

Specifications on Reasonable Adjustments

Consultation on:

- Ofqual's specifications under Section 96 of the Equality Act 2010
- Qualifications covered by Ofqual's specifications
- Indicating exemptions on certificates



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1 Introduction

1.1 Scope of this consultation

Awarding organisations have a duty, under the Equality Act 2010 ('the Equality Act'), to make reasonable adjustments for disabled students. Each year many adjustments are made to the way disabled students take their assessments, to remove or reduce the disadvantage they would otherwise experience. The Act gives Ofqual the power to limit the extent of the duty on awarding organisations to make reasonable adjustments, for specified general qualifications in England.

We have been given this power so we can make sure that reasonable adjustments do not:

- prevent a qualification giving a reliable indication of a student's knowledge, skills and understanding; or
- damage public confidence in a qualification.

We use this power by making 'specifications'. These prohibit or limit the extent to which awarding organisations must make or allow reasonable adjustments to some qualifications. In 2011, we made eight specifications¹ which are listed in appendix 1. The list of qualifications to which they apply is in appendix 3. We committed to keeping these specifications under review and are now seeking views on proposed amendments and additions to them.

In addition to the specifications themselves, we are also seeking views on the qualifications our specifications apply to and how awarding organisations indicate an exemption on students' certificates.

1.2 Summary of our proposals

We have reviewed our current specifications and propose, with some amendments, to retain all of them. Feedback suggests they are appropriate, although some could be worded more clearly. The amendments we propose are to make the specifications clearer. As amended, these can be summarised as follows:

- restricting the use of exemptions, so that:
 - exemptions are only permitted where no other reasonable adjustment is available;

¹ <https://www.gov.uk/government/publications/specifications-in-relation-to-the-reasonable-adjustment-of-general-qualifications>

- no more than 40 percent of a qualification can be exempted;
- provision is made for qualifications that include separately reported results;
- exemptions can only be granted where no part of a component of an assessment is accessible to a disabled student;
- prohibiting adjustments to grade boundaries or to the allocation of marks as a reasonable adjustment;
- restricting the use of:
 - human readers and electronic readers;
 - human scribes, speech recognition systems and other aids;
 - practical assistants;

so that students are only rewarded for skills that are being assessed where they have performed these skills themselves, not where these have been performed on their behalf;

- restricting the use of British Sign Language and other alternative languages as a reasonable adjustment in an assessment where a different target language is being assessed.

In addition, we propose to introduce a new specification to:

- restrict access to texts and other materials as a reasonable adjustment where access is not otherwise allowed for students taking the assessment.

There are three other areas covered in this consultation. These are:

- to recommend to DfE that the list of qualifications to which our specifications apply is updated. This list is owned by DfE, so Ofqual cannot change it, but we have included in our proposals the list of qualifications we will recommend to DfE that our specifications should apply to;
- to seek views on whether or not to specify to prohibit the use of Oral Language Modifiers (OLMs) as a reasonable adjustment;
- to set out our proposed approach to certificate indications where an exemption is used as a reasonable adjustment.

1.3 Geographic coverage

We are consulting on proposals that would apply to qualifications specified by the Secretary of State for Education, offered by awarding organisations in England. In Wales and Scotland, where the Equality Act also applies, the regulators of qualifications in those countries² determine the specifications that apply. Different legislation applies in Northern Ireland.

1.4 How to respond to this consultation

The closing date for responses is 31 July 2016.

You can respond to this consultation in one of three ways:

- Complete the online response at <https://www.surveygizmo.com/s3/2801750/Consultation-on-Specifications-on-Reasonable-Adjustments>.
- Email your response (using the form at the back of this document) to consultations@ofqual.gov.uk. Please include the consultation title Consultation on Specifications on Reasonable Adjustments in the subject line of the email and make clear who you are and in what capacity you are responding.
- Post your response (using the form at the back of this document) to Consultation on Specifications on Reasonable Adjustments, Ofqual, Spring Place, Coventry Business Park, Herald Avenue, Coventry, CV5 6UB, making clear who you are and in what capacity you are responding.

1.5 Evaluating the responses

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity. We will therefore only consider your response if you complete the information page.

A third party might evaluate the responses on our behalf. Any personal data (such as your name, address and any other identifying information) will be processed in accordance with the Data Protection Act 1998 and our standard terms and conditions.

We will publish the evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us that

² Qualifications Wales in Wales and the Scottish Qualifications Authority in Scotland.

you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

2 Background

2.1 Making adjustments to qualifications

Awarding organisations are required to design assessments to be as accessible as is possible. They must not include unnecessary barriers that would stop certain students taking them. Despite this, there may be occasions where it is not possible for an assessment to assess what it is intended to, and yet be accessible for all students. Awarding organisations therefore can (and do) sometimes make adjustments to assessments at the point of delivery and to the conditions under which the assessments are taken.

These adjustments are commonly referred to under the general term 'access arrangements'. This incorporates reasonable adjustments, which awarding organisations have a legal duty to make for disabled students, and other adjustments, which are sometimes made to enable students without a disability to access an assessment (such as to allow a student who has broken their arm to dictate their answers to a scribe).

2.1.1 Reasonable adjustments

A reasonable adjustment is a change that an awarding organisation can make, or allow, to the way a disabled student takes a qualification³. Awarding organisations make or allow these adjustments to remove or reduce a disadvantage that a disabled student faces, because of their disability, compared with a student who is not disabled.

A reasonable adjustment can be unique to an individual student, although certain types of reasonable adjustment are more commonly made. Some of the most frequently made reasonable adjustments include:

- extra time to complete an assessment, for example because of a specific learning difficulty that affects the speed at which a student can process information, or a sensory or physical impairment;

³ Awarding organisations have a legal obligation to make reasonable adjustments for disabled students who, because of their disability, would otherwise be at a substantial disadvantage when demonstrating their skills, knowledge and understanding in an assessment. Under section 20(3) of the Equality Act, where a provision, criterion or practice of an awarding organisation puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the awarding organisation is required to take such steps as it is reasonable to have to take to avoid the disadvantage.

- a scribe to write down a student's dictated answers, for example where an impairment has a substantial and long term adverse effect on the student's ability to write;
- providing an examination paper in an enlarged font, usually for a visually impaired student.

Other examples of reasonable adjustments which are commonly made include: supervised rest breaks; use of readers or computer readers; speech recognition technology; or the use of a word processor. There are many other types of adjustment that are made, depending on the needs of the individual student.

For those adjustments that are more commonly made, awarding organisations, through JCQ publish regulations for access arrangements and reasonable adjustments. These set out the types of reasonable adjustment available and the criteria used to assess whether a student should be given a particular adjustment. They also set out how a centre should apply for a reasonable adjustment for a disabled student, the evidence they should provide to support an application, and how the adjustment will be applied. Information about the JCQ's access arrangements are available on the JCQ website⁴.

Not all adjustments are considered reasonable in all cases. In deciding whether an adjustment is reasonable, an awarding organisation may take account of factors such as:

- the needs of the disabled student;
- the impact of the adjustment on the knowledge, skills and understanding being assessed;
- the cost and effectiveness of the adjustment; and
- the likely impact of the adjustment on the student and other students.

2.1.2 Access arrangements

Access arrangements is a broader term which encompasses reasonable adjustments. It also covers other provisions to remove or reduce any unfair

⁴ <http://www.jcq.org.uk/exams-office/access-arrangements-and-special-consideration>

disadvantage for students, caused by a temporary illness or injury, or because the student shares another protected characteristic⁵.

Examples of 'access arrangements' include:

- the use of a scribe by a student who has broken his or her arm. This would not be described as a reasonable adjustment because a broken arm is a temporary impairment, not a disability. Nevertheless, the student may need to dictate their answers to a scribe;
- the use of a bilingual dictionary in an exam for a student whose first language is not English, Irish or Welsh. This is not addressing a disadvantage caused by a disability, but may still be allowed;
- a mark adjustment made as part of special consideration for a student who might not have been able fully to demonstrate their knowledge, skills and understanding in an assessment. This could be for reasons such as illness, injury or a recent bereavement.

Our specifications, and therefore this consultation, only apply to reasonable adjustments for disabled students. They do not apply to the wider description of access arrangements.

2.2 Ofqual's duties and powers

Ofqual has a number of statutory duties and powers, including some which relate to equalities issues.

We have a duty under the Apprenticeships, Skills, Children and Learning Act 2009 to have regard to the reasonable requirements of relevant students, including those with special educational needs and certain disabilities. We are also subject, as a public body, to the public sector equality duty. This requires us to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

⁵ The protected characteristics under the Equality Act 2010 are: age; disability; gender reassignment; marriage and civil partnerships; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Under section 96 of the Equality Act, general qualifications bodies (otherwise known as awarding organisations or exam boards) have a duty to make reasonable adjustments for disabled students taking specified qualifications. They must also not discriminate, victimise or harass disabled students in relation to their arrangements for conferring qualifications.

The Equality Act gives Ofqual the power to specify circumstances in which the reasonable adjustments duty does not apply to awarding organisations. Ofqual can also specify matters where the duty to make reasonable adjustments does apply, but where certain specified adjustments should not be made, thereby limiting the extent of the duty on awarding organisations. This consultation concerns revisions that we propose to make to our specifications.

When we make specifications, the Equality Act sets out the factors that we must have regard to. These are:

- the need to minimise the extent to which disabled students are disadvantaged in attaining a qualification because of their disability;
- the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of the person it is awarded to; and
- the need to maintain public confidence in the qualification.

We set out our additional duties in relation to equalities issues in appendix 2.

2.3 Current position

We consulted on and published our existing specifications in 2011. The full list of our current specifications is on our website⁶ and is also set out at appendix 1. Our existing specifications:

- restrict the use of exemptions, whereby in limited circumstances a student can be exempt from a specific assessment and have their marks for the remaining assessments scaled up to determine their grade;
- prohibit adjustments to grade boundaries or pass marks as a reasonable adjustment;

⁶ <https://www.gov.uk/government/publications/specifications-in-relation-to-the-reasonable-adjustment-of-general-qualifications>

- prohibit the use of British Sign Language when assessing students' ability to speak or listen in English or a Modern Foreign Language;
- restrict the use of: human readers in assessments of reading ability; human scribes and voice recognition systems in assessments of writing ability; and practical assistants to carry out physical activities that are being assessed.

These apply in England to general qualifications specified by the Secretary of State for Education. They are typically qualifications such as GCSEs and A levels, plus other qualifications used by schools and colleges in a similar way. You can see the list of qualifications currently covered in appendix 3.

We committed to reviewing and updating our specifications as required. In doing so, we plan to take account of a number of changes since 2011:

- GCSEs and A levels now have all exam assessments at the end of the course instead of being taken throughout, and our specifications need to reflect this;
- AS level qualifications will cease to be part of A level qualifications. Our specifications for exemptions are based on the AS being part of the A level and we need to take account of this change;
- in GCSE(9-1)⁷ English language, the spoken language assessments are reported as a separate result on the certificate instead of forming part of the overall grade (and for the speaking and listening component in legacy GCSE English language and legacy GCSE English).
- A level science and geology practical assessments will be separately reported; and
- changes in technology could mean the way in which some reasonable adjustments are applied has changed.

⁷ GCSEs are being reformed. GCSEs that are first made available for teaching after September 2015 will use grades 9-1. Existing GCSEs, which are graded A*-G are being phased out. In this document, we refer to the existing A*-G GCSEs as 'legacy' GCSEs.

3 Proposals for updating the list of qualifications to which our specifications apply

We propose to recommend to the Department for Education (DfE) that it updates the existing list of qualifications to which our specifications apply. We propose that this is done alongside us revising our specifications, to make sure the specifications are appropriate to the list.

The qualifications we propose to recommend that our specifications should apply to are shown below. We have highlighted our proposed new additions in **bold**. All others are on the current list and we propose to recommend that they remain.

Advanced Extension Awards

Cambridge International Certificate

Cambridge IGCSE⁸

Cambridge Pre-University Qualification

Certificate in Adult Literacy

Certificate in Adult Numeracy

English for Speakers of Other Languages (ESOL)

Entry level certificates in GCSE subjects

Free Standing Mathematics Qualifications

Functional Skills

General Certificate of Education Advanced level (Advanced and Advanced Subsidiary levels) (AS and A level)

General Certificate of Secondary Education (GCSE and GCSE (9-1))

International Baccalaureate Diploma

International GCSEs (level 1/2 certificates)

Principal Learning

⁸ IGCSE is the registered trademark of Cambridge International Examinations

Project

The reason for recommending the additions to this list is that these qualifications are typically used by schools and colleges as alternatives to those on the existing list. Including them will help ensure there is a consistent approach to reasonable adjustments across qualifications that are used for similar purposes.

We propose to recommend that the following qualifications should be removed from the list as they are no longer listed on the Register⁹ as being offered in England:

- General National Vocational Qualifications;
- Key skills;
- Welsh Baccalaureate Qualification Core Certificate.

Whether or not the list is updated will be decided by the Secretary of State. These proposals are therefore a recommendation only. Whether or not the Secretary of State accepts our recommendation has no bearing on our proposed update of our specifications.

Question 1: To what extent do you agree or disagree that we should recommend to DfE that our specifications apply to the qualifications listed on page 12?

Question 2: Are there any changes to the list that you would recommend and, if so, why?

Our specifications do not apply to qualifications not on this list. Awarding organisations offering other (vocational) qualifications have a duty to make reasonable adjustments under section 53 of the Equality Act. The Act does not give Ofqual any powers to limit adjustments in respect of these other qualifications. Awarding organisations offering vocational qualifications do not always have to make an adjustment however, if that adjustment would affect a competence standard¹⁰ being applied¹¹.

⁹ Register of Regulated Qualifications <http://register.ofqual.gov.uk/>

¹⁰ Section 54(6) of the Equality Act says that a competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

¹¹ Under the Equality Act, applying a competence standard to a disabled person is not disability discrimination, provided the application of the standard is justified.

4 Proposals for amending our existing specifications

In this section, we set out our proposed amendments to our existing specifications. We propose to make the specifications clearer; we are not seeking to alter the substance of them. We set out each of our proposals below.

4.1 Exemptions

Current position

An exemption allows a disabled student to complete a qualification without taking certain assessments. The student's performance in the assessments they do take is considered to be their performance for the whole qualification. Their marks for these assessments are scaled up to determine their overall grade. The student's certificate indicates that the student did not take all of the assessments because those assessments were not accessible to the student. An exemption could be granted, for example, to a deaf student who cannot take a listening assessment in a modern foreign language qualification. A small number of exemptions are granted each year¹².

Exemptions are only allowed where no other reasonable adjustment is available to the student. A student cannot be exempted from more than 40 per cent of the available (weighted) marks for a qualification and can only be exempted from whole components.

Proposals

4.1.1 Exemptions as a last resort

We propose to continue to restrict the use of exemptions to only allow them as a last resort. Where possible, alternative adjustments should be made so that students have the opportunity to demonstrate what they can do. We propose to only allow an exemption where there is no alternative reasonable adjustment. Although we don't plan to change the meaning of this specification, we think the way it is worded could

¹² We collect and publish data on the number of reasonable adjustments made in GCSEs, AS and A levels. Awarding organisations do not report exemptions separately – they are categorised under the 'other' category of reasonable adjustments. In 2014/15 there were 350 approved requests for reasonable adjustments in this category for GCSE and 100 approvals at A level. Exemptions represent part, but not all of this category.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473151/access-arrangements-for-gcse-and-a-level-2014-15-_academic_je....pdf

be clearer. So we propose the following, to make it clearer in what circumstances an exemption is not permitted¹³.

A - An exemption must not be used as a reasonable adjustment except where no other reasonable adjustment would avoid the substantial disadvantage faced by a Learner in demonstrating the knowledge, skills and understanding being assessed.

Example 1

If a student with a hearing impairment cannot access any part of the listening assessment in a modern foreign language qualification, worth 20 per cent of the overall qualification marks, they could request and be granted an exemption from this part of the assessment. The student would complete the other parts of the assessment as normal, and be awarded an overall mark based on their performance in the other parts of the assessment.

Example 2

A student taking a written exam has a disability which means they can only hand-write very slowly. However, typing on a laptop allows them to produce written work at a normal speed. As a result, an exemption is unlikely to be appropriate. This is because there are other reasonable adjustments that could be made which would help to minimise the disadvantage faced, such as allowing the student to use a laptop in the exam.

Question 3: To what extent do you agree or disagree that exemptions should only be allowed where no other reasonable adjustment is available?

4.1.2 Limiting the amount of a qualification that can be exempted

We propose to continue to limit the maximum amount of a qualification from which a disabled student can be exempted. This limit will be expressed as a percentage of the total (weighted¹⁴) marks for the qualification. Allowing students to be exempted

¹³ Where a term is defined in the General Conditions of Recognition, we use that term in our specifications. Where we use a defined term, it will have a capitalised first letter and the meaning should be taken to be the same as that which is in the General Conditions. This is the case for the word Learner in specification A below.

¹⁴ We refer to weighted marks to take account of assessments which have different number of marks, but which are weighted to reflect the contribution they make to the overall mark for the qualification. For example, four assessments could have different numbers of marks in each, but be weighted so that each assessment contributes 25% towards the overall qualification mark.

from part of the qualification means that, as far as is possible, students who cannot access part of a qualification are not disadvantaged as a result of their disability. Limiting the percentage of a qualification from which a student can be exempted means an awarding organisation has sufficient evidence on which to base its assessment of the student's knowledge, skills and understanding.

We propose to retain the existing limit of 40 per cent of the total (weighted) qualification marks for which an exemption can be given. This strikes a balance between the need to secure that the qualification provides a reliable indication of the student's knowledge, skills and understanding; maintaining public confidence in the qualification; and minimising the extent to which a disabled student is disadvantaged in attaining the qualification because of their disability.

Principal learning

Our specification currently specifies separately how to calculate the 40 per cent maximum for Principal Learning¹⁵. We propose no longer to specifically refer to Principal Learning. This is because the way Principal Learning is used has changed since we made our specifications in 2011¹⁶. We do not make such explicit requirements for other similar qualifications. It will be for awarding organisations to ensure they do not grant an exemption for more than 40 per cent of any qualification covered by our specifications.

A levels

Our existing specification requires that at A level, at least one A2 unit must be completed for an exemption to be allowed. For reformed A levels¹⁷, AS qualifications will not be a component of A levels - they will be separate stand-alone qualifications - and A levels will not be unitised. We therefore propose to remove this requirement for reformed A levels, as it will no longer be relevant.

¹⁵ Principal learning is a qualification that was originally taken as part of the Diploma, but is now a standalone qualification. It is available in a range of sectors (for example engineering) and is taken through a combination of examined units and centre-marked assessments. It is intended to provide learners with the knowledge, skills and understanding essential to the sector(s) covered and enables them to focus on specific topics within the sector they are studying and to apply their understanding in practice.

¹⁶ For Principal Learning 40 per cent of the qualification refers to 40 per cent of the guided learning hours. This requirement reflected the role of Principal Learning in the Diploma, for which a minimum number of guided learning hours was required in order to be awarded the qualification. Therefore it was necessary to specify the percentage in terms of guided learning hours to ensure that the requirements of the Diploma had been met. Principal Learning is no longer taken as part of the Diploma; it is taken as a standalone qualification, so it is not necessary to specify in this way. It will be for awarding organisations to determine what constitutes 40 per cent of the qualification as they do with the other qualifications covered by our specifications.

¹⁷ Those that are available for first teaching in September 2015, 2016 or 2017

Whilst new A levels are being phased in, existing (legacy¹⁸) A levels in subjects for which reformed qualifications have not yet been introduced, comprising of both AS and A2 units, will still be available. For legacy A levels, we propose that our existing specification, requiring at least one A2 unit to be completed, should continue to apply. This will be the case until such time as all the legacy qualifications have been replaced.

4.1.3 Qualifications with separately reported results

Some new GCSEs and A levels will have assessments which will be reported separately on students' certificates from the grade for their written exams. Although students will have to complete these assessments, their mark for them will not be combined with the mark for their written assessment to calculate one overall grade. The certificate will indicate separately how the student performed in these assessments. This will be the case in:

- GCSE(9-1) English language qualifications for the spoken language assessment;
- A level biology, physics and chemistry for the practical science assessment;
- A level geology for the practical skills assessment.

It is possible that in these subjects, some disabled students may request a reasonable adjustment to access these separately reported assessments. If no reasonable adjustment is available, the student may apply for an exemption. We propose to set specific requirements in these subjects, to take account of these separately reported results.

Background

GCSE (9-1) English Language¹⁹

Students must complete a spoken language assessment which requires students to:

- demonstrate presentation skills in a formal setting;
- listen and respond appropriately to spoken language, including to questions and feedback to presentations; and
- use spoken standard English effectively in speeches and presentations.

¹⁸ Those that were available for first teaching before September 2015.

¹⁹ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-english-language>

This assessment is a single assessment taken at the student's school or college ('centre'). The centre must provide a statement to the exam board confirming that the student has completed the assessment. The student will be awarded either a Pass, Merit or Distinction for this assessment if they meet the relevant criteria. Students who do not meet the criteria, or who do not take the spoken language assessment (other than because an exemption is granted because of a disability) get a 'not classified' result.

A level science²⁰ (biology, physics, chemistry) and A level geology²¹

These subjects require students to undertake at least 12 practical activities throughout their course of study. These activities must provide each student with the opportunity to use a range of apparatus and techniques, which are common across exam boards for each subject. Centres must provide a statement to the exam board to confirm that the student has undertaken these activities. Students are also asked questions about practical work in the written exams.

At the end of the course, students are assessed on whether they are competent in a range of common skills, based on the activities they have completed. Students that are judged competent are awarded a Pass. This is indicated on their certificate, but reported separately, and does not contribute to the student's grade for the written assessments. Students who do not meet the criteria, or who do not complete the assessments (other than because an exemption is granted because of a disability) get a 'not classified' result.

Proposal

Exemptions in GCSE(9-1) English and A level science subjects and geology

Disabled students may require a reasonable adjustment for any part of the assessment. This could include the spoken language assessment and the practical science/skills assessments. As with all other qualifications, if this is reasonable, and not prohibited by our specifications, it is likely to be allowed. If there is no reasonable adjustment that would allow the student to attempt the assessment, so the student cannot attempt the assessment at all, because of their disability, the student may request an exemption.

Given the nature of the skills being assessed in the spoken language and practical science/skills assessments, it is more likely that an exemption would be requested from these than from the written assessments. Other reasonable adjustments are

²⁰ <https://www.gov.uk/government/publications/gce-subject-level-conditions-and-requirements-for-science>

²¹ We have recently consulted on requirements for A level geology –

<https://www.gov.uk/government/consultations/as-and-a-level-reform-regulations-for-geology>

likely to be available to allow students to access the written assessments, such as a scribe or additional time.

As the spoken language and practical skills assessments do not count towards the calculation of the grade given for the written part of the qualification we cannot quantify the percentage of the marks the spoken language and practical skills assessments contribute to the overall qualification. Our existing specification, which does not allow an exemption for more than 40% of a qualification, cannot therefore be applied. It is possible (although we believe it would be unlikely) that a student could request an exemption from the separately reported component *and* one or more of the written papers. We do not think it would be appropriate for a student to have an exemption from both the spoken language or practical assessment and one of the written papers, as this would mean a significant part of the qualification had not been assessed. The qualification would not, therefore, give a reliable indication of a student's knowledge, skills and understanding.

To prevent this, we propose that a student who is exempted from either the spoken language assessment in a GCSE(9-1) English language qualification, or the practical science/skills assessment in an A level biology, chemistry, physics or geology qualification, should not be allowed an exemption from any other component of that qualification. We do not believe such a restriction would affect any students who are likely to take the qualifications, however, we would welcome views on this.

We recognise that previously, students could have been exempted from a 20 per cent speaking and listening assessment in GCSE English language *and* another component worth 20 per cent. In relation to the new GCSE(9-1) English language qualification, these students will now only be able to be exempted from the one spoken language assessment. The same applies to A level qualifications in biology, chemistry, physics and geology, in which students could previously be exempted from the practical assessment (which could be worth between 20-30% of the marks for the qualification) as well as another component of between 10-20%. Students will now only be able to be exempted from the practical science assessment. We are not aware of any students for which such exemptions have been given.

In practice, we do not believe our proposal would have a negative impact on disabled students. Students do not typically request an exemption from the written components as other reasonable adjustments (such as a scribe or additional time) are available. In addition, exemptions are only allowed from whole components, making it unlikely that a student could be exempted from a practical component in addition to any others, whilst still meeting the requirements of our specifications. We have included this in our equality impact assessment however (see section 9), and would welcome any views.

Our proposed specification limiting the maximum amount of a qualification from which a student can be exempted is set out below.

B - An exemption must not be used as a reasonable adjustment where it would form more than 40 per cent of the available (weighted) marks of a qualification. In addition –

- (i) In respect of a legacy²² GCE qualification, a reasonable adjustment must not be made where this would mean that a Learner does not complete at least one A2 unit.
- (ii) In respect of a GCSE qualification (9-1) in English language, a Learner who has been granted an exemption from the spoken language assessment must not be granted any other exemption.
- (iii) In respect of a GCE A level qualification in biology, chemistry or physics, a Learner who has been granted an exemption from the practical science assessment must not be granted any other exemption.
- (iv) In respect of a GCE A level qualification in geology, a Learner who has been granted an exemption from the practical skills assessment must not be granted any other exemption.

Example 3

For a qualification that comprises two assessments – Assessment A worth 40 per cent of the total marks for the qualification and Assessment B worth 60 per cent of the total marks for the qualification – a disabled student could apply for, and be granted, an exemption from the whole of assessment A. The student could not apply to be exempted from Assessment B as this represents more than 40 per cent of the total qualification marks.

Example 4

If a disabled student taking a GCSE (9-1) qualification in English language could not access the spoken language component the student could apply for, and be granted, an exemption from this component. As the student has been exempted from the spoken language component, the student would not be allowed to be exempted from any other part of the qualification.

²² Available for first teaching prior to September 2015

Question 4: To what extent do you agree or disagree that exemptions should not be permitted where they would form more than 40 per cent of the total (weighted) marks for the qualification?

Question 5: To what extent do you agree or disagree that for GCSE (9-1) English language, where an exemption applies for the spoken language component, no other exemption may apply?

Question 6: To what extent do you agree or disagree that for A level science subjects and A level geology, where an exemption applies for the practical component, no other exemption may apply?

Question 7: Are there any other subjects for which we should make specific provisions?

Question 8: Are there any factors we have not set out here that we should consider to ensure that students are not unfairly advantaged or disadvantaged by our proposed approach to exemptions in qualifications with separately reported results?

4.1.4 Prohibiting exemptions from part-components

We propose to continue to prohibit exemptions from parts of components. We will only allow exemptions from whole components to help ensure fairness and consistency of approach. If exemptions were allowed from parts of components, awarding organisations may need complex processes which could be difficult to administer and could place the quality control and standardisation of awarding at risk.

In particular, in subjects with separately reported results (GCSE(9-1) English language and A level science subjects and geology), we propose that where an exemption is granted from a component with a separately reported result, the exemption must be for the whole of that component, not part of it. Where other reasonable adjustments would allow the student to access parts of these components, an exemption should not be permitted, and the student should complete those parts of the assessment they are able to.

We propose to retain our existing specification.

C - An exemption to part of a Component must not be used as a reasonable adjustment. Exemptions must only be provided for whole Components where a Learner can access no part of that Component.

Example 5

A component of a history exam requires an extended written response to assess a student's knowledge and understanding of the subject. In addition, the exam also allocates a small number of marks for the quality of the student's spelling, punctuation and grammar. A disabled student who has difficulty with spelling and/or grammar and punctuation cannot be exempted from the component as the student would still be able to access the marks for the subject knowledge. It is only the marks allocated to the specific spelling, punctuation and grammar skills which the student might be unable to access.

Example 6

A student with a hearing impairment is not able to access any part of the listening component for a modern foreign language assessment. As the student is not able to access any of the marks for this component, then providing the component was not worth more than 40 per cent of the marks for the overall qualification, the student would be eligible to apply for an exemption.

Question 9: To what extent do you agree or disagree that exemptions should only be permitted for a whole component and only where a student can access no part of that component?

Certificate indications

Although not part of our specifications, we also believe that where an exemption has been granted, this should be indicated on the student's certificate. This is in line with what happens currently. We set out our proposals for certificate indications in section 8.

4.2 Changes to grade boundaries and pass marks

Current position

A grade boundary or pass mark is the score that a student needs to achieve to be awarded a particular grade or to pass an assessment. Awarding organisations apply boundaries or marks consistently to all students taking a particular assessment, so that all students achieving a particular mark get the same grade. Awarding organisations make no distinction between disabled or non-disabled students when determining grade boundaries.

Proposal

We propose to continue to prohibit changes to grade boundaries and pass marks as a reasonable adjustment. It is important for qualifications to give a reliable indication of a student's knowledge, skills and understanding. Allowing changes to the standard of the qualification for disabled students would risk undermining the value of their qualifications.

In addition, we propose that this prohibition applies to making changes to the number of marks awarded for particular aspects of knowledge, skills and understanding. This means that where a student has taken an assessment (i.e. the student has not been granted an exemption) awarding organisations can only award marks for knowledge, skills and understanding the student has demonstrated. An awarding organisation cannot give marks for skills or knowledge the student has not shown (for example spelling, punctuation or grammar). This would risk undermining the value of their qualifications and could provide a misleading indication of the student's skills.

We recognise that awarding organisations sometimes make small adjustments to marks as part of their special consideration²³ arrangements. While such changes would be prohibited by our proposed specification where it is used as a reasonable adjustment, they will continue to be allowed as special consideration. This is an important distinction. Special consideration reflects a temporary difficulty that a student has: because of an event outside of their control, the student could not at the time of the assessment demonstrate their knowledge and skills to the standard they would otherwise have shown. By contrast, a reasonable adjustment is intended to prevent a student being disadvantaged as a result of a disability, and to allow them to demonstrate their knowledge, skills and understanding, as far as is possible, through their normal way of working.

Our proposed specification is below.

D- Awarding organisations must not make reasonable adjustments in relation to grade boundaries, pass marks (also known as 'cut scores'), or marks awarded for particular aspects of knowledge, skills and understanding save where those marks are awarded as a result of an exemption from a whole component.

Example 7

²³ As an example, for GCSEs and A levels, the maximum adjustment (as set out by JCQ) is 5 per cent which is reserved for the most severe instances in which a student's performance in an assessment is likely to have been affected by a serious matter outside of their control such as the very recent death of an immediate family member or the student's own terminal illness.

Where the A/B grade boundary is 70 per cent of the available marks, both a disabled student and a non-disabled student that score 69 marks must be awarded a grade B.

Question 10: To what extent do you agree or disagree with our proposal that changes to grade boundaries or marks should not be permitted as a reasonable adjustment?

4.3 Readers

Current position

A reader is a person or electronic device that can read the instructions of the question paper and the questions to the student. A reader cannot decode or interpret the paper. A reader may be used, for example, by a student with a visual impairment who is unable to read the words for themselves and does not use Braille. Using a reader can allow a student to demonstrate their knowledge, skills and understanding therefore making the qualification accessible to them.

Our current specifications prohibit a human reader where a student's reading ability is being assessed. A human reader can be used where this would not compromise the knowledge, skills and understanding being assessed.

We do not prohibit electronic readers where reading is being assessed. We make this distinction because human readers may provide additional meaning, even where they do not depart from or elaborate on the text of the instructions or questions, for example through the tone of their voice. This could help a student's comprehension of what is being read and affect whether the qualification gives a reliable indication of their knowledge, skills and understanding. An electronic reader does not provide this same level of vocal interpretation. Our existing specification would also prohibit a student who is a lip reader from lip reading in assessments where reading is being assessed.

Proposal

We propose to retain our current restrictions on readers. We will re-word the specification to make it clear that the restriction on the use of a reader applies only when reading ability is being assessed and where its use would compromise this assessment; it is not a blanket ban. Wording our specification in this way will remove the need to distinguish between machine and human readers; the specification will be about how it is used, not the type of reader being used. Whilst this will make the specification clearer, we do not expect it to affect how it is applied in practice. The distinction that was previously made between machine and human readers is still

likely to be relevant in an awarding organisation's consideration of whether a reader would prevent the awarding organisation from being able to assess the student's reading ability.

Under this proposal, it would continue to be prohibited, under the application of this specification, for a student to lip read where their reading ability is being assessed. The speaker may provide visual cues to a student that a computer or machine reader would not. If a student was not able to use a computer or machine reader where their reading ability is being assessed, they may request an exemption.

Our proposed specification is below.

E - Where an assessment seeks to test a Learner's reading ability, a reader must not be used as a reasonable adjustment where such use would prevent the awarding organisation from assessing the Learner's demonstration of that ability.

Example 8

In a modern foreign language assessment, designed to assess a student's reading skills in the language being assessed, a human reader should not be used. This is because the human reader could help the student to understand the text, even if the student could not read it themselves, for example through facial expressions. This could prevent the awarding organisation from being able to assess the student's reading ability. In this instance, alternative reasonable adjustments such as a computer or machine reader could be used instead because this would not provide the additional meaning that a human reader might.

Example 9

In a science assessment where a student has to read an account of an experiment and answer questions about what happened, which is designed to assess the student's knowledge of what happened rather than their ability to read, a human or electronic reader could be used to read the text to the student and the student would be able to access all the available marks.

Question 11: To what extent do you agree or disagree that we should continue to prohibit the use of readers where a student's reading ability is being assessed?

4.4 Scribes/voice recognition systems

Current position

A scribe is a person who writes down or word-processes a student's dictated answers. A voice recognition system is software which does this electronically. We currently prohibit the use of human scribes and voice recognition systems where they would mean a student being rewarded for skills the student had not demonstrated themselves.

We do not prohibit scribes or voice recognition systems altogether. They may be permitted if they do not have an impact on the student's ability to demonstrate the knowledge, skills and understanding being measured. They may also be used in assessments that measure these skills (for example spelling or punctuation), but with students not able to access those marks if the student has not demonstrated the skills themselves.

Proposal

We propose to refer in our amended specification to speech recognition, rather than voice recognition. This will make the terminology more accurate, because this type of software is intended to recognise the words being said as opposed to the way they are being said.

We propose to re-word our current specification to make it clearer that students who use a scribe or speech recognition system cannot gain marks for skills they have not demonstrated. If marks in an assessment are allocated for correct spelling, punctuation or grammar, those marks must not be available to students who have not demonstrated those skills themselves.

We propose that the specification should allow for a student to access marks for spelling and/or punctuation when using a scribe, if the student dictates the words in their answer letter by letter, and/or dictates the punctuation. The specification would not stop a student being able to access the marks for correct use of grammar as it would be the student's grammar that would be shown in a dictated answer.

Likewise, if a speech recognition system was used in a way that would ensure it was the student's use of punctuation and grammar that was being assessed, the specification would not prohibit the student accessing the marks for those aspects of the assessment. Speech recognition systems however, spell the words dictated, so marks for spelling would not be available to students using such systems.

Our proposed specification is below:

F - A human scribe, speech recognition system or other writing aid must not be used as a reasonable adjustment to allow a Learner to access marks in relation to any aspect of written communication save where the Learner

demonstrates the relevant knowledge, skills and understanding in the assessment him or herself.

Example 10

A disabled student is not able to write their answers in a written exam themselves. The exam awards marks for the quality of the student's spelling, punctuation and grammar. The student could:

- use a human scribe, speech recognition system or other aid and dictate their answers. In this case the student would be able to access marks for the skills they had performed, but not for those that were performed by the scribe or speech recognition system (such as spelling);
- use a human scribe, but dictate the spelling of words letter by letter and the punctuation and grammar. In this scenario, the student could still be rewarded for these skills as they had demonstrated these. This could be used in combination with additional time as it would take longer for the student to spell out each word.

Question 12: To what extent do you agree or disagree that we should prohibit the use of a human scribe, speech recognition system or other writing aid where a student's writing ability is being assessed and where this would prevent the student demonstrating that ability?

4.5 Alternative languages (e.g. British Sign Language)

Current position

A Sign Language Interpreter is a person who presents the questions in an assessment in sign language, without changing the meaning, adding additional information or explaining what the question requires. A Sign Language Interpreter can be used for hearing-impaired students for whom this is their normal way of working.

We currently prohibit British Sign Language (BSL) where students are required to demonstrate their ability to speak or listen in English or a Modern Foreign Language. This is because BSL is a language in its own right, so responding in BSL would alter what was being assessed.

Our specification applies specifically where the ability to speak or listen in English or a Modern Foreign Language is being assessed. This means it is not prohibited in all circumstances. Where the ability to communicate in the wider sense (as opposed

explicitly to speaking and listening in English or a Modern Foreign Language) is being assessed, BSL is not prohibited.

Proposal

We propose to amend our specification to prevent any alternative language being allowed as a reasonable adjustment, where specific skills in a language are being assessed. This will mean that in addition to BSL, other languages such as Irish Sign Language or alternative foreign sign languages would also be prohibited. We will not prohibit adjustments which do not alter the knowledge, skills and understanding being assessed. So, for example, a sign language interpreter may still be permitted, where communication as opposed to speaking in a particular language is being assessed.

Our specifications apply specifically to the use of alternative languages. So whilst we would continue to prohibit BSL in the circumstances described above, we would not prohibit Sign Supported English. This is because Sign Supported English is not a language in its own right, but uses the vocabulary and word order of English, so would not alter the skills being assessed.

Our proposed specification is below.

G - Where an assessment seeks to test a Learner's knowledge of, skills in, or understanding of a particular language, the use of an alternative language – such as British Sign Language – must not be used as a reasonable adjustment where such use would prevent the Learner demonstrating the required knowledge, skills or understanding.

Example 11

In a modern foreign language assessment, students must not give their answers in BSL, where the assessment requires the answers to be given in the foreign language being assessed. In addition, where questions or stimulus materials are written in the foreign language being assessed, these must not be translated into BSL.

Example 12

Sign Supported English may be permitted as a reasonable adjustment for a student to demonstrate their communication skills. This is because the student would still be communicating in English and not an alternative language, so the knowledge, skills and understanding being demonstrated are not being changed.

Question 13: To what extent do you agree or disagree that the use of another language (such as British Sign Language) should not be permitted as a reasonable adjustment where this would prevent a student demonstrating their understanding and use of the particular language that is being assessed?

4.6 Practical assistants

Current position

A practical assistant is someone who can perform practical tasks on behalf of a student, according to the student's instructions. In written assessments, a practical assistant may perform tasks such as turning pages or holding a ruler in place. In practical assessments, they may perform tasks such as holding or passing equipment to a student.

We do not allow practical assistants to carry out physical tasks or demonstrate physical abilities, where those physical tasks or abilities form part of the qualification's assessment objectives. To do so would affect whether the assessment provided a reliable indication of the knowledge, skills and understanding being assessed. This means that an assistant may be able to pass equipment to a student (if the ability to pick up the equipment was not being assessed and so long as it was the student who decided which equipment should be passed), but not carry out an experiment on the student's behalf, or without instruction.

Allowing a third party to carry out a task on behalf of a student would mean that it was the assistant being assessed, not the student. This would prevent the qualification measuring the extent to which the student has the knowledge, skills and understanding being measured.

Proposal

We propose to amend this specification to make it more consistent with our other specifications. We are not proposing to change what is prohibited. The change would mean that we refer specifically to the skills being assessed by the qualification.

Our proposed specification is below.

H - A practical assistant must not be used as a reasonable adjustment to allow a Learner to access marks in relation to carrying out physical tasks or demonstrating physical abilities save where the Learner demonstrates the relevant knowledge, skills and understanding in the assessment him or herself.

Example 13

If a student is being assessed on their ability to play a musical instrument, a practical assistant must not be able to play the instrument on behalf of the student.

Example 14

Where a mobility-impaired student requires assistance to turn pages in a written examination, or to hold or move equipment in a practical assessment, and these are not the skills being assessed, a practical assistant may be used to perform these tasks under the student's instruction.

Question 14: To what extent do you agree or disagree that practical assistants should be permitted, but that students should not be rewarded for skills that they have not themselves demonstrated?

5 Access to texts and other materials as a reasonable adjustment

In addition to reviewing our existing specifications, we have considered issues brought to our attention since we made our current specifications. One such issue is whether students should be allowed access to materials (for example copies of texts and calculators) that are not otherwise available to students in an assessment, for example due to a severe memory impairment.

We have considered whether or not we should prohibit the provision of such materials as a reasonable adjustment. We set out our proposed approach in this section.

Current position

We do not currently prohibit through our specifications, access to material or resources that are not otherwise available to students taking an assessment as a reasonable adjustment. We do however set out, in our Conditions and guidance for reformed GCSEs and A levels, some circumstances when students should not have access to some materials in assessments. In some qualifications, awarding organisations prohibit access to such materials through their own specifications.

Examples where materials are not permitted include:

- In GCSE(9-1) English literature students answer questions on texts that they have previously studied. An exam board might provide students with an extract of the text during the exam but not the whole text. This is in line with our guidance²⁴;
- in GCSE(9-1) and GCE modern foreign language assessments, our Conditions²⁵ require an awarding organisation to take reasonable steps to ensure that no student has access to a dictionary;
- in GCSE(9-1) maths our subject level conditions require an awarding organisation to ensure that between 33 and 50 per cent of the total marks are

²⁴ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-guidance-for-english-literature>

²⁵ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-modern-foreign-languages> and <https://www.gov.uk/government/publications/gce-subject-level-conditions-and-requirements-for-modern-foreign-languages>

allocated to questions or tasks which must be completed without the use of a calculator²⁶;

- in some subjects where students need to perform calculations, awarding organisations' own specifications prohibit the use of calculators in exams.

Whether or not an awarding organisation could provide materials - such as those outlined in the examples above – as a reasonable adjustment will depend on where this prohibition is set out. Such a prohibition could be:

- prohibited by Ofqual's Conditions and requirements (for new GCSEs and GCEs this would include any prohibition in the Secretary of State's Content Documents for each subject, as these are given the force of law through the Subject Level Conditions);
- the subject of Ofqual's guidance which states that materials should not be provided; or
- prohibited by the rules placed by an awarding organisation on how an assessment is to be completed.

Where particular materials are prohibited through Ofqual's Conditions and requirements an awarding organisation cannot disapply the relevant Condition or requirement through a reasonable adjustment²⁷. An awarding organisation cannot, for example, make a reasonable adjustment to a GCSE (9-1) or reformed GCE modern foreign language assessment to allow a student access to a dictionary in the assessment.

Where Ofqual's guidance states that materials should not be provided, or where awarding organisations have made this a requirement through their specifications, awarding organisations are not prohibited from providing materials as a reasonable adjustment. Awarding organisations must have regard to our guidance, but may decide not to follow it where offering a reasonable adjustment. Likewise, awarding organisations are free to make a reasonable adjustment to any rules they themselves have specified in relation to how an assessment should be taken. In any case, where it is not prohibited, awarding organisations are not required to provide

²⁶ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-mathematics>

²⁷ Section 191 of, and schedule 22 to, the Equality Act 2010 lifts the requirement on awarding organisations to make reasonable adjustments where they do anything to meet a requirement or condition imposed by virtue of an enactment. Ofqual's Conditions take effect under section 132(3)(b) of the Apprenticeships, Skills, Children and Learning Act 2009, and so an awarding organisation is relieved of the duty to make reasonable adjustments with respect to something which it is required to do under the Conditions.

access to materials as a reasonable adjustment. It will be for awarding organisations to determine if provision of materials is a reasonable adjustment

We believe there is a risk that awarding organisations could act inconsistently in deciding whether to allow access to materials in circumstances where Ofqual's Conditions do not prohibit it. We have therefore considered whether to prohibit the provision of materials as a reasonable adjustment.

Proposal

In considering whether to prohibit or limit provision of materials as a reasonable adjustment, we have considered different options about the extent to which we should prohibit, if at all, the provision of materials. These options are set out below.

Approach A - To make no specification

Under this approach, we would not make a specification and it would be for awarding organisations to determine in each case whether the provision of materials is a reasonable adjustment. This approach would allow flexibility for awarding organisations to consider what a reasonable adjustment is for each disabled student. Where an awarding organisation is prohibited from providing such materials by our Conditions, that prohibition would continue to apply.

Whilst providing access to materials might enable students to access marks in the exam, there is a risk that this approach could stop the qualification giving a reliable indication of the student's knowledge, skills and understanding. If an assessment is designed to test a student's ability to recall something from memory and the student was provided with that material, they may be credited for recall skills they have not demonstrated. There is also a risk that this approach could lead to inconsistency of approaches between awarding organisations and potentially to some disabled students receiving an unfair advantage over other students.

Approach B – Prohibit materials in some circumstances

We could set a specification prohibiting provision of materials in some circumstances. This approach would apply where the initial prohibition is set out through our guidance or an awarding organisation's own rules. Where a prohibition takes effect through our Conditions, this would continue to apply.

There are two ways we could do this:

- **i)** We could write a specification listing each type of material and the subjects in which these are prohibited. This would make it clear exactly what can and cannot be provided. Being prescriptive in this way would, however, risk our specification becoming outdated if awarding organisations change their

qualifications. It would also be difficult to take account of the different ways materials might be used by different awarding organisations.

- **ii)** An alternative could be to refer to the circumstances in which such materials are prohibited, but not list specific materials. We could specify that materials are prohibited where certain skills are being tested and where providing these would compromise the assessment of these skills. It would be up to awarding organisations to consider on a case by case basis whether or not providing a particular material would compromise the assessment.

Our view is that the second approach above (ii) would be the most suitable approach if we were to restrict the provision of materials. Our specification under this approach would be:

I1 - Materials and other resources that are not normally made available to Learners during an assessment must not be provided as a reasonable adjustment where that provision would compromise the ability of the awarding organisation to make judgements on the Learner's knowledge, skills and understanding being assessed.

This approach strikes a balance between ensuring students are not disadvantaged and ensuring that the assessment is not compromised. It would be flexible enough to accommodate different assessments where materials might be used in a different way. Although there is a risk that such a specification could be applied inconsistently, we judge this could be managed by awarding organisations as long as the specification is clear.

Example 15

In an assessment where a student is required to recall a piece of text and then answer questions on it, a disabled student with a severe memory impairment could apply for the text to be provided (if our Conditions did not prohibit this). It would be for an awarding organisation to decide whether this was a reasonable adjustment for a particular assessment.

Approach C - Prohibit provision of materials in all circumstances

We could specify to prohibit materials being provided as a reasonable adjustment in all cases where these are not otherwise available to students.

As the assessments will have been designed to be taken without students having access to the resources, giving some students such access could affect whether the qualification gives a reliable indication of the student's knowledge, skills and understanding. For example, if an assessment is designed explicitly in part to assess

a student's ability to recall a text, recall an equation or play a piece of music from memory, allowing a student access to the text, the equation or the music would compromise the assessment.

We would refer in our specification to materials and other resources which directly relate to the content of the assessment. This would ensure that whilst resources such as texts, dictionaries or calculators would be prohibited, others such as a laptop or a reader would not be captured by the specification.

Our proposed specification under this approach would be:

I2 - Access to materials and other resources during an assessment which directly relate to the content of that assessment must not be provided as a reasonable adjustment where that access is otherwise prohibited.

Example 16

If an exam has a question requiring students to recall and apply an equation, a student would not be allowed to be provided with the equation as a reasonable adjustment.

We consider that whilst approach A (no specification) would be the most likely to minimise the risk that disabled students are not able to gain marks in an assessment because of their disability, it poses too great a risk to ensuring that qualifications provide a reliable indication of the knowledge, skills and understanding of the student.

We consider that approach B (ii) (prohibiting in some circumstances) strikes an effective balance between the need to ensure that the qualification gives a reliable indication of the student's knowledge, skills and understanding, whilst not disadvantaging disabled students through prohibiting an adjustment that in some cases could be considered reasonable. Whilst the more prescriptive approach in B(i) would also achieve this balance, B(ii) also allows the flexibility for awarding organisations to take students' specific circumstances in to account.

Approach C (blanket ban) would be the most likely to ensure that the qualification gives a reliable indication of a student's knowledge, skills and understanding. However, this approach would be most likely to disadvantage disabled students as it might stop them having access to materials that would enable them better to complete the assessment without compromising it.

Our preferred approach is therefore B(ii), which we believe strikes the best balance between ensuring the qualification provides a reliable indication of a student's knowledge, skills and understanding whilst also minimising the extent to which

disabled students are disadvantaged. We propose to restrict when materials can be provided using specification I1 above.

Question 15: To what extent do you agree or disagree that we should restrict the provision of materials to students as a reasonable adjustment where these are not generally provided to other students?

Question 16: Do you have any comments on any of the approaches set out in relation to the provision of materials to students as a reasonable adjustment? Which is your preferred approach and why?

6 Oral language modifiers

When we consulted on our existing specifications in 2011, we considered whether to prohibit Oral Language Modifiers (OLMs) as a reasonable adjustment. At the time, responses were fairly evenly divided between those who thought we should prohibit them and those who did not. We decided not to prohibit them.

We committed to keeping the position in relation to OLMs under review. We do not propose here to specify to prohibit their use, but set out our position and invite views on whether we should make such a specification in future.

Current position

An OLM is a responsible adult who may clarify the carrier language used in an assessment when requested to do so by a student. The OLM must not explain technical or subject-specific terms. OLMs may be used by students whose language development has been significantly impaired by their disability, often a hearing impairment. OLMs differ from readers in that a reader can only read what is on the question paper, whereas an OLM can modify carrier language. In other words, an OLM can use different words, other than technical words, to help a student access the question.

For some students, an OLM can help them understand what the assessment requires. This gives them a greater chance of being able to demonstrate their knowledge, skills and understanding. As OLMs are only permitted to modify carrier language, when used appropriately their use should not compromise the assessment. Used poorly however, there is potential to compromise the assessment. In recent years, exam boards have tightened the controls for OLM use to address this concern.

Proposal

We do not propose to specify to prohibit the use of OLMs. We propose that awarding organisations should continue to be allowed to permit OLMs as a reasonable adjustment, if they consider this reasonable.

We do not believe that for the small number²⁸ of disabled students who use an OLM as a reasonable adjustment, other reasonable adjustments exist that would mitigate

²⁸ In 2014/15, there were 1,050 approvals for OLMs at GCSE and 200 at A level (source: Ofqual, *Access Arrangements for GCSE and A Level: 2014/15 Academic Year*). The number of approvals does not refer to the number of individual students - an approval refers to each exam an OLM can be used in, so a student who requires an OLM for English and History would count as two approvals. Additionally, the OLM may not actually have been required in every case for which it was approved.

the disadvantage these students would otherwise experience. Where a student does not understand a question because of their disability, we are not aware of any alternative adjustment that could mitigate this. If we were to specify to prohibit OLMs from being used, this could disadvantage this group of students.

We recognise however that an OLM has the potential to compromise an assessment. If an OLM explains subject-specific language or technical terms to a student, that student could be unfairly advantaged. Or if the OLM explains a term incorrectly, the student also be unfairly disadvantaged. We expect however, that where an OLM is used, awarding organisations put in place arrangements to ensure they are used appropriately.

On balance, taking into account the small number of occasions on which OLMs are used, and the lack of alternative adjustments, we do not propose currently to specify to prohibit OLMs being used. But we would welcome views and evidence as to whether or not this should be the case.

Our proposal not to specify to prohibit OLMs does not however mean that requests for OLMs must always be approved. It is for awarding organisations to decide in each case whether an OLM is a reasonable adjustment. Where it considers it to be reasonable, the awarding organisation must ensure that the OLM does not compromise the assessment.

Question 17: To what extent do you agree or disagree with our proposal not to prohibit the use of Oral Language Modifiers (OLMs) as a reasonable adjustment?

An approval means an OLM is made available, but the OLM may not be used if there are no questions that the student cannot understand in the exam.

7 Other reasonable adjustments

We have set out in this consultation the areas in which we propose to make specifications. We do not to propose to make specifications in areas other than those set out above, but would welcome views on this.

Question 18: Are there any other specifications not covered in this consultation that we should make?

8 Indicating an exemption has been given on a certificate

We set out in section 4 our proposed approach to restricting the use of exemptions. We believe that it is important in ensuring that a qualification gives a reliable indication of the knowledge, skills and understanding of a student, and to maintain public confidence in the qualification, that it is clear to all users of a qualification if there are parts that a student has not completed.

Current position

Awarding organisations indicate on a student's certificate where an exemption is given. The guidance to our specifications says that where an exemption is granted, an indication will be placed on the student's certificate to show that not all of the assessment objectives were accessible. We do not specify the form of this indication.

Proposal

We propose that, as currently, where an exemption is applied, this should be indicated on the student's certificate. Users of a qualification should be able to see from the certificate if there are any skills that were not accessible to the student and therefore not assessed. It is important that a consistent approach is taken by all awarding organisations as to whether they indicate an exemption.

For most qualifications, all assessments are used to calculate the overall qualification grade. There are some however, which we set out in section 4, with assessments that have separately reported results²⁹, so that there are two grades or outcomes for the same qualification. We believe that the same approach should apply to these qualifications as to others. So it should be clear on the certificate if there are any parts of the assessment that were not accessible to a student and have therefore not been completed. It should be clear, if a component has not been completed, that this is because it was not accessible due to a student's disability as opposed to them not attempting it or attempting it but not meeting the required standard.

Currently our requirements for GCSE qualifications (9-1) in English language³⁰ and reformed A levels in biology, chemistry, physics³¹ and our proposed requirements for

²⁹ GCSE(9-1) English Language and A level biology, chemistry, physics and geology

³⁰ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-english-language>

³¹ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-single-science>

geology³² state that where a student has been granted an exemption from taking the spoken language assessment or practical science/skills assessment on grounds of disability, the outcome reported on the certificate must be in line with any requirements which may be published by Ofqual and revised from time to time.

We propose to require, through our Additional Certificate Requirements³³, awarding organisations to indicate on a student's certificate where an exemption has been granted, but not to specify the form that this should take, for all qualifications covered by our specifications. This will ensure it is clear to users of qualifications whether all assessments have been completed. But it allows awarding organisations flexibility to determine how to do this. As certificates can vary between qualifications and awarding organisations, a single approach may not be appropriate in all cases and could lead to indications being used incorrectly despite following our rules. We judge that our proposed approach should avoid this. But we would welcome views on this.

As this would be covered by our certificate requirements and not our section 96 specifications, we will consult separately on the detail of the amendments to the certificate requirements.

Question 19: To what extent do you agree or disagree that where an exemption is granted, this should be indicated on the student's certificate?

Question 20: To what extent do you agree or disagree that we should not specify the form of any indication that is placed on the student's certificate?

³² <https://www.gov.uk/government/consultations/as-and-a-level-reform-regulations-for-geology>
³³ <https://www.gov.uk/government/publications/additional-certificate-requirements>

9 Equality analysis

Ofqual's role, objectives and duties

We are subject to the public sector equality duty. We have set out in this consultation how this duty interacts with our statutory objectives and other duties.

Equality analysis relating to our proposals

Any changes we make to our section 96 specifications will necessarily have an impact on some disabled students. The extent to which this is the case will depend on our specifications.

We have considered the potential impact of each of our proposed specifications on students who share protected characteristics. We set out the specific issues we have considered below.

We have also considered the impact of our proposals in relation to the qualifications to which our specifications should apply and our proposals in relation to signalling exemptions on certificates.

During this consultation we will continue to seek and consider evidence and feedback to our proposals that might help us identify potential impacts on students who share a protected characteristic.

Qualifications to which our specifications apply

The list of qualifications to which our specifications apply will be updated by DfE. Our proposals in this consultation are a recommendation to DfE, who will ultimately determine any updates to the list.

Adding qualifications to this list that were not previously included may have an impact on disabled students taking those qualifications. It is possible that an adjustment which was previously permitted in these qualifications will no longer be due to being covered by our specifications, although we are not aware of any examples where this is the case.

We have balanced this with the need to secure that qualifications give a reliable indication of the knowledge, skills and understanding of the student and maintaining public confidence. We believe that for these qualifications, these considerations outweigh the potential negative impact on students.

Exemptions

Allowing the use of exemptions minimises the disadvantage faced by disabled students as a result of their disability. If we were to prohibit the use of exemptions

entirely, then there would be a risk that some disabled students were prevented from having their knowledge, skills and understanding in those aspects of the qualifications that are accessible to them recognised. We recognise that restricting exemptions to no more than 40 per cent of the qualification may mean there are some students that cannot access an assessment as they can require an exemption of greater than 40 per cent. However, we believe that restricting it in this way is necessary to ensure that the qualification provides a reliable indication of the student's knowledge, skills and understanding and that our proposal strikes a balance between these competing considerations.

Our proposal that for subjects with separately reported results, where an exemption is granted for the separately reported component it should not be allowed for any other component, should not disadvantage students. This approach could mean some students that could previously have been exempted from a spoken language assessment, or a practical skills assessment in A level science or geology *and* another component (where both components, taken together, do not total more than 40%) will now only be allowed an exemption from one component although we don't know of any examples of this. In practice, when combined with our specification limiting exemptions to whole components, we do not believe this will have a negative impact on disabled students. A student is less likely to request an exemption from the other written components as other reasonable adjustments are available, such as a scribe or additional time.

By allowing exemptions, but by restricting their use, awarding organisations can minimise the disadvantage faced by disabled students as far as is possible, whilst ensuring that qualifications provide an accurate measure of the student's knowledge, skills and understanding. Qualifications are relied on by employers, universities and others. Where a student has been awarded a qualification without attempting all of the assessments, and has had their marks scaled up, we believe it is appropriate for this to be indicated on a certificate.

Changes to grade boundaries and pass marks

Prohibiting changes to grade boundaries or pass marks will neither advantage nor disadvantage disabled students. This specification will ensure that all qualifications of a particular type are of equal value and mean that a qualification held by a disabled student will not be worth more, or less, than one held by any other student.

Readers

Allowing the use of readers, in some circumstances, by disabled students will reduce or remove the disadvantage these students might otherwise experience. The use of machine readers will allow students to demonstrate their knowledge, skills and understanding independently.

Limiting the use of readers in circumstances where this would affect the assessment of knowledge, skills and understanding being measured will prevent disabled students from being unfairly advantaged when taking an assessment.

The amendments we propose to this specification may mean that some disabled students are able to access an assessment with a reasonable adjustment that were not able to do so under our existing specification. This specification would not fully eliminate the disadvantage faced by disabled students. Some visually impaired students who are not able to use Braille, machine readers or reading pens would remain disadvantaged where a human reader is prohibited. In such circumstances, the only reasonable adjustment available to them may be an exemption from the component that assesses reading ability.

Scribes/speech recognition systems

Allowing the use of a scribe or speech recognition system in some circumstances by disabled students will ensure that these students are not disadvantaged. Limiting their use in circumstances where this would affect the knowledge, skills and understanding being measured will prevent disabled students from being unfairly advantaged when taking an assessment.

The amendments we propose to this specification may mean that some disabled students are able to access an assessment with a reasonable adjustment that were not able to do so under our existing specification. This specification would not fully eliminate the disadvantage faced by disabled students. In circumstances where, by using a scribe or speech recognition system, a student would not be demonstrating their own knowledge, skills and understanding, then some marks may be unavailable to disabled students that are available to others. As qualifications should give an indication of a student's own knowledge, skills and understanding, we believe it is right that students should not be given marks for knowledge, skills or understanding they have not themselves demonstrated.

We believe that the proposed specification achieves the best balance of minimising the disadvantage faced by disabled students whilst maintaining public confidence in the qualification and ensuring that it gives a reliable indication of the student's knowledge, skills and understanding.

Alternative languages (such as British Sign Language)

Our specification will mean that students who use languages such as British Sign Language will not be able to use that language when taking qualifications designed to assess their skills in other languages. The prohibition would not extend to other subjects. This is in line with our current approach and, we understand, is accepted as appropriate by the British Sign Language community.

Practical assistants

To allow practical assistants to perform tasks that were being measured as part of the knowledge, skills or understanding being assessed would mean allowing students to be rewarded for tasks that were being performed by someone else.

By not prohibiting practical assistants entirely, disabled students are allowed the chance to demonstrate their knowledge, skills and understanding with the support of a practical assistant where the practical assistant is not performing tasks that are part of the assessment and is being instructed by the student. The amendments we propose to this specification may mean that some disabled students are able to access an assessment with a reasonable adjustment that were not able to do so under our existing specification.

Access to texts and other materials as a reasonable adjustment

In considering our proposal to restrict access to materials and resources which are generally prohibited to students taking an assessment, we have balanced the disadvantage that might otherwise be experienced by some disabled students, the need for the qualification to provide a reliable indication of the knowledge, skills and understanding it is assessing and public confidence in the qualification. Restricting, but not fully prohibiting, the circumstances in which such materials and resources can be provided, will ensure that disabled students are not prevented from accessing materials and resources where necessary to assist with minimising disadvantage, providing this does not undermine the assessment.

Where providing such materials would compromise the assessment, we consider there are other adjustments available which could help to minimise disadvantage, such as the provision of extra time. In cases where other adjustments are not suitable, an exemption may be possible from a component, provided that the criteria for this have been satisfied.

Question 21: We have identified a number of ways our proposals may impact (positively or negatively) on persons who share a protected characteristic. Are there any other potential impacts we have not identified? If so, what are they?

Question 22: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic? If so, please comment on the additional steps we could take to mitigate negative impacts.

Question 23: Have you any other comments on the impacts of the proposals on persons who share a protected characteristic?

10 Regulatory impact

We set out in this section the likely regulatory impact of our proposals. As part of this, we have considered the likely regulatory burden.

We follow good regulatory practice and we seek to keep our regulatory functions under review to avoid any unnecessary burden. By burden, we mean: a financial cost; an administrative inconvenience; an obstacle to efficiency, innovation, productivity or profitability; or a sanction.

Some burden is a necessary and proper part of regulation – for example, awarding organisations must invest in the appropriate systems, processes and controls needed to develop and award sufficiently valid qualifications. However, as we want to allow awarding organisations to innovate, invest and respond to the legitimate needs of employers and others and to provide sufficiently valid qualifications, we must make sure that any burden that we impose is proportionate and necessary to secure valid qualifications.

We expect the regulatory burden of the proposals in this consultation to be low. Our specifications will prohibit awarding organisations from taking some actions, but will not require them to take additional actions. Awarding organisations may however choose to do so as a result of our specifications.

Where any of the changes we are proposing mean that something that is currently allowed is prohibited, then awarding organisations may have to make some changes to ensure that this is implemented and to monitor that it is being applied effectively. We will seek to ensure that any additional burden that is caused by any of these changes is minimised by taking account of the reasonable timelines required for awarding organisations to update their own processes and communicate these to centres.

Question 24: We have not identified any ways in which the proposed specifications will unduly increase the regulatory burden of our proposals. To what extent do you agree or disagree with this assessment?

Question 25: Are there any additional steps we could take to reduce the regulatory burden of our proposals?

Appendix 1 – Ofqual's existing specifications

- A.** An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is available to the candidate.
- B.** An exemption must not be used as a reasonable adjustment where it would form more than 40 per cent of the available (weighted) marks of a qualification. In a GCE, at least one A2 unit must be completed. For Principal Learning, 40 per cent of the qualification should be taken to mean 40 per cent of the guided learning hours.
- C.** An exemption to part of a component must not be used as a reasonable adjustment. Exemptions must only be provided for whole components where a candidate cannot access any part of that component.
- D.** Awarding organisations must not make reasonable adjustments for disabled candidates in relation to grade boundaries and pass marks, also known as 'cut scores'.
- E.** Human readers must not be used as a reasonable adjustment where a candidate's reading ability is being assessed.
- F.** Human scribes and voice recognition systems must not be used as a reasonable adjustment to demonstrate written skills where those written skills form part of the qualification's assessment objectives.
- G.** British Sign Language must not be used as a reasonable adjustment where candidates are required to demonstrate their ability to speak or listen in English or a Modern Foreign Language.
- H.** Practical assistants must not be used as a reasonable adjustment to carry out physical tasks or demonstrate physical abilities where those physical tasks or abilities form part of the qualification's assessment objectives.

Appendix 2 – Ofqual's duties and powers

Our statutory objectives include the qualifications standards objective, which is to secure that the qualifications we regulate:

- give a reliable indication of knowledge, skills and understanding; and
- indicate:
 - a consistent level of attainment (including over time) between comparable regulated qualifications; and
 - a consistent level of attainment (but not over time) between qualifications that we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate.

We must therefore regulate so that qualifications properly differentiate between learners who have demonstrated that they have the knowledge, skills and understanding required to attain the qualification and those who have not.

We also have a duty under the Apprenticeship, Skills, Children and Learning Act 2009 to have regard to the reasonable requirements of relevant learners, including those with special educational needs and disabilities and of others including employers and the higher education sector, and to aspects of government policy when so directed by the Secretary of State.

As a public body, we are subject to the public sector equality duty. This duty requires us to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Under section 96 of the Equality Act³⁴, general qualifications bodies (awarding organisations) have a duty to make reasonable adjustments for disabled people taking specified qualifications. They must also not discriminate, victimise or harass disabled learners in relation to their arrangements for conferring qualifications.

³⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

The Equality Act gives Ofqual the power to limit the extent of the duty on awarding organisations to make reasonable adjustments. Specifically, we can specify provisions, criteria or practices in relation to which an awarding organisation:

- is not subject to a duty to make reasonable adjustments;
- is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator [Ofqual] specifies should not be made.

We do this to ensure that qualifications remain valid and that the public can have confidence that a person with a qualification has met the requirements of that qualification. The Act requires us, in making specifications, to have regard to:

- the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;
- the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred; and
- the need to maintain public confidence in the qualification.

This power only allows us to prohibit or limit particular adjustments. We cannot require that a particular adjustment is made or is made available. If we have not restricted its use, awarding organisations must consider whether a specific adjustment is reasonable.

Legislation therefore sets out a framework within which we must operate. We are subject to a number of duties and we must aim to achieve a number of objectives. These different duties and objectives can, from time to time, conflict with each other. For example, if we regulate to secure that a qualification gives a reliable indication of a learner's knowledge, skills and understanding, a learner who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification. A person may find it more difficult, or impossible, to demonstrate the required knowledge, skills and/or understanding because of a disability. This could put them at a disadvantage relative to others who have been awarded the qualification. It is not always possible for us to regulate so that we can both secure that qualifications give a reliable indication of knowledge, skills and understanding, and advance equality between people who share a protected characteristic and those who do not. We must review all the available evidence and actively consider all the available options before coming to a final, rational decision.

Qualifications cannot be used to mitigate inequalities or unfairness in the education system or in society more widely that might affect, for example, learners' preparedness to take the qualification and the assessments within it. While a wide

range of factors can have an impact on a learner's ability to achieve a particular mark in an assessment, our influence is limited to the way that the qualification is designed and assessed.

We require the exam boards to design qualifications to give a reliable indication of the knowledge, skills and understanding of those on whom they are conferred. We also require the exam boards to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a learner to achieve because they have a particular characteristic. We require exam boards to monitor whether any features of their qualifications have this effect.

The protected characteristics under the Equality Act 2010 are: age; disability; gender reassignment; marriage and civil partnerships; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

It should be noted that with respect to the public sector equality duty under section 149 of the 2010 Act, we are not required to have due regard to impacts on those who are married or in a civil partnership.

Appendix 3 – Qualifications prescribed by the Secretary of State

14–19 Diploma Principal Learning

Advanced Extension Awards

Cambridge International Certificate

Cambridge Pre-University Qualification

Certificate in Adult Literacy

Certificate in Adult Numeracy

Entry level certificates in GCSE subjects

Extended Projects

Foundation Projects

Free Standing Mathematics Qualifications

Functional Skills

General Certificate of Education Advanced level (Advanced and Advanced Subsidiary levels)

General Certificate of Secondary Education

General National Vocational Qualifications

Higher Projects

International Baccalaureate Diploma

Key Skills

Welsh Baccalaureate Qualification

Core Certificate

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