispute resolution should rest with the host authority with few respondents disagreeing.
- 40. Of the few that disagreed with this proposal, no specific reasons were given for their disagreement.

Responses to Q6 from all respondents:



- 41. The issue outlined by **Q7** of the consultation document related to the retrieval of funds by a host authority from a home authority for the provision of mediation and dispute resolution.
- 42. 23(2) of the Education (Scotland) Act 1980 currently provides that where an education authority have provided school education with or without other services for any pupils belonging to the area of some other authority or have provided additional support within the meaning of the 2004 Act for any such pupil, the education authority, may, if a claim therefore is made within the prescribed period, recover from that other authority such contributions in respect of such provision as may be agreed by the authorities concerned, or, in default of such agreement, as may determined by the Secretary of State, who shall have regard to the estimated cost of such provision.
- 43. However, this leads to a situation where following a successful out of area placing request, the costs of providing mediation and dispute resolution services would be provided by the home authority, an authority which at that point is not responsible for the child's education and is not party to the dispute. **Q7** proposes that cost of these services should be met by the host authority.

Sample responses:

“Local home authorities already pay significant fees to host authorities.”  
[local authority]

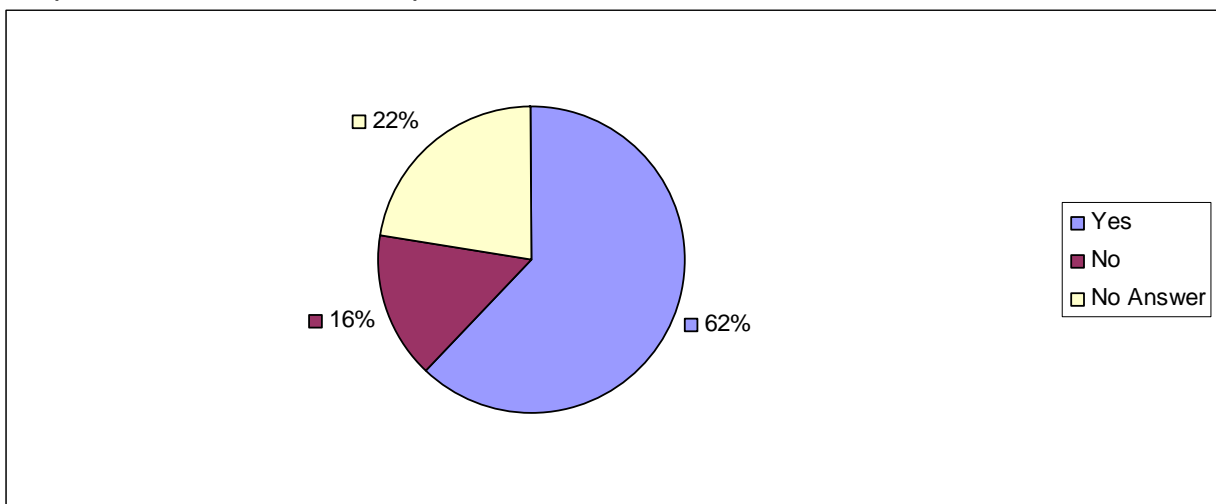
“The dispute lies with the host authority therefore they should be responsible for the costs involved.” [individual respondent]

“It should not be recoverable from home authority.” [national voluntary organisation]

“the host authority is receiving funding and have full responsibility for the education of that child.” [school]

44. A majority of respondents agreed with the proposal outlined in this question including 19 of the 23 local authorities who responded – the group upon whom this proposal has the greatest impact. 3 local authorities did not respond to this question and only 1 authority indicated that they disagreed with the proposal. The authority that disagreed did not offer any explanation as to why.
45. After considering the responses to the consultation, the Scottish Government proposes to amend the 2004 Act to provide that following the submission of an out of area placing request, a parent can access the potential host authority’s mediation services regarding the placing request. Furthermore, that following a successful out of area placing request, parents and young people will be able to access mediation and dispute resolution services from the host authority.
46. Furthermore, the Scottish Government proposes to amend **Section 23(2)** of the **Education Scotland Act 1980**, to reflect the fact that the cost of providing any mediation or dispute resolution services will not be recoverable from the home authority.

Responses to Q7 from all respondents:



## Home and host authority: reviewing a CSP

Q8. Do you think that the CSP process would be streamlined by amending the legislation to provide that, following the acceptance of an out of area placing request for a child/young person who has a CSP, the host authority assumes responsibility for reviewing the CSP, and that such a review should be conducted immediately?

Q9. Do you agree that the best time for the transfer of education authority responsibility to take place is at the time the child starts at the new school?

47. A decision to discontinue a CSP is subject to appeal to an ASNTS. However, section 18(1) of the 2004 Act stipulates that it is the authority with the responsibility for the child's education that would be the subject of any such appeal. **This infers that following a successful out of area placing request, the parent would have no recourse to an ASNTS with regards to a home authority's decision on any matter relating to the review of the CSP as they would not be responsible for the child's school education at that time.**

48. **Q8** and **Q9** of the consultation document sought to resolve the issues surrounding the responsibility for the review of CSP. **Q8** proposed that the CSP process could be streamlined by amending the legislation to provide that, following the acceptance of an out of area placing request for a child with a CSP, the host authority should assume responsibility for reviewing the CSP.

49. It further proposed that such a review should be conducted as soon as is reasonably practicable after the host authority assumes this responsibility.

Sample responses:

"Yes – the host authority has responsibility for education." [local authority]

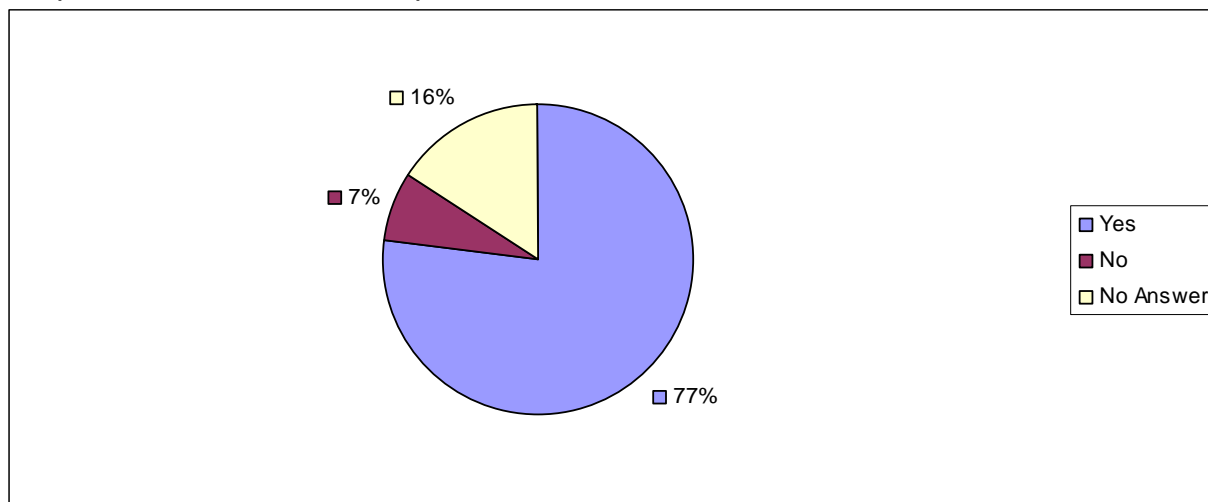
"Time delays are not acceptable so a review should be immediate to acquire and review information. Services are with the host authority and personnel there should be aware of services." [school]

"the sooner the review is conducted, the sooner the reviewed CSP can be put in place." [further education college]

"This would simply reflect good practice." [individual respondent]

50. Most respondents indicated that they agreed with the proposals as outlined in **Q8** with only a few indicating that they believed the legislation should not be amended in this respect. A majority of our key stakeholders also agreed with only 1 signalling their disagreement.

Responses to Q8 from all respondents:



51. In **Q9** of the consultation document, it was proposed that the best time for the transfer of education authority responsibility to take place is at the time the child starts at the new school.

Sample responses:

“this is the obvious hand over point.” [local authority]

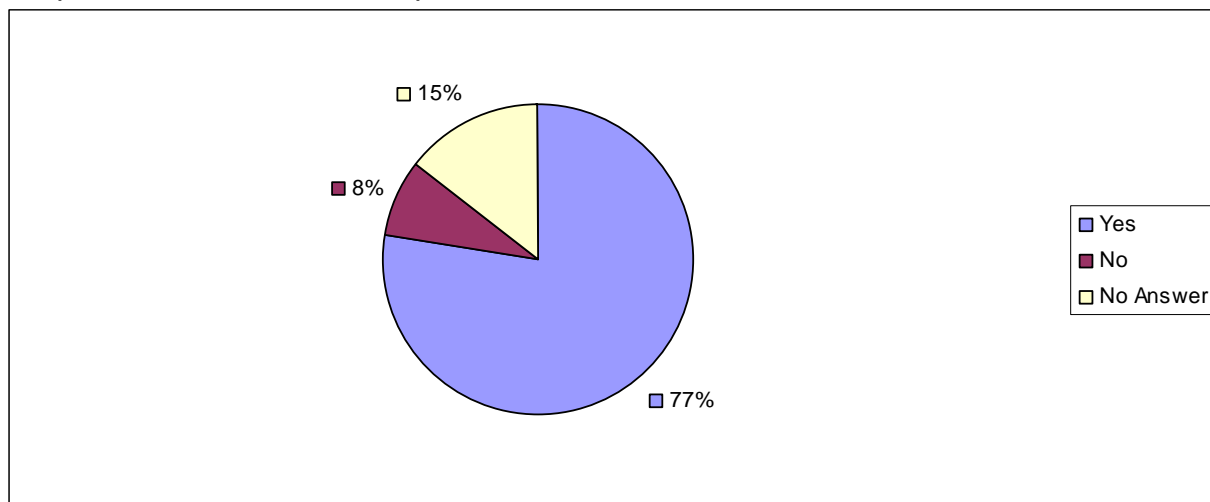
“Yes, best time for a point of transfer.” [local authority]

“I don’t think a transfer of Education Authority should happen at any other time other than immediately the child starts at a new school.”  
[individual respondent]

“This would ensure clearness of responsibility.” [national voluntary organisation]

52. Most respondents agreed that this would be the best time for the transfer of education authority responsibility to take place with only a few respondents indicating that they disagreed. This was also true amongst individuals and among local authorities, taking these groups in isolation. A majority of key stakeholders also agreed with these proposals.
53. Having considered the responses to **Q8** and **Q9** in the consultation paper, the Scottish Government proposes to amend the legislation to provide that, following a successful out of area placing request, the host authority will assume full responsibility for the child’s or young person’s education, including duties in relation to reviewing any CSP, and that such a review should be conducted as soon as is reasonably practicable by the host authority.
54. The host authority will therefore assume all responsibility for the child’s education and its CSP decisions, failures etc can be referred to an ASNTS. It is intended that this transfer of responsibility will take place at the time the child starts at the school in the host authority.

Responses to Q9 from all respondents:



### CSP timescales – references to an ASNTS

Q10. Should the ASL Act legislation be amended to allow references to the ASNTS regarding the following education authority failures?

- A parent or young person requests the education authority to establish whether a CSP is required and the education authority simply fails to acknowledge his/her request.
- The education authority has issued its proposal to establish whether a child or young person requires, or would require, a CSP but fails to decide either way.

55. Where a parent or young person requests the education authority to establish whether a CSP is required, the Supporting Children's Learning Code of Practice states that the authority should notify the person making the request of its decision as quickly as possible but certainly no later than 4 weeks from when the request was received.
56. Where an education authority has issued its proposal to establish whether a CSP is required, the code of practice states that it is expected that an education authority will have reached a decision and notified the parent or young person no later than 4 weeks after informing the parent or young person of the proposal, unless it would be impracticable to do so.
57. **Currently, there is no provision in the 2004 Act to allow for references to be made to the ASNTS where an authority fails in these respects.**
58. **Q10** of the consultation document addressed these issues as a two part question. The first part of **Q10** asked respondents whether the legislation should be amended to allow cases to be referred to an ASNTS where an education authority fails to acknowledge a request from a parent or young person to establish whether a CSP is required.



Sample responses:

"Failure to acknowledge should not happen." [local authority]

"Failure to address this issue could result in a conflict with no obvious route to resolution." [local authority]

"This will ensure that education authorities respond more efficiently to requests for CSPs." [university]

"An authority should acknowledge a request." [school]

"Yes, this would empower parents and young people and ensure their rights are being met." [national voluntary organisation]

59. The second part of **Q10** asked respondents whether the legislation should be amended to allow cases to be referred to an ASNTS where an education authority has issued a proposal to establish whether a child or young person requires or would require, a CSP, but fails to decide either way.

Sample responses:

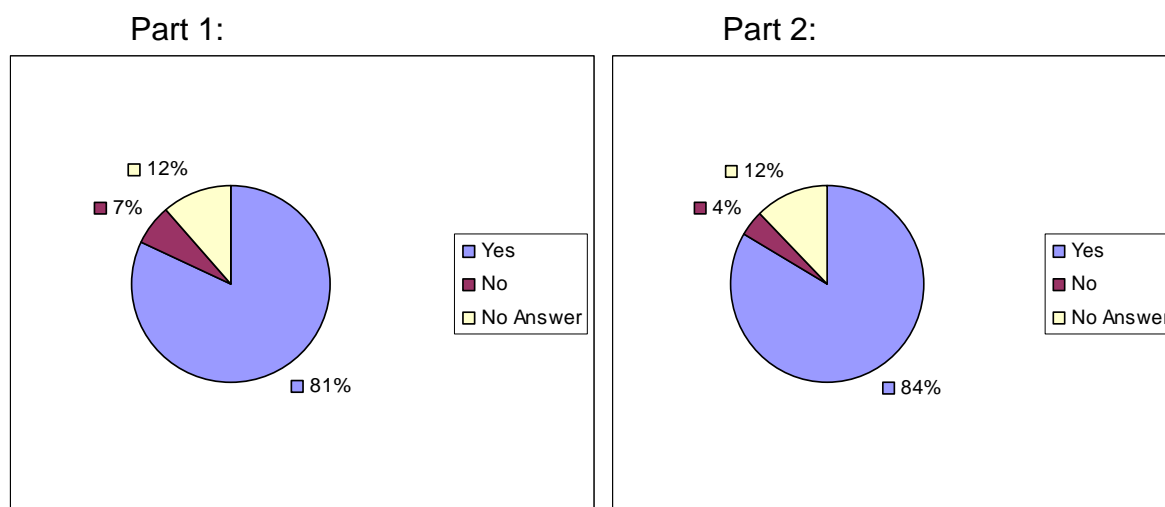
"The letter of proposal to consider a CSP should start the timeline and, therefore, any failure to respond by the authority within four weeks, regarding a decision to open a CSP, should be referred to the ASNTS." [local authority]

"The education authority has a duty to make the decision within a specific period of time." [further education college]

"We have experienced problems with undue delays, multiple further meetings to discuss etc – need a way to speed up process and force a decision sometimes." [national voluntary organisation]

60. Few respondents disagreed that either failure should be subject to a referral. Those who did disagree were not concentrated among any one group of respondents. The reason most frequently cited was that these failures should be dealt with through the education authority's complaints procedures as opposed to through the Tribunal. Most respondents to the consultation however, indicated that they believed that the legislation should be amended to allow references to an ASNTS in respect of both of the failures outlined in **Q10**.
61. As a result of considering the responses to **Q10** in the consultation paper, the Scottish Government proposes to amend the 2004 Act to allow the situations described in paragraphs 53 and 54 above to be referred to an ASNTS: where the education authority, having received a request to establish whether a CSP is required, has failed to respond to the parent's or young person's request; and where the education authority, having indicated their intention to do so, have failed to establish whether a CSP is required.

Responses to Q10 from all respondents:



Q11. Should a new ASNTS document based process be introduced to expedite those references in which an education authority has failed to meet a relevant timescales?

62. Experience to date has shown that there have not been any references to an ASNTS, where it has been determined that a child or young person requires a CSP, but the education authority has failed to prepare one, that have been opposed or been subject to any dispute whatsoever on the facts. In light of this, **Q11** of the consultation document proposed that **it is in the interest of all parties that a decision is made quickly to ensure that the local authority does not wait until just before the notified date of a hearing to indicate that its opposition has been withdrawn, incurring wasteful expenses in the interim** and therefore a documents only procedure should be introduced to expedite such references.

Sample responses:

“This would simplify options for all concerned.” [local authority]

“Definitely – delays are a cause of great stress for parents.” [school]

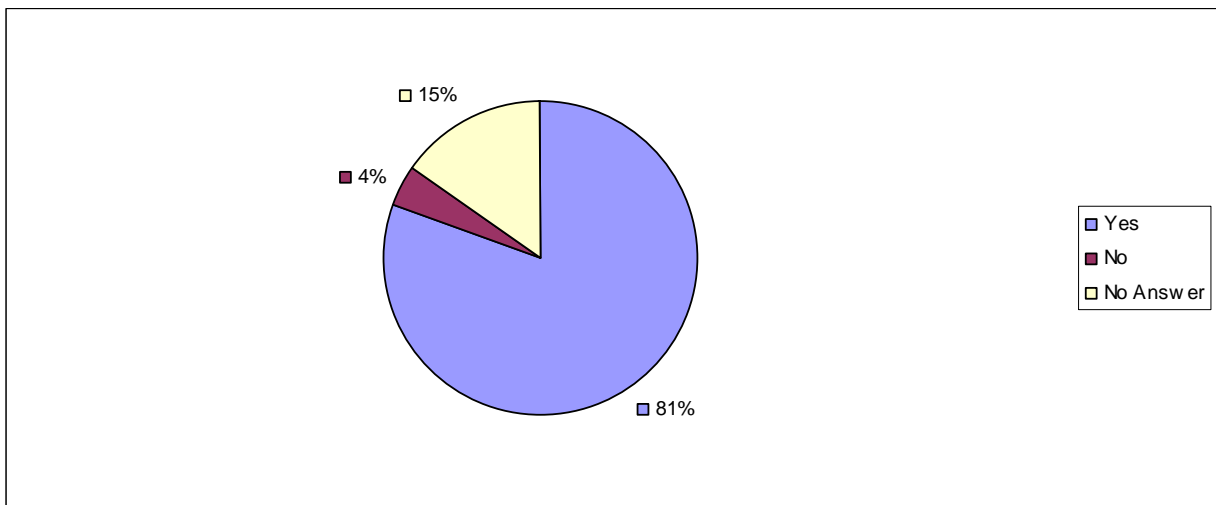
“Anything that reduces the time and stress inherent in attending a tribunal, especially when there is little debate regarding the outcome, has to be a good thing.” [national professional body]

“I think that such a process should be introduced. Where an authority has failed to meet the relevant timescale the process of reference and decision should be short so that the child and parent or the young person should not be further disadvantaged.” [individual respondent]

“Yes. A document based process would be helpful to an education authority.” [national voluntary organisation]

63. Most respondents indicated that a new ASNTS document based process should be introduced for the circumstances outlined in **Q11**, including almost all local authorities. No local authorities opposed the proposal, although one authority did not show a preference either way in its response. Of the 17 key stakeholders that responded, the majority were in support of the proposal and none were in opposition.
64. In light of these responses, the Scottish Government proposes to introduce an expedited documents only ASNTS procedure for references in which authorities fail to meet statutory timescales.

Responses to Q11 from all respondents:



## ASNTS – reviewing decisions

Q12. Are you content for the ASNTS to be given the power to review its decisions?

65. **It might be considered desirable for an ASNTS to have the power to review its decisions and revoke or vary its orders and awards. The ASL Act does not currently allow for an ASNTS to review its decisions.** **Q12** of the consultation document asked respondents whether they would be content for an ASNTS to be given the power to review its decisions.

Sample responses:

“Yes, tribunals should be given the power to review decisions. This may remove the need for further serious legal interventions.” [local authority]

“I understand that at the moment the ASNTS do not have this power, but if a mistake has been made then surely a review can only be beneficial for all parties.” [further education college]

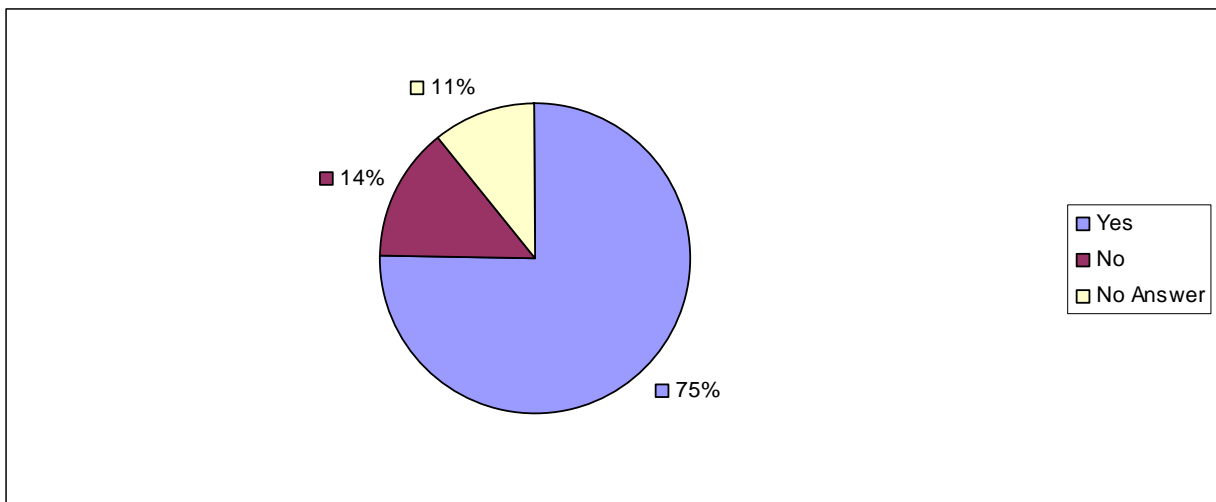
“This may be more expedient in terms of time/resources spent.” [school]

“This would bring it into line other tribunals.” [non-departmental public body]

“A sensible step forward.” [community council]

66. Most respondents indicated that they were content for the ASNTS to be given the power to review its decisions with only a few indicating that they were not content. The majority of local authorities who responded to this consultation question indicated that they support the proposal, as did a majority of our key stakeholders. Some responses raised questions about the grounds on which a review should be permitted, some expressing the belief that it should be reserved only for occasions on which the decision of a Tribunal represents an error in law.
67. Issues surrounding the precise grounds on which an ASNTS will be able to review its decisions will be considered by the Scottish Government and will be fully consulted on in the process of considering the secondary legislation.
68. It is apparent from the responses that there is broad support, in principal, for the ASNTS to have the power outlined in **Q12**. In light of this, the Scottish Government intends to amend the legislation to allow an ASNTS to review its decisions.

Responses to Q12 from all respondents:



### Enforcement of a restricted reporting order and an award of expenses

Q13. Do you agree that the legislation should be amended to:

- introduce a criminal offence punishable by a fine for anyone in breach of a restricted reporting order under Rule 35 of the Rules?
- enable enforcement of an award of expenses under Rule 39 of the Rules as if it were an extract registered decree arbitral bearing a warrant for execution issued by a sheriff court?

69. There is a lacuna (a gap) in the legislation surrounding the enforcement of a restricted reporting order or an award of expenses. A restricted reporting order may be made to prevent public comment about a case under consideration and an award of expenses may be made in certain circumstances, including where either party has acted unreasonably. However, there are no provisions for enforcement in either of these situations. **Q13** suggested introducing a criminal offence, punishable by a fine not exceeding level 5 on the standard scale (currently £5,000) for anyone in breach of a restricted reporting order and enforcement of an award of expenses as if it were a warrant issued by a sheriff.

Sample responses:

“With no sanction then there is no incentive to comply.” [local authority]

“This must take place to ensure anonymity of children.” [school]

“There is a gap in the current legislation and an amendment would address the problem.” [non-departmental public body]

70. The majority of respondents agreed with the proposition outlined in **Q13**. As did the majority of local authorities responding to the consultation.
71. However, less than half of the key stakeholders agreed. Among those who disagreed with this proposal, the majority cited their view that it would be unworkable and unproductive.
72. Some other points, found in the responses of some of our key stakeholders, were thought to be particularly pertinent:

Sample responses:

“To date the Tribunal has made a restricted reporting order in one reference only where there was a decision of a Tribunal issued on a preliminary matter and an indication that the decision would be subject to an appeal to the Court of Session. There is no equivalent power in the broadly similar jurisdictions in England, Wales or Northern Ireland and none has ever been sought.” ...

...” If the breach of the restricted reporting order is by the parent, or a person acting as the parent's representative, then presumably they are content to have the issue made public and whilst this may not be the wish of the authority, it may be questioned whether it is in the public interest to seek to restrict a parent's ability to make public comment on a decision if they so wish. Several parents have already sought publicity for Tribunal decisions and those which have gone on to an appeal in the Court of Session.”...

... “If the breach is on the part of the authority then what would the parent gain by the authority paying a fine? The parent would not

receive the fine by way of any compensation payment.” [key stakeholder]

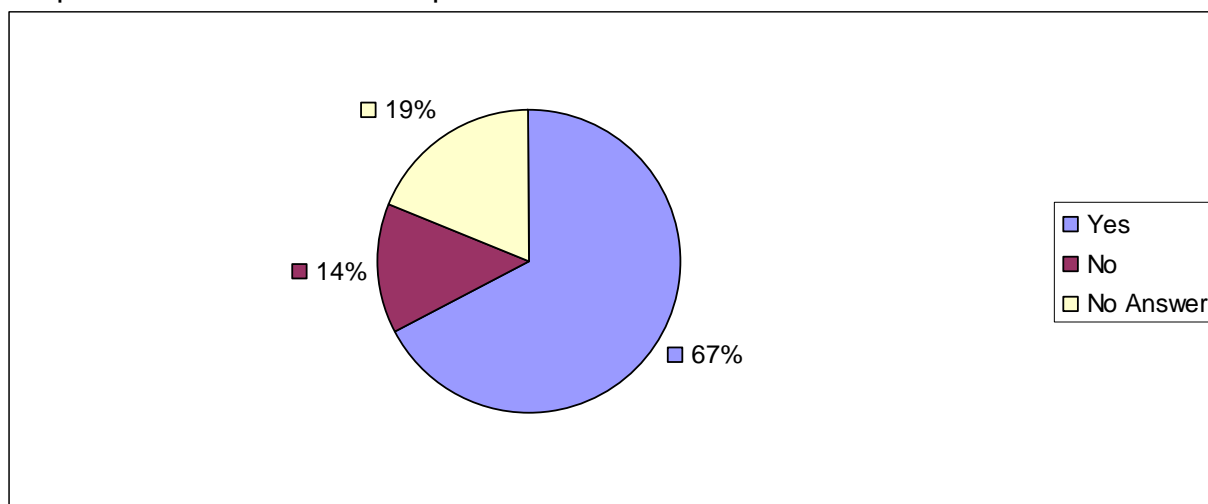
“... some concerns that this amendment would deter parents and young people from making references to the ASNTS if they felt an award of expenses etc could be imposed on them.” [key stakeholder group]

“This is impractical as the parent as an individual would be seen to have committed an offence; however, an authority is not held accountable on an individual level.” [key stakeholder group]

“...we would have grave misgivings if the threat of such a fine were used in any way to coerce young people or their families from publicly discussing the outcome of an ASNTS case.” [key stakeholder group]

73. The points raised in these responses indicated that there was a risk that making the necessary amendments to fill this gap in the legislation could ultimately prove to have a detrimental effect on parental rights and the rights of young people.
74. In light of this, the Scottish Government decided that it should reconsider whether the implementation of the amendments suggested by **Q13** would be desirable and whether it would serve to strengthen and clarify the original policy intention of the 2004 Act. It was decided that this proposal should not be pursued. As a result, the Scottish Government does not intend to incorporate the proposals outlined in **Q13** into the Bill.
75. In addition to being asked to respond to the specific questions posed in the consultation paper, respondents were also invited to submit views and suggestions relating to any aspect of the 2004 Act. A number of views and suggestions were submitted and where permission has been granted these have been published.
76. The majority of the views and suggestions are, by their nature, more appropriately dealt with by either: amendments to Secondary Legislation contained in Regulations; amendments to the “supporting children’s learning code of practice”; or by further Scottish Government steps aimed at supporting and implementing the 2004 Act. While all views and suggestions have been carefully considered the Scottish Government has decided that the Bill, as readers will recognise, focuses on particular measures in relation to placing requests and Tribunals and therefore has decided not to include other suggestions to the proposed amendments contained in the 2008 Bill.

Responses to Q13 from all respondents:



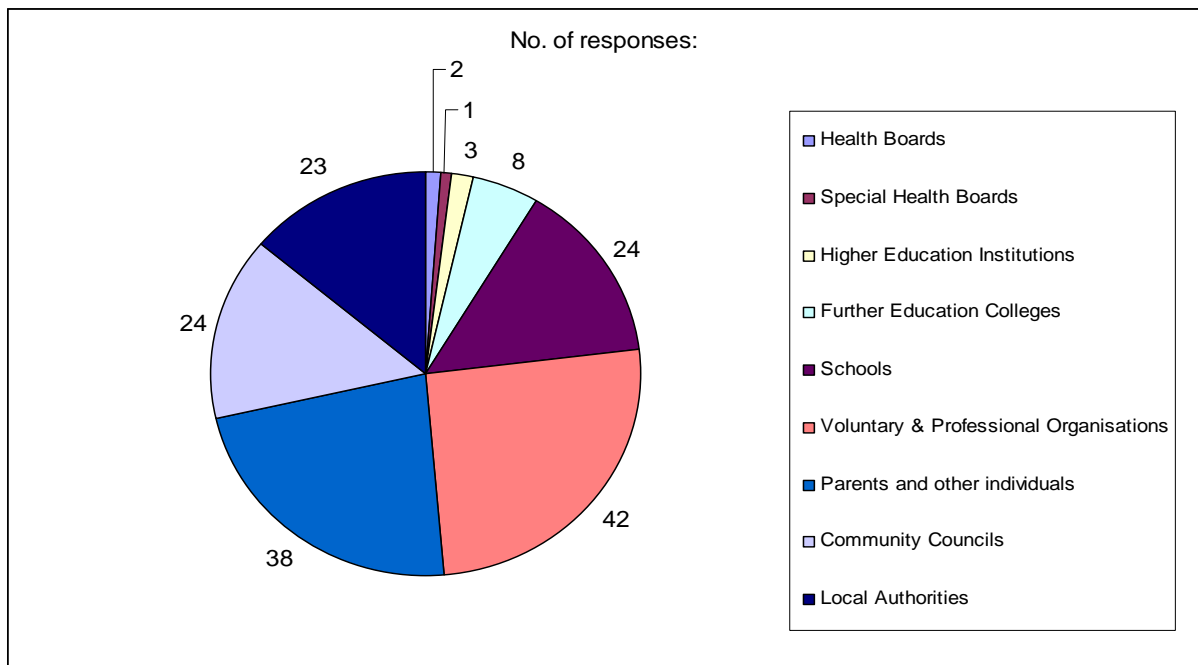
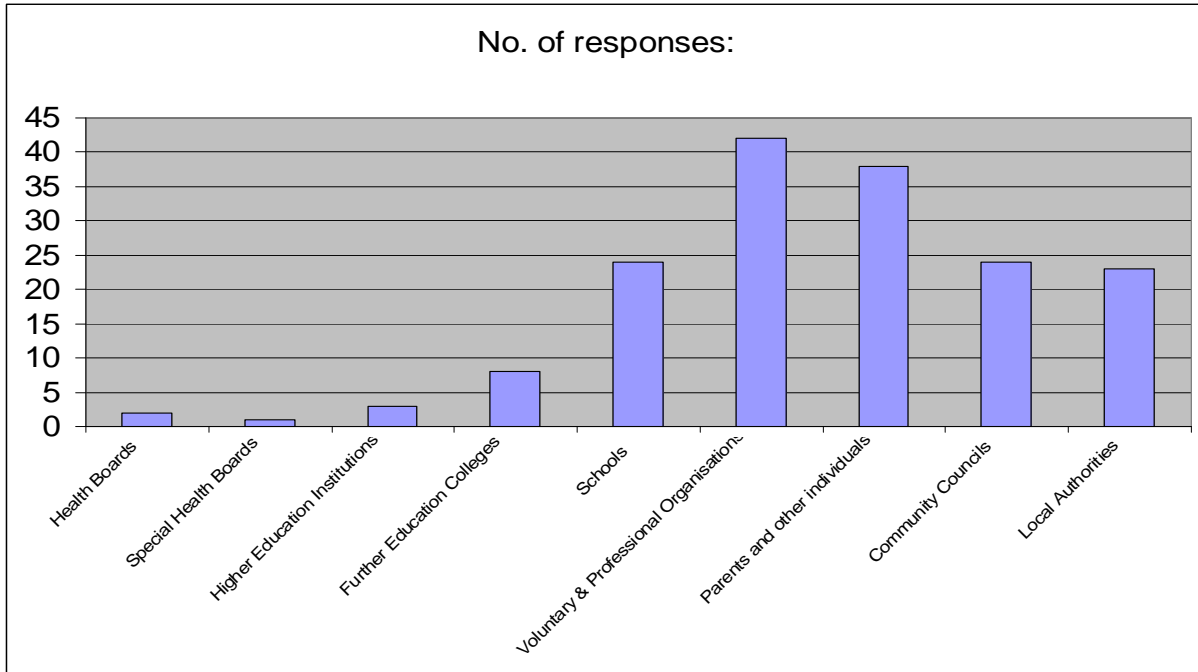
### **What Happens Next?**

77. After introduction into the Scottish Parliament, the Bill passes through three Parliamentary Stages. The Education, Lifelong Learning and Culture Committee will scrutinise the proposals in the Bill and may invite individuals and organisations wishing to submit their views to give evidence. Other Committees in Parliament can also comment on the Bill to the lead Committee. The Education, Lifelong Learning and Culture Committee will then report to the full Parliament on the general principals of the Bill and the adequacy of the consultation process. A debate will also take place in the Parliament. This is known as Stage 1 of the Bill. If the Parliament agrees to the principals of the legislation, Stage 2 proceeds with the lead Committee considering separately each and every section and schedule of the Bill. Amendments to any part of the Bill can be put forward by members of the Scottish Parliament (MSPs) and the Committee votes on whether to accept these or not. There is then another debate in the Scottish Parliament, known as Stage 3 of the Bill, when amendments can also be made, and the Parliament then votes whether to pass the Bill. If passed, the Bill will be incorporated into the 2004 Act once it receives Royal Assent. The supporting children's learning code of practice will also be amended to reflect the legislative developments as well as reflecting growing good practice and understanding of the 2004 Act.
78. However, that is not the end of the matter. The legislation has to be put into practice. It must be commenced (and different parts can be commenced at different times) and other secondary legislation must be considered by Parliament. The secondary legislation is the various regulations, orders and rules that the Bill provides for Scottish Ministers to make. These will set out in more detail the circumstances under which an ASNTS may review its decisions and the timescales within which authorities must carry out certain procedures relating to CSPs.

## Consultation Data

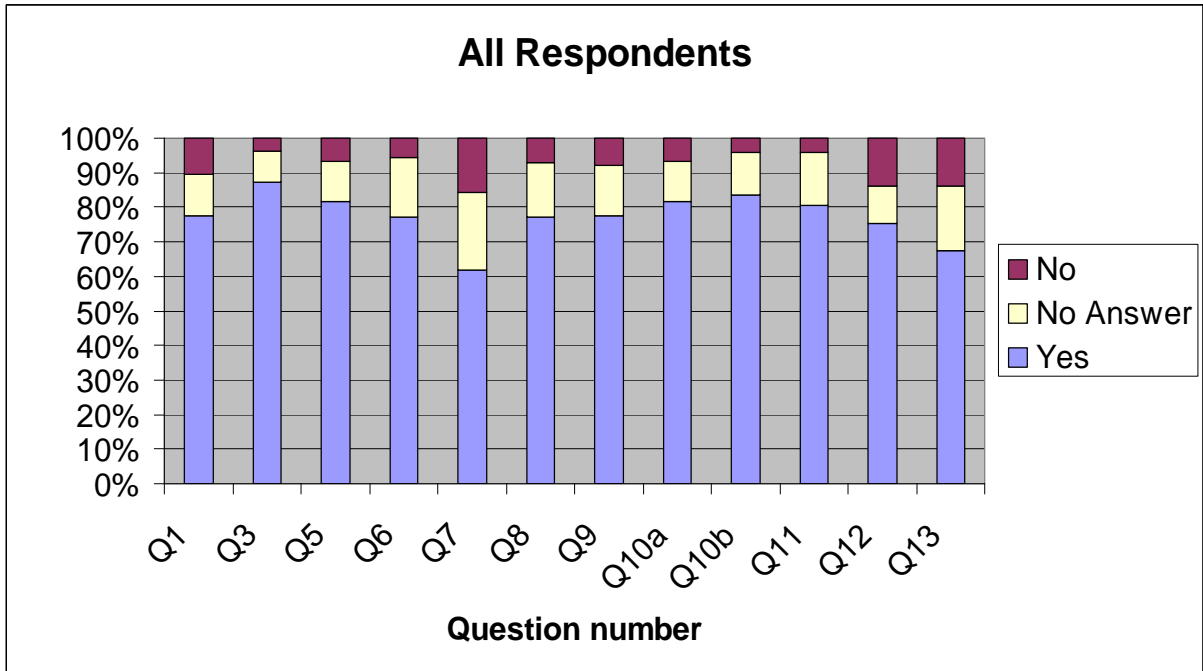
79. Question **Q2** and **Q4** asked respondents for free text answers relating to the responses given for **Q1** and **Q3** respectively and made no specific proposals in their own right. They are not included in the following graphs.

### Total number of responses:

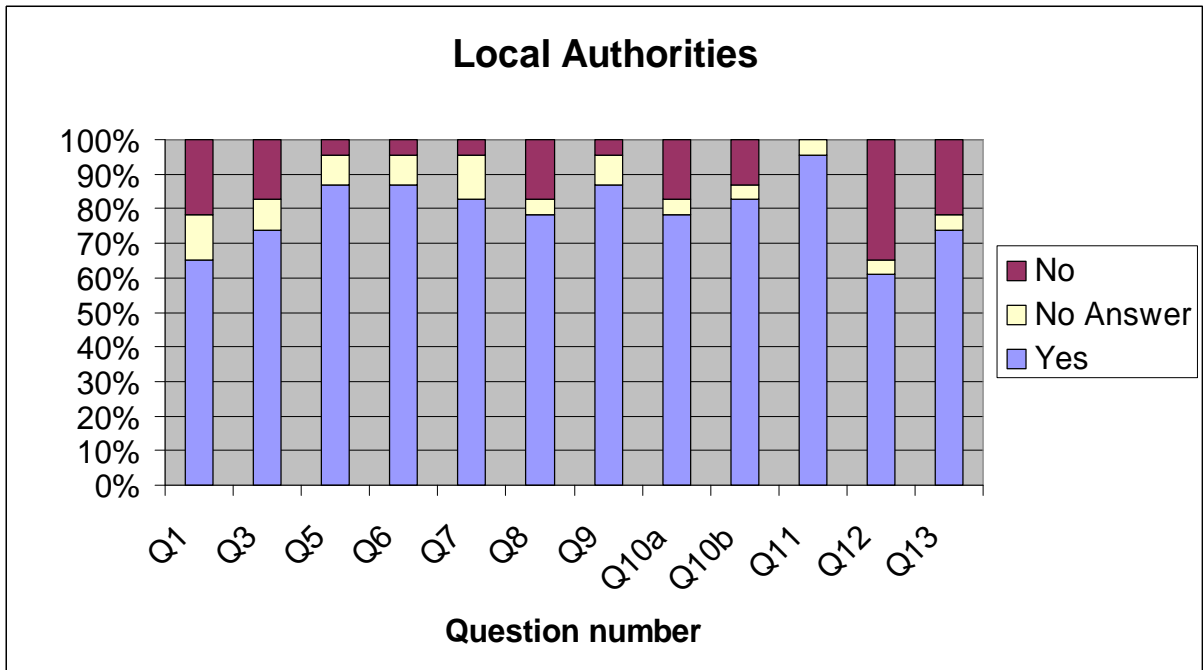




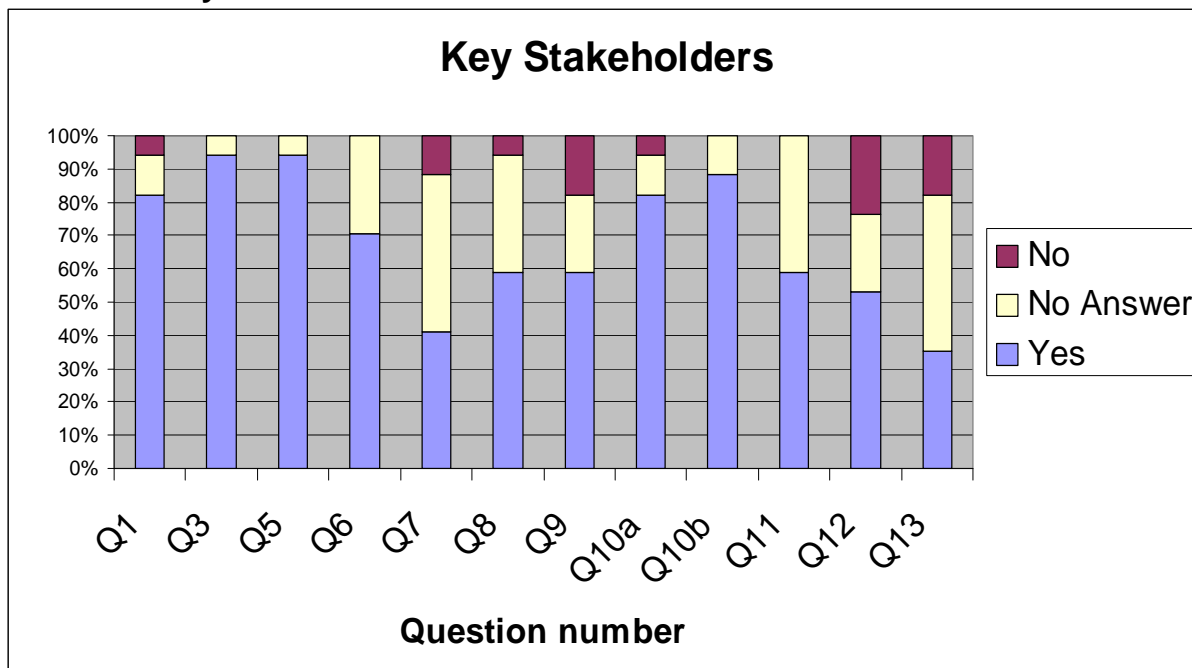
Data compiled from all respondents:



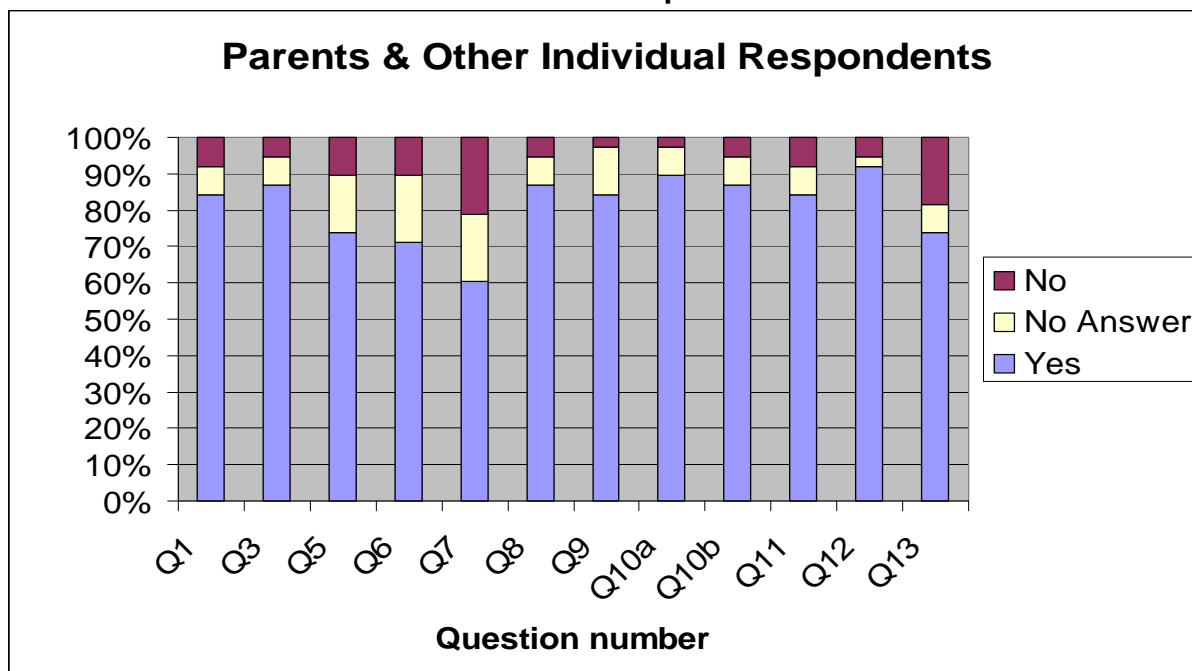
Data from Local Authorities only:



**Data from Key Stakeholders\* :**



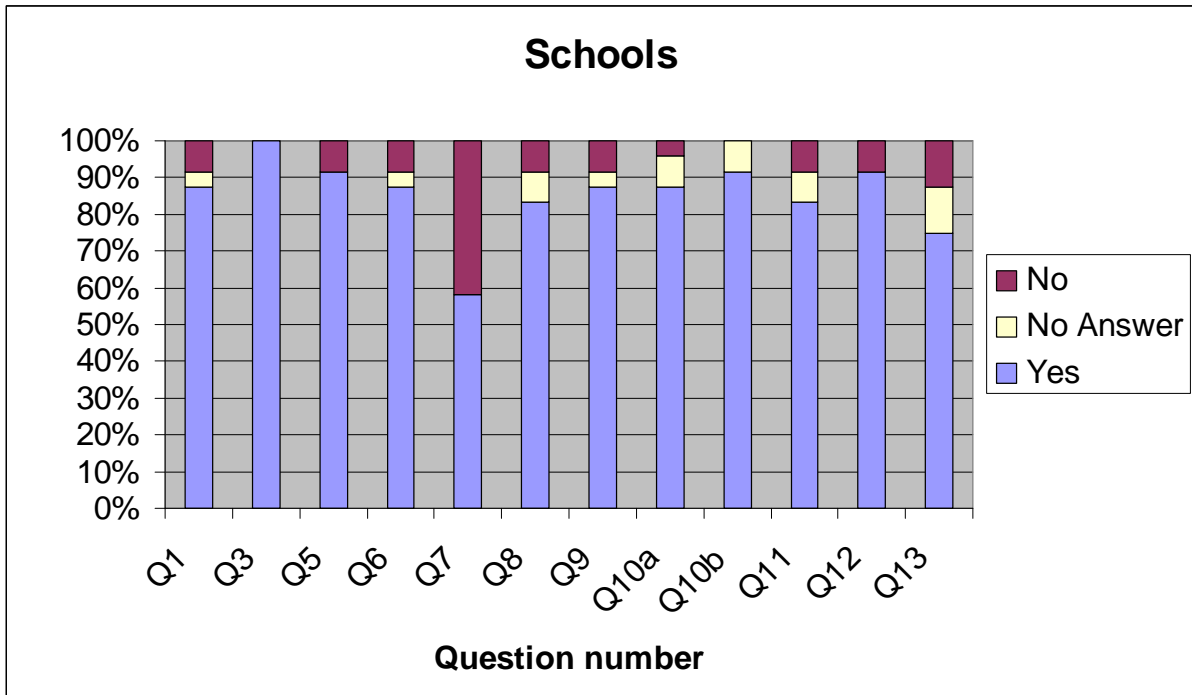
**Data from Parents and Other Individual Respondents:**



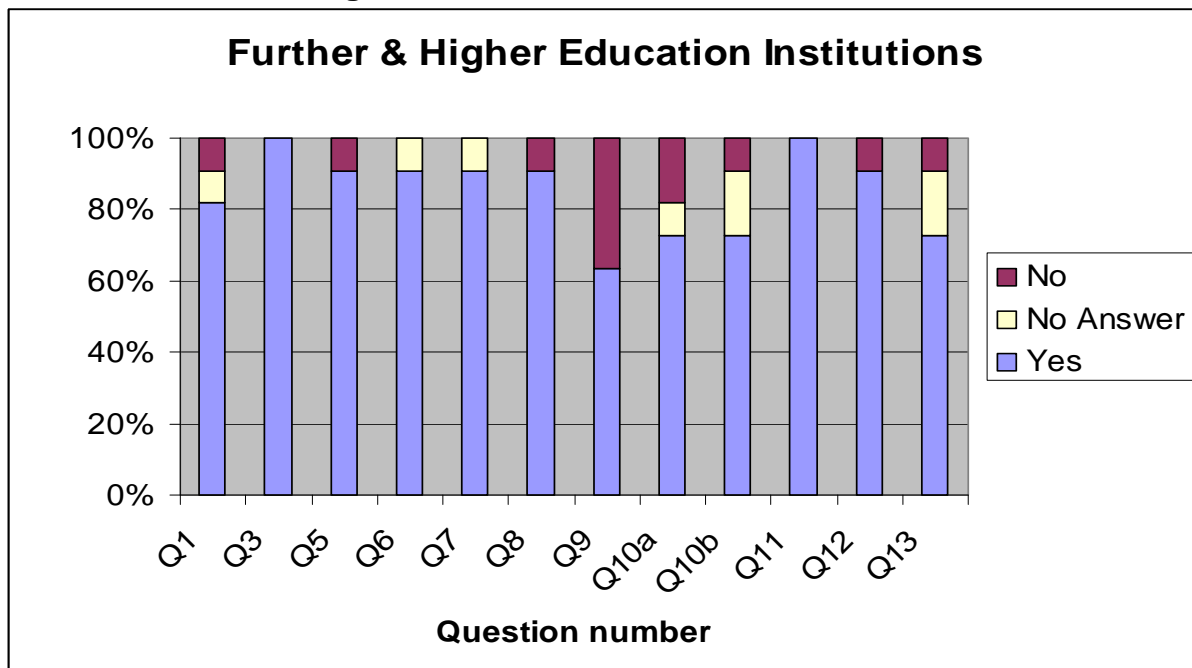
\*The Key Stakeholders group has been compiled from the responses of voluntary organisations, professional organisations and non-departmental public bodies with a direct interest in education or additional support needs and have been selected in order to cover as wide a spectrum of expertise as possible while avoiding over emphasis on any one specific specialist area. While there were other responses which have been highly instructive, it has not been possible to included these responses in the statistical analysis due to the fact that they did not provide a definitive answer to the consultation question and were more general in nature.

The responses included in this group are from: ADES, ADSW, EIS, the President of the ASNTS, Govan Law Centre, the Scottish Consumer Council, Scotland’s Commissioner for Children and Young People, ISEA, LTS, the National Autistic Society, the National Deaf Children’s Society, Down’s Syndrome Scotland, the Special Needs Information Point, the Scottish Traveller Education Programme, the Scottish Division of Educational Psychologists, the European Human Rights Committee and Barnardo’s Scotland.

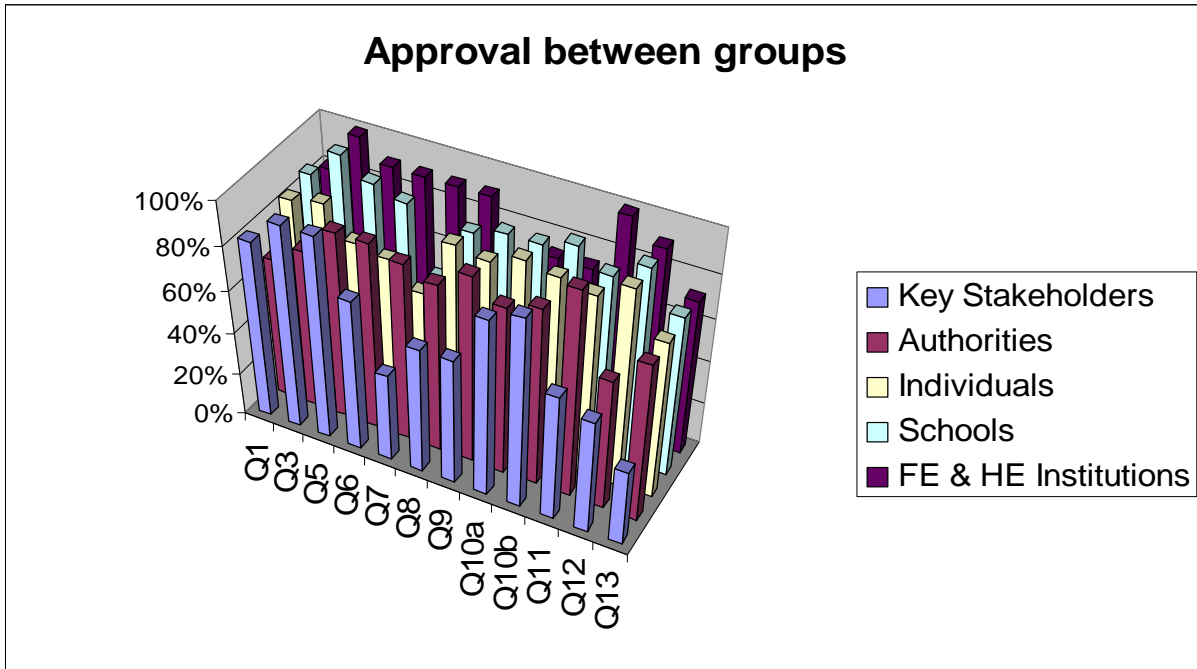
**Data from Schools:**



**Data from Further & Higher Education Institutions:**



**Percentage of 'Yes' Responses When Compared Between Various Groups:**



**Percentage of 'No' Responses When Compared Between Various Groups:**

