

Specifications in Relation to the Reasonable Adjustment of General Qualifications

Fulfilling Our Regulatory Powers under Section 96
of the Equality Act 2010



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Introduction

Under Section 96(7) of the Equality Act 2010, the appropriate regulators Ofqual (Office of Qualifications and Examinations Regulation) in England, SQA (Scottish Qualifications Authority) and DfES (Department for Education and Skills) in Wales, are given the power to specify where reasonable adjustments to general qualifications should not be made. The Equality Act 2010 is not applicable to Northern Ireland, which has separate equality legislation. The Secretary of State for Education has the power to list which qualifications conferred in England are included in the definition of 'relevant qualifications' covered by Section 96. The current list is set out in appendix 1. It should be noted that this power does not extend to vocational qualifications.

Ofqual has consulted on its proposals to exercise its power in respect of the qualifications on the Secretary of State's list. Having considered the responses to this consultation, it is making the specifications set out below.

In developing these specifications, Ofqual has taken account of:

1. The need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities
2. 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
3. The need to maintain public confidence in the qualification.

The making of specifications by the appropriate regulator only removes the duty on awarding organisations to make reasonable adjustments within the limited confines of those specifications. Where the appropriate regulator has not made any relevant specifications, awarding organisations remain under a legal duty to make reasonable adjustments for disabled candidates. Awarding organisations must consider what adjustments might be reasonable in any particular set of circumstances. That an adjustment is not subject to a specification does not mean that it will necessarily be reasonable in any particular set of circumstances.

Section 96(7) does not create a power of appeal to the appropriate regulator for disabled candidates who are refused an adjustment. Where disabled candidates have been refused an adjustment by an awarding organisation, they may complain to the awarding organisation. Disabled candidates may be able to take such a complaint to court under equality legislation.

Section 96(7) does not give the appropriate regulator responsibility for monitoring and enforcing equality law. Decisions concerning what constitutes discrimination are ultimately a matter for the courts. The Equality and Human Rights Commission

(EHRC) is the public sector body responsible for promoting, monitoring and enforcing equality. The EHRC also provides advice and support to organisations and individuals on their duties and rights under equality law.

Current awarding organisation practice on the use of reasonable adjustments tends to be based on the Joint Council for Qualifications' publication *Access Arrangements, Reasonable Adjustments and Special Consideration - General and Vocational Qualifications*, which is updated annually. References in this document to current practice are references to practice as detailed in *Access Arrangements, Reasonable Adjustments and Special Consideration - General and Vocational Qualifications*.

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.

Guidance and Examples relating to the specifications

Exemptions

Certain candidates, because of a disability, may not be able to demonstrate all of the skills required within an assessment. An exemption is an adjustment made by an awarding organisation, in advance of an examination and/or controlled assessment, whereby a disabled candidate is allowed not to take a component (or components)¹. When an exemption is granted, the candidate's performance on the components actually taken will be considered to be the performance for the whole qualification, and the candidate's marks for the assessment will be scaled up accordingly. Where an exemption is granted, an indication will be placed on the candidate's certificate to show that not all of the assessment objectives were accessible.

Allowing the use of exemptions minimises the disadvantage faced by disabled candidates. Imposing certain limitations on their use maintains public confidence and secures that the qualification provides a reliable indication of the knowledge, skills and understanding of the candidate.

Three specifications relate to exemptions:

Specification	Guidance on use
A. An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is available to the candidate.	This specification forms the underlying basis for the other specifications on exemptions. Every effort should be made to identify reasonable adjustments that allow the candidate to participate in the assessment of all parts of the qualification. Exemptions should only be used as a last resort, i.e. when all other reasonable adjustment arrangements have been considered and none have been found that would allow the candidate to demonstrate the knowledge, skills and understanding being assessed.

¹ The GCSE, GCE Code of Practice defines a component as 'a discrete assessable element within a qualification which is not itself formally reported'.

Specification	Guidance on use
<p>B. An exemption must not be used as a reasonable adjustment where it would form more than 40% of the available (weighted) marks of a qualification. In a GCE, at least one A2 unit should be completed. For Principal Learning, 40% of the qualification should be taken to mean 40% of the guided learning hours.</p>	<p>Current practice is that the maximum proportion of a qualification that can be exempted is 50%. However, the structure of many general qualifications is such that 40% equates better with whole components and so, even at present, 40% tends to be the maximum exemption used in practice.</p> <p><u>Example</u> - Where a hearing impaired candidate cannot access the listening component of an English examination, as this component forms less than 40% of the qualification, an exemption may be granted where there is no other reasonable adjustment that would allow the candidate to demonstrate the skills in question.</p>
<p>C. An exemption to part of a component must not be used as a reasonable adjustment. Exemptions should only be provided for whole components where a candidate cannot access any part of that component.</p>	<p>This specification reflects the current approach to reasonable adjustments and helps to ensure fairness and consistency of approach. The exemption of part components would lead to the necessity for a complex process that would be difficult to administer, and could place the quality control and standardisation of awarding at risk.</p> <p><u>Example 1</u> - A hearing impaired candidate cannot access any part of the listening component of an English listening examination, and no other reasonable adjustment is available. In this instance an exemption may be used for that whole component.</p> <p><u>Example 2</u> - A dyslexic candidate may have difficulty gaining marks for spelling and punctuation, which form part of a writing component. In this instance an exemption should not be granted as the candidate can access other parts of that component and may also be able to gain some marks for spelling and punctuation. In such a case it is anyway likely that an exemption would not be used because other reasonable adjustments, such as the provision of extra time, would be available to the candidate.</p>

D. Awarding organisations must not make reasonable adjustments for disabled candidates in relation to grade boundaries and pass marks, also known as ‘cut scores’.

This specification fits with the idea that reasonable adjustments are intended to try to create a level playing field for candidates with disabilities, so that they participate on an equal basis with their peers and gain the qualification on merit. Therefore, where a candidate is not granted an exemption, grade boundaries must be applied in a consistent fashion. Introducing different ‘cut scores’ for disabled candidates would add further challenge to the grading system and might result in a two-tier system, which could impact post-course progression to employment and/or continuing education. It is important both to disabled learners and to public confidence that the qualifications achieved are of the same value for all candidates and provide a reliable indication of the knowledge, skills and understanding of the candidate. Where a candidate has received an exemption from a component, the candidate’s grade is calculated based on their performance for the components actually completed.

Example - Where the overall grade boundary for a GCSE grade C in Mathematics is 50 to 59 per cent, a disabled candidate and a non-disabled candidate scoring 59 per cent should both be awarded a grade C.

E. Human readers must not be used as a reasonable adjustment where a candidate’s reading ability is being assessed.

This specification relates to human readers only.

Current practice is usually to disallow the use of computer/screen readers when a candidate’s reading ability is being assessed. The use of assistive technologies provides the possibility of enabling independence of candidates in an examination without adding any nuance or meaning that the vocal interpretation of a human reader might provide. The use of such technologies may allow visually impaired candidates who cannot access modified or Braille papers an opportunity to demonstrate their skills, rather than having to apply for an exemption from the reading component, thus helping to reduce the extent to which such candidates are disadvantaged. It will be for awarding organisations to decide whether the use of such technologies would be a reasonable adjustment in any particular set of circumstances.

Example - In a GCSE English or a Modern Foreign Language reading examination designed to test the candidate’s reading ability, a human reader should not be used. In this instance, an alternative adjustment such as a computer/screen reader or reading pen may be appropriate.

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.

This specification reflects the current practice. Whilst this specification does not allow the use of scribes or voice recognition systems where written skills are being assessed, it would not preclude the use of scribes and voice activated software altogether. It would mean that where such aids are used any marks allocated to spelling, punctuation and grammar (SPaG) would not be available to the candidate, apart from the situation in which a candidate working with a scribe spells out the letters of each word. Similarly, marks for SPaG would not be available to those using computers for writing unless the spell-check facility had been turned off. Please note that voice recognition systems have an integral spell check that cannot be turned off and so marks for SPaG will not be available to the candidate where voice recognition systems are used.

Example 1 - In a GCSE foreign language writing assessment, a voice recognition system should not be used as it would generate foreign language words that would not allow candidates to demonstrate their own ability to write accurately in a foreign language. As an alternative reasonable adjustment, a candidate could dictate answers into a voice recorder and re-run the recording, spelling individual words to a scribe.

Example 2 - In a GCSE English writing assessment, a scribe is used as a reasonable adjustment. Where spelling and punctuation have been generated by the scribe and not by the candidate this is indicated on the examination cover sheet. Marks are awarded only for spelling and punctuation generated by the candidate. The candidate is not awarded marks for spelling and punctuation generated by the scribe.

Example 3 - In a GCSE Mathematics examination where spelling and punctuation do not form part of the assessment objectives, a voice recognition system or scribe may be used as a reasonable adjustment.

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.

Current practice is not to use British Sign Language (BSL) as a reasonable adjustment to speaking and listening components of most general qualifications in English and Modern Foreign Languages (MFL) because:

- BSL is recognised as a language in its own right

- Current GCSE subject criteria in English and MFL specifically reference the ability to speak and listen, but do not refer to non-written communication in the wider sense and so do not include assessment objectives appropriate for the assessment of BSL.

A different approach is currently taken, and would continue to be allowable, in respect of Functional Skills English, because assessment objectives have been specifically designed to take account of BSL usage.

Example 1 - In a GCSE MFL listening assessment, the provision of a BSL interpreter should not be used as it would not allow candidates to demonstrate their ability to understand a spoken foreign language, which is part of the subject criteria. Alternative reasonable adjustments such as a cued speech interpreter may be provided, or, where this is not accessible to the candidate, an exemption may be used.

Example 2 - In the Functional Skills English speaking assessment an awarding organisation may allow a BSL interpreter to be used as the assessment of non-written communication provides for the use of BSL.

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.

Allowing practical assistants to demonstrate physical skills that form part of the assessment objectives would undermine public confidence in the qualification, since candidates would not be assessed on the basis of their own abilities. This specification, whilst not allowing the use of a practical assistant for tasks that form part of the assessment objectives, does not preclude the use of a practical assistant to perform tasks that are not part of an assessment objective, e.g. turning pages in a written examination or holding/moving equipment.

The specification is in line with current practice.

Example 1 - Where candidates are being assessed on their ability to play a musical instrument for a music qualification or to make a product for a design and technology qualification, a practical assistant should not be allowed to demonstrate that skill on behalf of the candidate.

Example 2 - Where a mobility impaired candidate requires assistance to turn pages in a written examination, or to hold or move equipment in a scientific practical assessment, a practical assistant may be used to perform this task because such physical skills are not part of any assessment objective.

Note: No specification is currently being made on oral language modifiers (OLMs.)

The need for a specification relating to OLMs will be reviewed within the next year.

Implementation dates

All the specifications with the exception of Specification B will come into effect from 1st January 2012.

As Specification B represents a tightening of existing practice, this will come into effect for learners who begin their qualification course in September 2012. This specification will not apply to learners who are currently embarked on a course that is due for completion in either Summer 2012 or Summer 2013.

The specifications set out the reasonable adjustments that must not be used in order to avoid compromising the standard and integrity of general qualifications. Awarding organisations are responsible for decisions about which adjustments will be made available and these are normally considered on an individual basis, depending on the needs of the learner. That an adjustment is not subject to a specification does not mean that it will be reasonable in any particular circumstance.

Ofqual intends to review the specifications regularly and update them as required.

Appendix 1: General qualifications in England covered by Section 96 of the Equality Act 2010 (as set by the Secretary of State for Education)

The Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010. Statutory Instrument 2010 No. 2245 Schedule 1.

	England
1	14–19 Diploma Principal Learning
2	Advanced Extension Awards
3	Cambridge International Certificate
4	Cambridge Pre-University Qualification
5	Certificate in Adult Literacy
6	Certificate in Adult Numeracy
7	Entry level certificates in GCSE subjects
8	Extended Projects
9	Foundation Projects
10	Free Standing Mathematics Qualifications
11	Functional Skills
12	General Certificate of Education Advanced level (Advanced and Advanced Subsidiary levels)
13	General Certificate of Secondary Education
14	General National Vocational Qualifications
15	Higher Projects
16	International Baccalaureate Diploma
17	Key Skills
18	Welsh Baccalaureate Qualification Core Certificate

Appendix 2: Related publications

The Equality Act 2010

www.legislation.gov.uk/ukpga/2010/15/contents

The Final Impact Assessment for the Equality Act

www.homeoffice.gov.uk/publications/equalities/equality-act-publications/specific-duties/RIA?view=Binary

The Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010

www.legislation.gov.uk/uksi/2010/2245/introduction/made?view=plain

The Equality Act 2010 (General Qualifications Bodies, Regulator and Relevant Qualifications) (Wales) Regulations 2010

www.legislation.gov.uk/wsi/2010/2217/contents/made

The Equality Act 2010 (Qualifications Body Regulator and Relevant Qualifications) (Scotland) Regulations 2010

<http://www.legislation.gov.uk/ssi/2010/315/contents/made>

Access Arrangements, Reasonable Adjustments and Special Consideration – General and Vocational Qualifications, Joint Council for Qualifications (updated annually)

www.jcq.org.uk/jcq_top_ten/index.cfm

Code of Practice in Relation to Trade Organisations, Qualifications Bodies and General Qualifications Bodies, Equality and Human Rights Commission

www.equalityhumanrights.com/uploaded_files/code_trade_organisations_qualifications_bodies.pdf

Codes of practice revised by the 2010 Equality Act, Equality and Human Rights Commission

www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice

New Public Sector Equality Duty Guidance, Equality and Human Rights Commission

www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance

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