

# Auxiliary Aids for Children with Disabilities

## Consultation Response Form

The closing date for this consultation is: 5  
December 2011

Your comments must reach us by that date.

**THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the Department for Education e-consultation website (<http://www.education.gov.uk/consultations>).**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**Please tick if you want us to keep your response confidential.**

Reason for confidentiality:

Name	Martin Ward Public Affairs Director
Organisation	Association of School and College Leaders
Address:	130 Regent Road Leicester LE1 7PG

If your enquiry is related to the policy content of the consultation, please contact Mark Sands by telephoning 0207 7838269 or emailing [mark.sands@education.gsi.gov.uk](mailto:mark.sands@education.gsi.gov.uk)

If you have a query relating to the consultation process you can contact the CYPFD Team by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

Please mark the box which best describes you as a respondent.

<input type="checkbox"/> Local authority	<input type="checkbox"/> Maintained mainstream school	<input type="checkbox"/> Maintained special school
<input type="checkbox"/> Independent mainstream school	<input type="checkbox"/> Academy/Free school	<input type="checkbox"/> Independent/non-maintained special school
<input type="checkbox"/> Professional association/union	<input type="checkbox"/> Parent/Carer	<input checked="" type="checkbox"/> Other

Please Specify:

Professional association

The Association of School and College Leaders (ASCL) represents over 15,000 members of the leadership teams of maintained and independent schools and colleges throughout the UK. This places the association in a unique position to consider this issue from the viewpoint of the leaders of both secondary schools and colleges.

The Department is aware of concerns that some schools and local authorities may have about the implications of the new requirement, especially that it could create an unlimited obligation on them. However, noting what is said in this consultation document about the inter-relationship between the new duty and schools' and local authorities' existing duties under the SEN framework and the limits placed on the new duty by the reasonableness test, the Department believes that the new requirement should be commenced, and should take effect from 1 September 2012. This would coincide with the start of the next academic year and also with schools' funding cycles (both for independent and maintained schools).

1 a) Do you agree that the Government should commence the auxiliary aids requirement of the reasonable adjustments duty under the Equality Act 2010 (the "third requirement") in relation to schools and local authorities when exercising education functions?

Yes

No

Not Sure

Comments:

See 1b below.

1 b) If you answered "no" or "not sure" to question 1a, please state your reasons and, if appropriate, what steps you think could be taken to make commencement of the requirement acceptable.

Comments:

In essence it is hard to argue against this proposal, and ASCL would expect to support the commencement of this duty in due course. But the association is not convinced that the potential implications for schools (and colleges?) have been fully worked out:

A time of financial stringency likely to last throughout the present parliament presents a danger that the introduction of such a duty could destabilise the budgets of some institutions. The association does not accept the argument that there will be little or no financial impact because schools and local authorities are already providing all these aids. If that is true then there is in any case little point in introducing the duty.

It seems more likely that this will lead to an immediate increased demand on educational budgets. Some of the provision likely to be covered by this duty is at present made by different agencies. There is no indication that there will be a transfer of existing funding from those agencies to education budgets to enable schools and Local Authorities to take up the slack. Given that budgets are tight in every part of the public service it is likely that the other agencies will have other good uses to make of their budgets and will no longer offer support in this area, unbalancing the departmental budget allocations and diverting education funding into worthy but non-educational activity.

The number of syndromes, both those recognised by medical science and those defined by the behaviour of the pupil, even though not recognised by medical science, has increased in recent decades and seems likely to continue to do so, which means that there is likely to be a further and unquantified increase in the need for aids.

In practice the introduction of the duty is likely to raise expectations that cannot be met. The use of the term 'reasonable' begs the question 'reasonable to whom?' and there would be a need for very detailed guidance about what is to be regarded as reasonable in this context. Even such detailed guidance would inevitably leave grey areas; and there would undoubtedly be cases where the student or parent asserts that it would be reasonable to provide such an aid, very likely with good cause, whilst the school asserted that it is reasonable for it to refuse given an absence of funds to provide it, very likely also with good cause.

In such cases there will be a high likelihood of litigation, and the opportunity cost to schools has also to be considered at a time when many are reducing the

number of their senior staff able to argue such a case at a tribunal.

For these reasons it is not clear to ASCL that this duty should be introduced at all, when it might cause funds that could have been used to support young people to be diverted into litigation or to have an unpredictable impact on the total budget of some schools and colleges (it has to be remembered that some have much higher incidence of students potentially need of such support than others).

Assuming that the duty is to be commenced:

2 a) Do you agree that 1 September 2012 is an appropriate commencement date for the new auxiliary aids requirement?

Yes

No

Not Sure

Comments:

See our answer to 1b above. September 2012 is too soon.

2 b) If you answered "no" or "not sure" to question 2a and think that the commencement date should be earlier or later than 1 September 2012, please state when you think the commencement date should be and the reasons why having an earlier or later commencement date would be appropriate.

Comments:

See our answer to 1b above. September 2012 is too soon.

When responding to the following 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 in complying with the reasonable adjustments duty;
- descriptions of persons to whom the first, second or third requirement of the reasonable adjustments duty does not apply;
- circumstances in which it is, or in which it is not, reasonable for a person (such as a school or a 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.

3 The Equality and Human Rights Commission will be producing a statutory code of practice and guidance for schools which will include advice on what schools must have regard to in relation to operating the reasonable adjustments duty. If you think this is unlikely to be sufficient to address your concerns about understanding the implementation and operation of the new requirement, please tell us what more will be needed or are there matters that could usefully be prescribed in Regulations?

Comments:

With regard to these very sensitive and often emotionally charged matters it is very hard to frame regulation that is sufficiently detailed to make for a consistent use of the term 'reasonable' without creating a very lengthy document that will be a bureaucratic burden on schools, and that will not then be subject intensive textual analysis by interested parties and the basis for many contested cases.

The EHRC has the dual role of being a source of advice and a vanguard campaigning organisation. In the circumstances it would hardly be surprising, and it would indeed be admirable, for it to propose 'gold standard' provision. However, such advice could not be seen as constituting the established legal meaning of 'reasonable' in a professional context, which refers to the band of standard, normal practice within a profession, not the very best practice.

ASCL would prefer to see the proposed guidance, and to have it operating in a non-statutory context for a period, before a decision is made about whether and when to introduce the statutory duty.

4 The Department is aware that there is a cohort of children who are disabled but do not have SEN, or who might require reasonable adjustments unrelated to their SEN. However, we are not clear on exactly what additional auxiliary aids and services these disabled children might require other than those that a school might currently be providing, either simply through "common sense" adjustments, or through SEN provision (including School Action, School Action Plus and statements).

We would therefore welcome any specific information that can be provided about the circumstances, and number, of children who might currently be missing out on the provision of auxiliary aids and services because of the current absence of the auxiliary aids requirement on schools and local authorities exercising their education functions.

Comments:

5 If you have any further comments or suggestions, please enter them here.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

**Please acknowledge this reply ✓**

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

✓ Yes  No

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator, tel: 01928 738060 / email: [carole.edge@education.gsi.gov.uk](mailto:carole.edge@education.gsi.gov.uk)

**Thank you for taking time to respond to this consultation.**

Completed questionnaires and other responses should be sent to the address shown below by 5 December 2011

Send by e-mail to: [AuxiliaryAids.CONULTATION@education.gsi.gov.uk](mailto:AuxiliaryAids.CONULTATION@education.gsi.gov.uk)

Send by post to: Mark Sands, Department for Education, Special Educational Needs and Disability Division, 1st Floor, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT.