

Specifications in Relation to the Reasonable Adjustment of General Qualifications: Consultation Questions

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



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Executive summary

Section 96 of the Equality Act 2010 gives a new power to qualifications regulators in relation to general qualifications. It provides for the appropriate regulator – the Office of Qualifications and Examinations Regulation (Ofqual) in England, the Scottish Qualifications Authority (SQA) in Scotland, and the Department for Children, Education, Lifelong Learning and Skills (DCELLS) in Wales¹ – to make specifications about where reasonable adjustments to general qualifications should not be made. In making such specifications, the regulator is required to have regard to the need to minimise disadvantage to disabled candidates; to secure that qualifications provide a reliable indication of knowledge, skills and understanding; and to maintain public confidence in qualifications.

As well as providing a new power to the qualifications regulator, section 96 of the Equality Act 2010 also details the existing legal duty on awarding organisations to make reasonable adjustments for disabled candidates.

This consultation document sets out how we propose to exercise our new powers under section 96 and seeks views on specific proposals. The proposals in Part 4 cover a number of key areas, and are largely in line with existing practice:

- Limitations on the use of exemptions:
 - their use as a reasonable adjustment of last resort
 - the maximum percentage of a qualification that can be exempted
 - their use in relation to whole components only.
- That pass marks and grade boundaries should not be adjusted for disabled candidates.
- Use of specific interventions (including limitations where an intervention may impact on assessment objectives):
 - human readers in assessments of reading ability
 - scribes and their technological equivalent in assessments of writing ability
 - British Sign Language in assessments of English and Foreign Language speaking and listening ability

¹ Northern Ireland is not covered by section 96. Where appropriate, the regulators in the different jurisdictions are aiming to work to common principles in the exercise of powers under section 96.

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- practical assistants in assessments of physical ability
- oral language modifiers.

Following each specific proposal there are a number of questions designed to elicit views on the proposal. There are also questions to find out whether there are suggestions concerning additional specifications that could be made under section 96. Details about how to respond to this consultation are provided in Part 6.²

² Section 96 provides qualifications regulators with a limited power. As part of our wider regulatory functions, we can ask awarding organisations to comply with regulatory conditions. We are currently reviewing our regulatory framework and have published major consultations in relation to this. The consultation document, *From Transition to Transformation*, sets out proposals on conditions of recognition that aim to embed equality within our regulatory function: <http://comment.ofqual.gov.uk>.

About this document

Scope

This consultation document is designed to explain and seek views on our proposed approach to exercising our new power under section 96 (7) of the 2010 Equality Act, relating to the reasonable adjustment of general qualifications. The document is designed to provide you with the opportunity to tell us what you think about our proposed approach.

Our new powers under section 96 (7) relate solely to general qualifications and do not relate to either vocational qualifications or National Curriculum Assessments. Vocational qualifications and National Curriculum Assessments are therefore not covered by proposals within this consultation document. Reasonable adjustments and other access arrangements in respect of National Curriculum Assessments are set out on the Qualifications and Curriculum Development Agency (QCDA) website.³ The reasonable adjustment of vocational qualifications is covered by section 53 of the Equality Act 2010 and guidance is provided by the revised Code of Practice which accompanied the 2005 Disability Discrimination Act.⁴

A list of the general qualifications covered by section 96 is at Appendix 2.

Audience

This document is intended for a wide audience, including the general public. It may be of particular interest to learners, parents, disabled people and groups representing disabled people, awarding organisations which award general qualifications, further and higher education institutions, schools, examination officers, teachers and employers.

How to navigate this document

Part 1 explains the background and context to our new power.

Part 2 provides a brief explanation of current guidance on reasonable adjustments to qualifications.

Part 3 explains how we propose to exercise our power.

Part 4 lists the specific proposals that we could make under section 96, and asks questions about what you think about these proposals.

³ www.qcda.gov.uk/assessment/3798.aspx

⁴ www.equalityhumanrights.com/uploaded_files/dda_revisedcop_tradeorgs_qualificationbodies.pdf

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Part 5 explains the transitional arrangements – i.e. the approach to be taken prior to any specifications coming into effect.

Part 6 explains how you can respond to this consultation, and lists the consultation questions.

Glossary

Access arrangements

Arrangements which are agreed before an assessment to allow learners with special educational needs, disabilities or temporary injuries to access the assessment. They allow learners to show what they know and can do without changing the demands of the assessment. An access arrangement that meets the needs of a disabled learner would be a 'reasonable adjustment' for that particular learner.

Assessment

The process of making judgements about the extent to which a learner's work meets the assessment criteria for a qualification or unit, or part of a unit.

Assessment criteria

The requirements that learners need to meet in order to achieve success (or a given grade) in a qualification or unit, or part of a unit.

Assessment objective

One of a set of statements in a specification describing the focus of assessment.

Assistive technologies

Mechanical or electronic devices that help individuals with particular needs to overcome limitations.

Carrier language

The language used to set an assessment (as opposed to technical language, use or knowledge of which is being assessed).

Centres*

Educational institutions, training providers or employers where assessment is undertaken.

Competence standard ⁵

An academic, medical, or other standard applied by or on behalf of an awarding organisation for the purpose of determining whether or not a person has a particular level of competence or ability.

Component ⁶

A discrete assessable element within a qualification which is not itself formally reported.

Content

The coverage of a qualification, programme, module, unit or other component, expressed as the skills, knowledge, understanding or area of competence that is covered.

Controlled assessment

Assessment undertaken where full examination conditions do not apply. The awarding organisation specifies the controls that apply to how work is set, the conditions under which it is done and how it is assessed.

Coursework

Tasks completed by a learner during the course of study and assessed against criteria made explicit in the specification.

Modified papers

Papers which are adapted to meet the needs of individual learners, for example by simplifying language, or diagrams, or producing a Braille version.

Qualification

An award made by an awarding organisation for demonstration of achievement or competence.

⁵ Competence standards are used for vocational qualifications. They are not used in relation to general qualifications.

⁶ As defined by the GSCE, GCE Code of Practice. The definition of 'component' within composite qualifications is different, for example, components of the Diploma include whole qualifications.

Reasonable adjustment

A reasonable step taken to lessen or remove the effects of a substantial disadvantage to a disabled learner in an assessment. A reasonable adjustment for a particular person may be unique to that individual.

Reliability

The extent to which assessment results are an accurate measurement of the learners' demonstration of the abilities specified by the assessment criteria.

Specification

The complete description – including mandatory and optional aspects – of the content, assessment arrangements and performance requirements for a qualification.

Unit

The smallest part of a qualification that is capable of certification in its own right.

Validity

The fitness for purpose of an assessment tool or scheme.

Part 1

Background and context

Reasonable adjustments in the context of general qualifications

- 1.1. As recognised by the House of Commons Work and Pensions Select Committee, achieving disability equality often requires that disabled people are treated differently to non-disabled people. This is clearly reflected in the Equality Act 2010 (the Act), which sets out a duty for employers and service providers to make reasonable adjustments for disabled people. This duty applies only in the context of disability; it does not apply to discrimination on the grounds of other protected characteristics, such as gender, race or age.
- 1.2. The difference between the educational attainment of disabled and non-disabled school learners has been recognised by Government. In 2009/10, Department for Education (DfE) figures show that 46 per cent of learners with special educational needs achieved 5 or more A*-C grades at GCSE or equivalent, compared to 85 per cent of learners without identified special educational needs.⁷
- 1.3. The Act places the following duties on awarding organisations in respect of disability:
 - (a) the duty to make reasonable adjustments for disabled candidates
 - (b) the duty not to discriminate against, harass or victimise disabled people in the arrangements for conferring qualifications.
- 1.4. These are not new duties; they were originally set out in the 2005 Disability Discrimination Act. For a number of years awarding organisations have made reasonable adjustments for disabled candidates taking certain general qualifications. Such reasonable adjustments can be broadly categorised as:
 - presentational adjustments - e.g. provision of modified or Braille papers
 - scheduling adjustments - e.g. provision of additional time
 - response adjustments - e.g. allowing candidates to speak or sign answers.
- 1.5. The reasonable adjustment of qualifications for disabled candidates is part of what is commonly known within the education sector as 'access arrangements'.

⁷ *Statistical First Release, GCSE and Equivalent Attainment by Pupil Characteristics in England, 2009/10*, Department for Education www.education.gov.uk/rsgateway/DB/SFR/s000977/SFR37_2010.pdf

Access arrangements, however, include a broader range of measures taken for reasons including, but not limited to, a candidate's disability. Examples include the use of bilingual dictionaries for candidates who use English as an additional language, or post-examination special consideration for candidates who may have been affected by a recent family bereavement.

- 1.6. Both the 2005 Disability Discrimination Act and the Equality Act 2010 have recognised the principle that reasonable adjustments may not always be appropriate in relation to qualifications. This is due to the fact that qualifications are designed to assess what a candidate can and cannot do. A qualification may only be adjusted up to a certain point before the meaning and value of the qualification may be undermined. Intrinsic to this is the distinction between the skills that are being assessed (e.g. the ability to analyse historical data) and the skills required to access the assessment (e.g. the ability to turn the pages of the History examination paper). While it should be appropriate for the skills required to access the examination to be subject to reasonable adjustment, it is important that assessment objectives – i.e. the skills, knowledge and understanding being assessed by the qualification – should not be compromised by a reasonable adjustment.
- 1.7. There are different approaches to the reasonable adjustment of vocational and general qualifications as set out in the Act. Section 53 of the Act places a duty on awarding organisations to make reasonable adjustments in relation to vocational qualifications. However where an awarding organisation applies a competence standard to a vocational qualification, application of that standard is not disability discrimination unless it is indirect discrimination under section 19 of the Act. Under previous legislation,⁸ competence standards also applied to general qualifications but this is no longer the case under the 2010 Equality Act. The approach to the reasonable adjustment of general qualifications is dealt with in section 96 of the Act.
- 1.8. The Disability Rights Commission now part of the Equalities and Human Rights Commission (EHRC) provided a revised Code of Practice for trade organisations and qualifications bodies in relation to the 2005 Disability Discrimination Act. However, this Code of Practice has not yet been revised to reflect the changes made by the 2010 Equality Act. A link to this document is provided in Appendix 3.

⁸ The Disability Discrimination Act 2005

Section 96: duty to make reasonable adjustments to general qualifications and a new power for the appropriate regulator

- 1.9. Under Section 96 of the Act, the appropriate regulators (Ofqual in England, SQA in Scotland, DCELLS in Wales) have been given a new power in relation to general qualifications, replacing the reference to maintaining a competence standard. Section 96 (7) gives the regulator the power to specify provisions, criteria or practices in relation to which an awarding organisation for general qualifications:
- (a) is not subject to a duty to make reasonable adjustments
 - (b) is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator specifies should not be made.
- 1.10. In effect, this allows the regulator to specify where reasonable adjustments should not be made. In making such specifications, the regulator must take into account ('have regard to') the following:
- (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities
 - (b) 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
 - (c) the need to maintain public confidence in the qualification.
- 1.11. Section 96 of the Act came into force on 1st October 2010. The section is applicable to England, Wales and Scotland (although, as noted above, we are only the appropriate regulator in respect of awarding organisations that confer general qualifications in England). The Act is not applicable to Northern Ireland.
- 1.12. The Secretary of State for Education has the power to list which qualifications are included in the definition of 'general qualifications' covered by section 96. This list is set out in Appendix 2 of this consultation document.

What section 96 does not cover

- 1.13. It is important to note that this new regulatory power does not remove the duty on awarding organisations to make reasonable adjustments, or to consider what adjustments might be reasonable in any particular set of circumstances. Where the appropriate regulator has not made any relevant specifications, awarding organisations are still under a legal duty to make reasonable adjustments for disabled candidates.
- 1.14. Section 96 does not create a power of appeal to the appropriate regulator. Where disabled candidates have been refused an adjustment by an awarding

organisation, they may complain to the awarding organisation. Disabled candidates are also able to take such a complaint to court under equality legislation.

- 1.15. Section 96 does not give qualifications regulators responsibility for monitoring and enforcing equality law, nor can the regulator make decisions regarding what may or may not constitute discrimination. Decisions concerning what constitutes discrimination are ultimately a matter for the judicial system. The Equality and Human Rights Commission (EHRC) is the public sector body responsible for promoting, monitoring and enforcing equality legislation. The EHRC also provides advice and support to organisations and individuals on their duties and rights under equality law.

The regulator's other equality duties

- 1.16. Currently public sector bodies, including qualifications regulators, are subject to a duty to promote sex, race and disability equality. The Equality Act 2010 extends this to include the promotion of equality in respect of age, gender reassignment, religion/belief and sexual orientation through the new Public Sector Equality Duty. However, the duty to make reasonable adjustments continues only to apply to disability, not to other protected characteristics⁹.
- 1.17. The EHRC is currently consulting on the new Public Sector Equality Duty. Links to its website containing guidance on the new duty are provided in Appendix 3.
- 1.18. Our draft *Single Equality Scheme*, setting out how we fulfil our current equality duties, has been published and is available on our website.¹⁰
- 1.19. We are committed to consulting equality groups in the development of our policies and practices. As part of this commitment, we manage two consultative panels focused on equality and diversity:
1. The Access Consultation Forum, which brings together disability groups and awarding organisations to promote disability equality in qualifications.
 2. The **External Advisory Group on promoting equality and inclusion in qualifications and assessments through regulation** which we have established to provide expert advice to us from people who have themselves, or who have an understanding of, protected characteristics.

⁹ Protected characteristics as defined by the Equality Act 2010 are age, disability, gender reassignment, pregnancy and maternity, marriage/civil partnership, race, religion/belief, sex, and sexual orientation.

¹⁰ <http://comment.ofqual.gov.uk/single-equality-scheme>

- 1.20. We are also a member of the Access to Assessment and Qualifications Advisory Group (AAQAG). This group, which is managed by DCELLS on behalf of the qualifications regulators in England, Northern Ireland, Scotland and Wales, focuses on strategic issues affecting disabled learners taking general and vocational qualifications. The group has been set up to ensure that the
- 1.21. work on access to assessment and qualifications across the four regulatory jurisdictions is planned and co-ordinated effectively.
- 1.22. We are also currently reviewing our regulatory framework and we have published major consultations in relation to this.¹¹ The consultation document, *From Transition to Transformation*, set out proposals on conditions of recognition that aim to embed equality within our regulatory function.
- 1.23. We recognise the need to ensure that our regulatory framework is regularly reviewed, and that there may be issues arising from this consultation which could form part of a future review.

¹¹ <http://comment.ofqual.gov.uk>

Part 2

Guidance currently available on reasonable adjustments to qualifications

Fair Access by Design

- 2.1. The regulators in England, Wales and Northern Ireland (Ofqual, DCELLS and the Council for the Curriculum, Examinations and Assessment (CCEA)) have produced guidance to awarding organisations to promote the production of accessible assessment materials across all kinds of qualifications.
- 2.2. *Fair Access by Design*¹² provides guidance on how both vocational and general qualifications can be designed to give all learners the fairest possible opportunities to show what they know, understand and can do. It includes examples of how this can be achieved in the design of:
 - qualifications
 - specifications
 - assessments (written and practical).
- 2.3. The recommendations in *Fair Access by Design* are intended to support and complement the best practice of awarding organisations in the design of qualifications.

JCQ Guidance

- 2.4. Each year the Joint Council for Qualifications (JCQ)¹³ issues guidance entitled, *Access Arrangements, Reasonable Adjustments and Special Consideration*,¹⁴ also known as the *Pink Book*. This guidance provides a major source of information about the current practices of awarding organisations in relation to when reasonable adjustments are appropriate and inappropriate. The document covers not only reasonable adjustments for disabled candidates, but also access arrangements for other groups and provisions for special considerations.

¹² www.ofqual.gov.uk/files/fair_access_by_design.pdf

¹³ The Joint Council for Qualifications is an umbrella body representing awarding organisations.

¹⁴ www.jcq.org.uk/attachments/published/538/22_per_cent20AARASC_per_cent201011.pdf

Exemptions guidance

2.5. In March 2010, Ofqual, CCEA and DCELLS issued joint guidance on principles governing the use of exemptions within general qualifications. These are contained within two documents: *Principles Governing the Use of Exemptions for GCSE, GCE and Entry Level Qualifications* and *Principles Governing the Use of Exemptions for Principal Learning Qualifications*.¹⁵ The content of this guidance and how this may interact with section 96 is discussed in Part 4 below.

Subject criteria

2.6. Subject criteria set out the requirements that must be met when an awarding organisation develops a qualification, such as GCSE Mathematics. There are subject criteria for GCSEs, GCEs (A/AS level), principal learning and functional skills available on our website.¹⁶

2.7. Where subject criteria have been recently reviewed, the approach to reasonable adjustments has been considered as part of the review process, and the approach has been set out within the subject criteria. In some subject criteria the approach to reasonable adjustments has been set out in a section known as an 'inclusion sheet'.

2.8. Subject criteria were previously developed by the Qualifications and Curriculum Authority. Since April 2010, we have taken on responsibility for publishing subject criteria. It is our intention to ensure that subject criteria are assessed for accessibility and inclusion as they are reviewed in future. It is likely that subject criteria will be revised following the current National Curriculum Review, which will continue until approximately March 2012.

2.9. Where appropriate, it is preferable for any subject criteria review for accessibility/inclusion to be undertaken in conjunction with criteria reviews which may follow the National Curriculum Review. It is important to minimise the number of new issues of subject criteria, in order both to provide stability within

¹⁵ Both available at: www.ofqual.gov.uk/for-awarding-organisations/96-articles/261-principles-for-the-use-of-exemptions-for-gcse-gce-and-entry-level-qualifications-and-for-principal-learning-qualifications

¹⁶ **GCSE criteria** available at: www.ofqual.gov.uk/qualification-and-assessment-framework/89-articles/12-gcse-criteria , **A and AS level criteria** available at: www.ofqual.gov.uk/qualification-and-assessment-framework/89-articles/14-a-and-as-level-criteria , **functional skills criteria** available at: www.ofqual.gov.uk/qualification-and-assessment-framework/89-articles/238-functional-skills-criteria , **principal learning criteria** available at: www.ofqual.gov.uk/qualification-and-assessment-framework/89-articles/17-diploma-lines-of-learning .

the qualifications system for learners and schools, and to reduce burdens on awarding organisations.

Access Arrangements Online

2.10. Access Arrangements Online is a web-based system used by centres to apply for certain kinds of access arrangements, including many reasonable adjustments. The system is designed to provide quick responses to straightforward applications and ensure a consistent approach across awarding organisations. More complex reasonable adjustments are dealt with by individual awarding organisations using the *Pink Book* and referring to our principles on exemptions (as detailed above).

2.11. Reasonable adjustments covered by the Access Arrangements Online system include:

- alternative accommodation (away from centre)
- computer reader
- examination on coloured/enlarged paper
- extra time of up to 25 per cent
- extra time of up to 25 per cent with supervised rest breaks
- extra time over 25 per cent
- live speaker for pre-recorded examination components
- modified papers
- oral language modifier
- practical assistant for practical assessments
- practical assistant for written papers
- reader
- scribe/voice activated computer system/voice input system
- sign language interpreter
- supervised rest breaks
- transcript.

2.12. The *Access Arrangements Online* system is currently available via the QCDA website¹⁷. The transfer of this system from QCDA to the Joint Council for Qualifications (JCQ) has been agreed in principle by DfE, JCQ, and the relevant awarding organisation chief executives. It is planned that the transfer will take place in autumn 2011. Until that time, QCDA will continue to maintain and operate the system.

¹⁷ www.qcda.gov.uk/qualifications/exams/807.aspx

Part 3

Structural options and principles

Section A: Structural options

3.1. The regulatory powers provided by section 96 (7) and (8) of the Equality Act 2010 do not require the regulator to make specifications, but provide the regulator with the power to do so.

3.2. The options for a regulatory approach to section 96 are as follows:

Option 1

3.3. The regulators do not make any specifications about where reasonable adjustments should not be made so that awarding organisations continue to make decisions in the absence of specifications from the regulator.

3.4. This option is not the preferred approach. There is a reasonable expectation that a regulator should exercise its new powers and consider issues raised by stakeholders from awarding organisations and disability groups regarding what should be specified under section 96. Furthermore, under Option 1, awarding organisations would continue to be obliged to consider each individual request for a reasonable adjustment, which may not be the most efficient or consistent approach where there are clear specifications which could be made.

Option 2

3.5. The regulator continues to provide only very high level guidance on the principles behind making and prohibiting reasonable adjustments, for example, by simply reiterating current principles on exemptions.

3.6. This option is similar to Option 1, and is not preferred for similar reasons. There is a reasonable expectation that a regulator should exercise its new powers and consider issues raised by stakeholders from both awarding organisations and disability groups regarding what should be specified under section 96.

Option 3

3.7. The regulator attempts to provide an exhaustive list of all reasonable adjustments that should not be made. This leaves only limited discretion to the awarding organisations.

3.8. This option is not the preferred approach. This option would remove any discretion on the part of awarding organisations that have a legal duty to make reasonable adjustments on the basis of individual requests. Each individual candidate has differing needs which may not be met by 'blanket' specifications

and this could result in unforeseen outcomes. It may also lead to a mistaken assumption that where the regulator does not make a specification, the awarding organisation would be under an obligation to allow all requests.

Option 4

- 3.9. The regulator makes specifications where it believes there is evidence and/or justification that reasonable adjustments should not be made in line with the legal powers set out under section 96 (8). The regulator would seek views on the specifications it proposes through a consultation process. The specifications made would be limited to those where a reasonable adjustment should not be made, or where there should be restrictions on reasonable adjustments. Such specifications could not constitute an exhaustive list, thus allowing awarding organisations to consider individuals' requests for reasonable adjustments in line with their legal duties.
- 3.10. This is the preferred approach, as it ensures that the regulator is fulfilling its legal powers without the risk of displacing the legal duty for awarding organisations to make reasonable adjustments.
- 3.11. This approach is less likely to lead to the mistaken assumption that where the regulator does not make a specification, a reasonable adjustment should automatically be made. The regulator would consider and consult on specific issues that have been raised by stakeholders in order to reach a reasoned conclusion. Option 4 also provides a useful tool to promote consistency, as specifications made under this approach would set out where individual decisions on reasonable adjustments would not need to be taken. The approach would minimise the risk of unwittingly disadvantaging individual candidates or fettering the discretion of awarding organisations by allowing the needs of disabled candidates to be considered individually.
- 3.12. The principles set out below, and the draft specifications set out in Part 4, follow the approach outlined in Option 4.

Section B: Principles

- 3.13. This section aims to set out some principles in relation to the regulatory approach to making specifications under section 96. As set out in Part 2 above, in making these specifications, the Equality Act 2010 (section 96 (8)) requires the regulator to take into account three factors:
- (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities
 - (b) 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

(c) the need to maintain public confidence in the qualification.

3.14. It is challenging to balance the above requirements to minimise disadvantage, to secure that qualifications give a reliable indication of knowledge, skills and understanding and to maintain public confidence in qualification. The three requirements are not always mutually compatible. For example, a practical assistant who plays a musical instrument for a mobility impaired candidate during a musical performance may minimise the disadvantage faced by that candidate. But may not give a reliable indication of the knowledge, skills and understanding of the candidate, and could undermine public confidence in that qualification. Conversely, maintaining exactly the same requirements for all candidates, regardless of disability, may on the face of it appear to be a good way to ensure that a qualification provides a reliable indication of knowledge, skills and understanding, but it would not fulfil the need to minimise disadvantage faced by disabled people and could undermine public confidence in that qualification.

3.15. It is recognised that, despite all reasonable efforts, it might not be possible for all candidates to be able to access all qualifications. It is therefore vital for all candidates to be given high quality advice before selecting qualifications for study.

3.16. In the light of the three factors outlined in section 96 (8) of the Act, there are three principles that should be considered when making specifications under section 96:

1. Standard assessment material and practices and modified assessment material should be as accessible as possible.

In relation to the accessibility of standard and modified materials, awarding organisations could partly fulfil this principle by ensuring that experts who make modifications to standard assessment materials are given early access to standard materials before final materials are selected. This would help ensure that:

- (a) standard materials are as inclusive as possible
- (b) standard materials are appropriate for modification
- (c) modifiers have sufficient time to develop modified materials to a high standard.

As discussed in Part 3, the publication, *Fair Access By Design*, also sets out how awarding organisations can design qualifications to be as inclusive as possible.

2. Assessment materials and practices in relation to disabled candidates should aim to reflect normal ways of working – i.e. classroom and future working environments – as far as is reasonable.

It is important to reflect, where possible, the continued and growing use of technology which may allow disabled people to access information and assessment material. Another example would be allowing extra time for a dyslexic candidate to complete an assessment where this reflects the usual way of working for that student.

3. Reasonable adjustments should not compromise assessment objectives¹⁸.

Where reasonable adjustments are made, these should be based on evidence of need and should not compromise the assessment objectives of the qualification.

¹⁸ Assessment objectives are a set of statements in a specification describing the focus of assessment and are related to the requirements that learners need to meet in order to achieve success (or a given grade) in a qualification or unit, or part of a unit.

Part 4

Specified measures

- 4.1. This part sets out the areas in which we are considering making specifications under section 96.
- 4.2. For each area, the current situation is described, followed by the proposals in respect of which we are considering making specifications. Specific proposals are then set out, with examples to illustrate what they would mean in practice. Finally, the consultation questions relating to the specific proposals are listed.
- 4.3. Part 6 of this document lists all consultation questions in sequence.
- 4.4. All of the proposed specifications listed below would apply irrespective of the form of assessment which may form part of a qualification. For example, final specifications made would apply to controlled assessments and to assessments which take place under examination conditions.
- 4.5. Following their implementation, we plan to review the specifications to ensure that they continue to be appropriate and relevant. Where subject criteria may be reviewed in future, specifications made under section 96 would also be reviewed to ensure that the specifications remain relevant and appropriate.

Exemptions

Current situation

- 4.6. An exemption is an example of a reasonable adjustment made to a qualification by an awarding organisation. It is an adjustment made by an awarding organisation, in advance of an examination and/or controlled assessment, whereby the disabled learner is allowed not to take a component (or components)¹⁹. As outlined above, when an exemption is granted, the learner's performance on the components actually taken will be considered to be the performance for the whole qualification.
- 4.7. It is generally agreed that exemptions are not an ideal approach and should only be used as a reasonable adjustment of last resort. However, exemptions have been used for many years so that disabled candidates can access qualifications where parts of qualifications are inaccessible, particularly in

¹⁹ The *GCSE, GCE Code of Practice* defines a component as 'a discrete assessable element within a qualification which is not itself formally reported'.

gateway qualifications²⁰. Where exemptions are given, this is currently indicated on the candidate's certificate with the text: "The candidate was exempt from part of the assessment. Details may be obtained from (name of awarding organisation)." This aims to ensure that the qualification remains a reliable indication of a candidate's skills, knowledge and understanding.

- 4.8. Exemptions and the use of certificate indicators represent a complex area of reasonable adjustment and are closely linked to subject criteria.²¹ In some areas exemptions are used because current subject criteria may not allow for a more inclusive approach to reasonable adjustments. For example, if alternative forms of communication were considered appropriate for use within GCSE English subject criteria, exemptions from specific components, such as speaking, reading and listening, may no longer be required for hearing impaired or visually impaired candidates. As outlined in Part 2, we are committed to reviewing subject criteria for accessibility and inclusion, in conjunction with future planned reviews.
- 4.9. As described in Part 2, current guidance on exemptions is provided by Ofqual, CCEA and DCELLS, and has been developed in consultation with disability groups and awarding organisations.²² These set out the following principles:
- (a) Exemptions are designed to recognise that there are certain learners who, because of a disability, may not be able to demonstrate all of the skills required within an assessment. Therefore exemptions enable disabled learners to gain recognition for parts of the assessment that they cannot access.
 - (b) Any access arrangement adopted should not undermine the integrity of the qualification or the qualification system.
 - (c) Exemptions are granted as a last resort when no other access arrangement(s) can be used. Every effort should be made to identify access arrangements that allow the learner to participate in the assessment of all parts of the qualification.

²⁰ A gateway qualification is a qualification that is often required to gain access to higher level qualifications, for example, GCSE English is often required for university entrance.

²¹ Also known as 'subject criteria'.

²² Available at: www.ofqual.gov.uk/for-awarding-organisations/96-articles/261-principles-for-the-use-of-exemptions-for-gcse-gce-and-entry-level-qualifications-and-for-principal-learning-qualifications

- (d) Where an exemption is granted, an indication will be placed on the learner's certificate to show that not all of the assessment objectives were accessible.
- (e) Exemptions are applicable to all GCSE, GCE, entry level certificates in GCSE subjects and principal learning qualifications.
- (f) In considering applications for exemptions, awarding organisations will ensure that learners are no worse off under revised arrangements than they would have been under previous arrangements.²³
- (g) Exemptions must apply only to those whole components within a qualification where the learner's disability means that s/he cannot access any of the assessment requirements within the component (or for a Diploma, any assessment requirements within the principal learning unit).
- (h) Normally no more than 50 per cent of a qualification may be exempted. At A level at least one A2 unit must be completed. For principal learning, 50 per cent of the qualification should be taken to mean 50 per cent of the guided learning hours (GLH).

4.10. Awarding organisations assess each exemption application on the basis of individual need, following the principles set out above.

4.11. The Joint Council for Qualifications (JCQ) estimates that approximately 100 exemptions are used in each academic year across all general qualifications awarded by JCQ awarding organisations. In the summer 2010 examination period, 6 million GCSE and 2.2 million GCE (A/AS level) qualification awards were made across England, Wales and Northern Ireland.²⁴

Proposals

4.12. Principles 3, 7 and 8 of the current guidance on exemptions are relevant to specifications which may be made under section 96. We would propose specifications stating that exemptions may only be used where no other

²³ This provision relates to visually impaired candidates who cannot use Braille or enlarged print papers and are exempted from the reading component of GCSE English. This issue is considered below in section 4.3 - Readers.

²⁴ *Statistical Bulletin - Enquiries about results for GCSE and GCE: Summer 2010 Examination Series*, December 2010, Ofqual/CCEA/DCELLS

reasonable adjustment is available, that they be limited to a certain percentage of a qualification and that exemptions are only applied to a whole component where a candidate cannot access any of that component. In the light of both the proposals below, which allow for a greater range of reasonable adjustments than are now normally permitted²⁵, and the estimates that the current maximum percentage of a qualification which is normally exempted is significantly less than 50 per cent, it is worth considering whether the 50 per cent recommended maximum exemption limit should be reduced.

- 4.13. Allowing exemptions for whole components only where a candidate cannot access any of that component, helps to ensure that exemptions are seen as a reasonable adjustment of last resort, where no other reasonable adjustments are available. Furthermore, in the context of exemptions, a component is the smallest part of a qualification assessable in its own right, and it may not therefore be practical or possible for an awarding organisation to assess only a part of a component.
- 4.14. 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 qualifications provide a reliable indication of the knowledge, skills and experience of the candidate.

²⁵ See for example proposal 4.3.1 regarding the use of readers.

Specific proposals and consultation questions

A. An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is available to the candidate.

Example 1

Where an e-assessment process creates a barrier for a visually impaired candidate, an exemption should not be required, because there is likely to be an alternative form of assessment that could be provided, such as a written or Braille paper, which is accessible to that candidate.

Example 2

Where a hearing impaired candidate cannot access the listening component of an English examination, an exemption may be granted where there is no other reasonable adjustment that would allow the candidate to demonstrate the skills in question.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Specific proposals and consultation questions

B. An exemption must not be used as a reasonable adjustment where it would form more than 50 per cent of the available (weighted) marks of a qualification. At A level, at least one A2 unit should be completed. For principal learning, 50 per cent of the qualification should be taken to mean 50 per cent of the guided learning hours.

Example 1

Where a controlled assessment provides 40 marks of the 100 marks available for a qualification, but these 40 marks are weighted to form 60 per cent of the qualification, a candidate should not be exempted from the controlled assessment component, as it forms more than 50 per cent of the qualification.

Example 2

Where a hearing impaired candidate cannot access the listening component of an English examination, an exemption may be granted where there is no other reasonable adjustment that would allow the candidate to demonstrate the skills in question.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

Alternatively you agree with a lower limit of 30 per cent as the maximum percentage of a qualification that can be exempted?

*Specifications in Relation to the Reasonable Adjustment of General Qualifications:
Consultation Questions*

Yes

No

Please give reasons for your answer.

If you do not agree with either 50 per cent or 30 per cent as the maximum percentage of a qualification that can be exempted, what alternatives would you suggest and why?

Specific proposals and consultation questions

C. An exemption to part of a component should 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.

Example 1

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.

Example 2

A dyslexic candidate may have difficulty gaining marks for spelling and punctuation which forms 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 likely that an exemption would not be used under draft specification A. This is because other reasonable adjustments, such as the provision of extra time, would be available to the candidate.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

Would you agree with a lower limit of 30 per cent as the maximum percentage of a qualification that can be exempted?

Yes

No

If not, what alternatives would you suggest?

If you would like to see exemptions granted for part of a component of a general qualification, it would be helpful if you could describe a situation in which this should/could be done (i.e. where there would not be other reasonable adjustments that could be put in place) and also how part of a component could be assessed.

Pass marks and grade boundaries

Current situation

- 4.15. Grade boundaries, pass marks and cut scores are not currently different for disabled and non-disabled candidates.
- 4.16. Where exemptions are used, candidates are marked out of 100 per cent for units that they have been entered for, and are then still subject to the same grade boundaries, pass marks and cut scores. For example, where a candidate is exempted from a component consisting of 20 per cent of a qualification, the candidate is marked only on the 80 per cent of the qualification for which he or she is entered. To establish the final mark, the 80 per cent of the qualification is adjusted to 100 per cent so that the candidate's score is marked out of 100 per cent. This mark is then subject to the same grade boundaries, pass marks and cut scores as in all other cases.

Proposal

- 4.17. It is proposed that there is no change to current arrangements, i.e. that grade boundaries, pass marks and cut scores are the same for disabled and non-disabled candidates, with marks given out of 100 per cent to exclude exempted units where exemptions are used.
- 4.18. Ensuring grade boundaries are not subject to a duty to make reasonable adjustments maintains public confidence and secures that the qualifications provide a reliable indication of the knowledge, skills and experience of the candidate, whilst neither disadvantaging nor advantaging disabled candidates.

Specific proposals and consultation questions

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

Example 1

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

Example 2

Where an exemption is provided and a disabled candidate is taking 80 per cent of a qualification, that 80 per cent would be deemed as 100 per cent of the qualification for the purposes of establishing a percentage mark. For example, where a disabled candidate is exempted from 20 out of 80 (equally weighted) marks available for a qualification, 60 marks would be deemed to be 100 per cent of the available marks. If the candidate gained 30 marks, this would be a percentage score of 50 per cent. The disabled candidate with a final percentage score of 50 per cent would be given the same grade as a non-disabled candidate with a final percentage score of 50 per cent.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Readers

Current situation

- 4.19. Readers are a reasonable adjustment currently used where visually impaired candidates cannot access examination papers in any format, including Braille or modified/enlarged papers. Readers include human readers, computer/screen readers and reading pens. These enable candidates to accept written assessment material, such as instructions and questions within an examination paper to candidates to enable them to access that assessment material.
- 4.20. Human and computer/screen readers are currently used as a reasonable adjustment in general qualifications where the candidate's ability to read is not being assessed.
- 4.21. However, where the ability to read is being assessed – for example in GCSE English reading components – human readers, computer/screen readers and reading pens are not currently allowed.
- 4.22. This means that where visually impaired candidates cannot access Braille, enlarged print or modified enlarged print, exemptions are currently available for reading components of qualifications such as GCSE English and Modern Foreign Languages.
- 4.23. An exception to these arrangements is that Functional Skills English allows the use of computer readers in the component which assesses the candidate's ability to read.

Proposals

- 4.24. There are a number of inconsistencies regarding the current use of readers:
- (a) The lack of consistency in approach between GCSE English and Functional Skills English reading components may undermine public confidence in one or both of these qualifications, Parents, learners and schools may find it difficult to understand why different reasonable adjustments are available, even though both components assess the candidate's reading ability.
 - (b) There is an anomaly within current exemption guidance, which states that learners 'should be no worse off under revised arrangements than they

would have been under previous arrangements'.²⁶ It is understood that this principle has been used to grant reading component exemptions to visually impaired candidates who cannot use Braille or modified papers, but who may be able to access parts of the reading component. This approach is not consistent with the other principles of exemptions, as candidates must normally not be able to access any part of a component in order to qualify for an exemption for that component. Also, the use of exemptions as a reasonable adjustment of last resort, where no other reasonable adjustment is available, does not seem to be compatible with this anomaly. This inconsistency may also undermine public confidence in the affected qualification.

- (c) In an everyday working and classroom environment, particularly where visually impaired learners do not attend specialist schools, Braille may not be taught or used. Visually impaired students may prefer to access written text via assistive technologies. In order to maintain public confidence it is important that the assessment context is consistent with learners' usual ways of working as long as this does not undermine the assessment objective.

4.25. It is worth considering whether use of computer readers and reading pens should continue to be prohibited when a candidate's ability to read is being assessed. There are two key points raised in support of the usage of computer/screen readers and reading pens during reading assessments:

- (a) Computer/screen readers and reading pens do not interpret text as a human reader may. Human readers can add a layer of vocal interpretation (nuance and meaning), resulting in reading assessment material being presented as if it were more akin to a listening assessment. Such interpretation could affect a candidate's response and thus compromise the reliability of the qualification.
- (b) Assistive technologies allow for independence during an examination, whereas a human reader does not.

²⁶ Principle 6 as set out in part 4.2 above. Full documents are available at www.ofqual.gov.uk/for-awarding-organisations/96-articles/261-principles-for-the-use-of-exemptions-for-gcse-gce-and-entry-level-qualifications-and-for-principal-learning-qualifications

- 4.26. We propose that a specification is made which does not allow for the use of human readers during assessments that assess reading, but that could allow for the use of computer/screen readers and reading pens as a reasonable adjustment in assessments that assess reading. For Modern Foreign Language reading assessments it would be necessary for any computer/screen readers and reading pens to use the language being assessed.
- 4.27. This approach would ensure consistency across general qualifications. This should have a positive impact on public confidence. By continuing to prohibit the use of human readers for reading assessments, it would ensure that the qualifications continue to provide a reliable indication of the knowledge, skills and understanding of candidates. It would also reduce the extent to which disabled candidates are disadvantaged, as it would allow visually impaired candidates who cannot access modified or Braille papers the opportunity to demonstrate their skills, rather than having to apply for an exemption from the reading component.
- 4.28. This proposal would allow awarding organisations to make reasonable adjustments of a form currently not used. However, some visually impaired learners who are not able to use Braille, computer/screen readers or reading pens would remain unable to access reading assessments. The only reasonable adjustment available to them would be an exemption from the component that assesses reading ability.

Specific proposals and consultation questions

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

Example

In a GCSE English or Foreign Language reading examination designed to test the candidate's reading ability, a human reader should not be used. In this instance, alternative reasonable adjustments such as a computer/screen reader or reading pen could be used.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Are there any circumstances in which it would be appropriate to allow the use of a human reader where reading ability is being assessed?

Scribes and voice recognition technology

Current situation

- 4.29. Scribes and assistive technology, such as voice activated computer software, are used as reasonable adjustments where learners cannot write or type using a word processor. This can be due, for example, to visual or mobility impairments. Scribes are people who write or word process a candidate's dictated answers. Voice recognition systems produce a hard copy with predictive text when the candidate dictates into a word processor. Scribes can also be used as readers, and computer readers can be used in conjunction with voice activated software.
- 4.30. For most qualifications, the use of scribes and voice recognition systems is a reasonable adjustment that can be used in a straightforward way. However, where qualifications explicitly assess the ability to write, such as English and Foreign Language qualifications, the situation is more complex. The use of scribes and voice recognition software can have a direct impact on assessment objectives. In relation to such qualifications, it is important to balance the need to minimise disadvantage to disabled candidates by using scribes and their technological equivalent as a reasonable adjustment, whilst limiting the way that such reasonable adjustments are used to ensure the reliability of such qualifications is maintained.
- 4.31. There are mediation and interpretation issues that arise with both voice recognition software (through predictive text which spells and punctuates and may not be possible entirely to 'turn off') and human scribes (where the scribe generates spelling or punctuation). The unrestricted use of both these reasonable adjustments could undermine the spelling and punctuation-related assessment objectives of written English and Foreign Language components, and also the accuracy of language assessment objectives within Foreign Language written components.²⁷
- 4.32. Current arrangements regarding the use of scribes and voice recognition systems aim to balance the need to minimise disadvantage faced by disabled candidates with the need to maintain the integrity of the qualification:

²⁷The Department for Education's White Paper, *The Importance of Teaching* has asked us to provide advice on how mark schemes could take greater account of the importance of spelling, punctuation and grammar for examinations in all subjects. In formulating this advice, we will work to ensure that any proposed policies/practices comply with the Public Sector Equality Duty.

- (d) Scribes and voice recognition systems are only allowed where a candidate cannot use another reasonable adjustment which allows them to demonstrate their written skills more completely, such as the use of touch typing or Braille input.
- (e) Scribes are currently allowed for use with assessments in English writing. However, marks awarded for spelling and punctuation are not available to candidates where they are generated by a scribe and not by the candidate. Examination cover sheets²⁸ state where punctuation and spelling are generated by the candidate's dictation, and where they are generated by the scribe. As marks for spelling and punctuation typically form only a small part of the total marks available, this arrangement means that even where spelling and punctuation are not dictated, this has a minor impact on overall marks gained. This arrangement balances the need to maintain the reliability of the qualification with the need to minimise disadvantage to disabled candidates.
- (f) Scribes are currently allowed in qualifications where a candidate's ability to write in a foreign language is being assessed, such as in GCSE and GCE Foreign Language qualifications, but only where the candidate spells each word letter by letter. Candidates generally dictate answers into a voice recorder in order to maintain the flow of the language and then re-run the recording, dictating each foreign language word letter by letter. Additional time is normally also used in such a situation. As accuracy of the language is a key assessment objective and often a major source of marks of Modern Foreign Language written components, the use of scribes with words spelled out minimises disadvantage to disabled candidates. This arrangement enables candidates to demonstrate their language accuracy skills, whilst maintaining the reliability of the qualification by ensuring that it is the candidate's skills, and not the scribe's skills, which are being assessed.
- (g) Voice recognition technology is currently not allowed for use with assessments in English writing due to the difficulty of spelling out words via technology which automatically generates words.

²⁸ Cover sheets are used with certain reasonable adjustments, such as scribes and oral language modifiers (OLM), to clarify what input the scribe or OLM has had.

- (h) Arrangements are different for the writing component of Functional Skills English, where a scribe is not allowed, but voice recognition software is allowed.

Proposals

- 4.33. In assessing accuracy of language and use of spelling and punctuation, it is clear that the unrestricted use of scribes (or their technological equivalent) can impact on a candidate's ability to demonstrate their skills. Where a skill, such as the ability to spell, is not demonstrated by a candidate, to award marks for that skill would not secure that the qualification in question provided a reliable indication of the knowledge and skills of the candidate.
- 4.34. There is an inconsistency in the approach to written components of English in different qualifications (GCSEs and Functional Skills) which may be justified by differing assessment objectives in current subject specifications. Any future subject specification reviews should aim to address concerns regarding inconsistency.
- 4.35. In order to minimise disadvantage faced by disabled candidates and maintain the reliability of qualifications to indicate the knowledge, skills and understanding of all candidates, we propose to make a specification under section 96 to the effect that scribes and voice activated software should not be used in a way that undermines assessment objectives.
- 4.36. Such a specification would not restrict how scribes or voice recognition technology are used in relation to components or qualifications that do not assess a candidate's ability to write. The assessment objectives for such components or qualifications would be unaffected.

Specific proposals and consultation questions

F. Scribes and voice recognition systems should not be used as a reasonable adjustment to demonstrate written skills where those written skills form part of the qualification's assessment objectives.

Example 1

In a GCSE Foreign Language writing assessment, a voice recognition system should not be used as it would generate foreign language words which would not allow the candidate 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 marked 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.

Do you agree with this specific proposal? (please tick ONE)

- | | |
|-------------------|--------------------------|
| Strongly agree | <input type="checkbox"/> |
| Slightly agree | <input type="checkbox"/> |
| Slightly disagree | <input type="checkbox"/> |
| Strongly disagree | <input type="checkbox"/> |
| No opinion | <input type="checkbox"/> |

Please give reasons for your answer.

If not, what alternatives would you suggest?

Are there any circumstances in which it would be appropriate to allow the use of a human reader where reading ability is being assessed?

British Sign Language

Current situation

- 4.37. Interpretation of spoken English into and from British Sign Language (BSL) is not currently available as a reasonable adjustment for hearing impaired candidates to access speaking and listening components of most general qualifications in English and Modern Foreign Language. Where candidates cannot access alternative forms of communication such as lip reading, live voice or sign supported English, exemptions are available for speaking and listening components.
- 4.38. There are two main reasons why the use of BSL is not currently available as a reasonable adjustment to speaking and listening components of general qualifications in English and Foreign Languages:
- (a) There is a view that because BSL is recognised as a language in its own right, it would not be appropriate to include BSL as a reasonable adjustment in an examination called 'English' or 'French'.
 - (b) Current GCSE subject criteria in English and Foreign Languages specifically reference the ability to speak and listen. The criteria do not refer to non-written communication in a wider sense. They do not include assessment objectives which may be appropriate for the assessment of BSL, for example, methods of assessment may need to be revised to reflect the different use of body language in BSL between English and BSL.
- 4.39. BSL is available as a reasonable adjustment for the speaking, listening and communication component of Functional Skills English. This can be explained by the different way that speaking and listening and non-written communication is approached within Functional Skills. The Functional Skills subject criteria defines speaking, listening and communication as 'non-written communication, normally conducted face-to-face'. This is inclusive of BSL, and different to the approach taken in GCSE English. Assessment objectives within Functional Skills have been specifically designed to take account of BSL usage.

Proposals

- 4.40. In order to promote public confidence, it may be preferable in the longer term to move towards a more consistent approach to the use of BSL in English and Foreign Language qualifications. However, there are clear reasons for the current different approaches which relate directly to assessment objectives contained within subject criteria.

4.41. It is difficult to amend existing practices in relation to the use of BSL as a reasonable adjustment to English and Foreign Language qualifications whilst current subject criteria are in place. To do so would risk undermining the reliability of such qualifications to indicate the knowledge, skills and understanding of a candidate. The current use of exemptions means that hearing impaired candidates who cannot access other reasonable adjustments such as lip reading, live voice or sign supported English, are still able to access English and Foreign Language qualifications, thus minimising the extent to which disabled candidates are disadvantaged.

Specific proposals and consultation questions

G. BSL should 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.

Example 1

In a GCSE Modern Foreign Language listening assessment, the provision of a BSL interpreter should not be used as it would not allow the candidate 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 BSL.

Example 3

In an oral Mental Mathematics examination, a BSL interpreter may be used as a reasonable adjustment to interpret questions to a hearing impaired candidate because the assessment objectives of this examination do not require a candidate to demonstrate their ability to listen.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Practical assistants

Current situation

4.42. Practical assistants are currently not allowed to demonstrate physical skills on behalf of a candidate where physical skills are part of the assessment objectives of a qualification.

Proposals

4.43. It is proposed that the current arrangements be reflected in a specification under section 96, because to change this could undermine the ability of affected qualifications to provide a reliable indication of the knowledge, skills and understanding of a candidate. Allowing practical assistants to demonstrate physical skills that form part of the assessment objectives could undermine public confidence in such qualifications. To allow practical assistants to demonstrate physical skills on behalf of a disabled candidate would not necessarily minimise disadvantage where, for example, a candidate would not be assessed on the basis of their own abilities.

Specific proposals and consultation questions

H. Practical assistants should 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.

Example 1

Where a candidate is being assessed on their physical 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 those skills 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 these tasks because such physical skills are not part of any assessment objective.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Oral language modifiers

Current situation

4.44. The role of oral language modifier (OLM) succeeded that of the oral communicator in 2007. The OLM arrangement was originally developed as a reasonable adjustment to support hearing impaired learners and learners with a below average reading comprehension. OLMs support candidates by helping them to understand 'carrier language'²⁹ that is used in examination papers. They are not permitted to modify 'technical language' – i.e. language that forms part of what is being assessed. OLMs are typically used in addition to written modifications to the examination papers made in advance of the examination. Modified papers have not always been appropriate for the needs of some candidates.

4.45. OLMs are currently allowed across all subjects. However, there are some concerns regarding the quality of the modifications they provide. For the majority of examinations for which they are requested, they are not actually used to modify language. Information from examination cover sheets submitted to the JCQ from the summer 2010 examination period shows that although OLMs were present in exams on 1482 occasions, on 1042 of these occasions OLMs were not required to modify language.³⁰

Summer 2010 examinations

Number of examinations for which OLMs were present	1482
Number of examinations at which OLMs performed no intervention	1003
Number of examinations at which OLMs performed reading only (no modification)	39
Number of examinations at which OLMs performed modifications	440 ³¹

4.46. The cover sheets returned to JCQ included information about what modifications had been made. These included examples of incorrect

²⁹ Carrier language is the language used to set an assessment (as opposed to the technical language which is being assessed).

³⁰ Data provided by the Joint Council for Qualifications (JCQ)

³¹ Data provided by the Joint Council for Qualifications (JCQ).

modifications, either where technical language was modified or where carrier language was wrongly modified, for example:³²

- In a Religious Studies paper the word 'contraception' was modified even though this is a technical term rather than carrier language.
- In a Mathematics paper the instruction 'measure one side' was incorrectly modified to 'work out perimeter' – again a modification of technical rather than carrier language, and in this case the modification made would have disadvantaged the learner.
- In one centre 'unique' was modified to 'more than one' on two separate occasions. In the same centre it had also been modified to mean 'only one'.

4.47. There are concerns that not all examination papers are modified in advance to a high enough standard to allow for OLMs to be completely removed. It is worth noting that for National Curriculum Assessments, OLMs are not used, as National Curriculum examination papers are modified much earlier in the test development cycle allowing for a more thorough modification process.

Proposals

4.48. There are concerns regarding the extent and quality of current modifications to examination papers. On this basis, if OLMs were to be specified as a reasonable adjustment that should not be made under section 96, this could disadvantage some disabled candidates. The potential disadvantage that may be suffered by disabled candidates could also undermine public confidence in general qualifications.

4.49. We therefore propose that no specifications be made under section 96 in relation to OLMs. This would allow awarding organisations to continue to allow the use of OLMs as a reasonable adjustment and minimise the disadvantage to disabled candidates. As there are quality concerns both in relation to OLMs and to modified papers this approach would appear neutral in relation to the need to secure that qualifications provide a reliable indication of the knowledge, skills and understanding of a candidate. Awarding organisations should take steps to make sure modified papers are of sufficient quality that OLMs are not needed. In addition, or alternatively, they should take steps to enhance the quality of the interventions made by OLMs.

³² Information provided by the Joint Council for Qualifications (JCQ).

4.50. This issue highlights the importance of designing accessibility into qualifications from the start of the development process, as outlined in *Fair Access by Design*.³³

Consultation questions

I. Do you agree that there should be no specification on oral language modifiers? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

³³ www.ofqual.gov.uk/files/fair_access_by_design.pdf

Other areas

4.51. We recognise that there may be other reasonable adjustments that stakeholders and the public believe should not be made in relation to general qualifications. If you would like to suggest other specifications under section 96, please tell us.

Consultation questions

J. Are there any specifications about reasonable adjustments that should not be made in relation to general qualifications that have not been listed in this document?

Yes

No

If so, what specifications would you suggest?

For each additional specification you suggest, please explain why you would make this suggestion.

Part 5

Transitional arrangements and timing

Transitional arrangements

- 5.1. It is important that adequate time is taken to consult on specifications which may be made under section 96 of the Equality Act 2010 concerning reasonable adjustments to general qualifications.
- 5.2. It is also important that awarding organisations have sufficient time to prepare for any changes. Schools and colleges also need time to advise learners on their choices.
- 5.3. Current arrangements in relation to reasonable adjustments to general qualifications are set out by the JCQ in their publication, *Access Arrangements, Reasonable Adjustments and Special Consideration*.³⁴ It includes an explanation of where reasonable adjustments are currently not made. Current arrangements concerning reasonable adjustments as set out in the JCQ guidance document will continue to apply until any specifications made by us are implemented.

Timing of implementation

- 5.4. Where specifications make no change to the current arrangements, we propose that these be brought into effect immediately on publication of the final specifications.
- 5.5. Where specifications make a change to current arrangements, we propose that these be published at least one academic year in advance of the academic year in which the changes will come into effect. This allows time for awarding organisations, centres and schools to prepare and plan for any changes.

³⁴ www.jcq.org.uk/attachments/published/538/22_per_cent20AARASC_per_cent201011.pdf

Part 6

Consultation questions and how to respond

How to respond

6.1. We welcome your views on our consultation, *Specifications in Relation to the Reasonable Adjustment of General Qualifications*.

You can respond to the questions we have asked in this document using one of the following methods:

- completing the online response form at <http://comment.ofqual.gov.uk/s96equalityactconsultation> respond
- emailing a completed response form to consultations@ofqual.gov.uk - please include the consultation title in the subject line of your email.
- emailing your response in an alternative format to consultations@ofqual.gov.uk – please include the consultation title in the subject line of your email.
- posting your response to: Specifications on Reasonable Adjustments, Ofqual, Spring Place, Coventry Business Park, Herald Avenue, Coventry, CV5 6UB.

6.2. Responses should be received by us no later than **Monday 15th August 2011**.

6.3. All responses will be read, analysed and considered. We aim to publish a summary of consultation responses and any final specifications in the autumn of this year. If you would like your response to this consultation treated in confidence, please state this clearly on your response.

Consultation questions

A. An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is available to the candidate.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

B. An exemption must not be used as a reasonable adjustment where it would form more than 50 per cent of the available (weighted) marks of a qualification. At A level, at least one A2 unit should be completed. For principal learning, 50 per cent of the qualification should be taken to mean 50 per cent of the guided learning hours.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

Alternatively would you agree with a lower limit of 30 per cent as the maximum percentage of a qualification that can be exempted?

Yes

No

Please give reasons for your answer.

If you do not agree with either 50 per cent or 30 per cent as the maximum percentage of a qualification that can be exempted, what alternatives would you suggest and why?

C. An exemption to part of a component should 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.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

Would you agree with a lower limit of 30 per cent as the maximum percentage of a qualification that can be exempted?

Yes

No

If not, what alternatives would you suggest?

If you would like to see exemptions granted for part of a component of a general qualification, it would be helpful if you could describe a situation in which this should/could be done (i.e. where there would not be other reasonable adjustments that could be put in place) and also how part of a component could be assessed.

Specific proposals and consultation questions

K. Awarding organisations should not make reasonable adjustments for disabled candidates in relation to grade boundaries and pass marks also known as 'cut scores'.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Specific proposals and consultation questions

L. Human readers should not be used as a reasonable adjustment where a candidate's reading ability is being assessed.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Are there any circumstances in which it would be appropriate to allow the use of a human reader where reading ability is being assessed?

Specific proposals and consultation questions

M. Scribes and voice recognition systems should not be used as a reasonable adjustment to demonstrate written skills where those written skills form part of the qualification's assessment objectives.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Are there any circumstances in which it would be appropriate to allow the use of a human reader where reading ability is being assessed?

Specific proposals and consultation questions

N. *BSL should 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.*

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Specific proposals and consultation questions

O. Practical assistants should 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.

Do you agree with this specific proposal? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Consultation questions

P. Do you agree that there should be no specification on oral language modifiers? (please tick ONE)

Strongly agree

Slightly agree

Slightly disagree

Strongly disagree

No opinion

Please give reasons for your answer.

If not, what alternatives would you suggest?

Consultation questions

J. Are there any specifications about reasonable adjustments that should not be made in relation to general qualifications that have not been listed in this document?

Yes

No

If so, what specifications would you suggest?

For each additional specification you suggest, please explain why you would make this suggestion.

Appendices

Appendix 1: Section 96, Equality Act 2010

Section 96 Qualifications bodies

- (1) A qualifications body (A) must not discriminate against a person (B)—
 - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
 - (c) by not conferring a relevant qualification on B.

- (2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—
 - (a) by withdrawing the qualification from B;
 - (b) by varying the terms on which B holds the qualification;
 - (c) by subjecting B to any other detriment.

- (3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—
 - (a) a person who holds the qualification, or
 - (b) a person who applies for it.

- (4) A qualifications body (A) must not victimise a person (B)—
 - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
 - (c) by not conferring a relevant qualification on B.

*Specifications in Relation to the Reasonable Adjustment of General Qualifications:
Consultation Questions*

- (5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—
- (a) by withdrawing the qualification from B;
 - (b) by varying the terms on which B holds the qualification;
 - (c) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a qualifications body.
- (7) Subsection (6) does not apply to the body in so far as the appropriate regulator specifies provisions, criteria or practices in relation to which the body—
- (a) is not subject to a duty to make reasonable adjustments;
 - (b) is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator specifies should not be made.
- (8) For the purposes of subsection (7) the appropriate regulator must have regard to—
- (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;
 - (b) 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;
 - (c) the need to maintain public confidence in the qualification.
- (9) The appropriate regulator—
- (a) must not specify any matter for the purposes of subsection (7) unless it has consulted such persons as it thinks appropriate;
 - (b) must publish matters so specified (including the date from which they are to have effect) in such manner as is prescribed.

- (10) The appropriate regulator is—
- (a) in relation to a qualifications body that confers qualifications in England, a person prescribed by a Minister of the Crown;
 - (b) in relation to a qualifications body that confers qualifications in Wales, a person prescribed by the Welsh Ministers;
 - (c) in relation to a qualifications body that confers qualifications in Scotland, a person prescribed by the Scottish Ministers.
- (11) For the purposes of subsection (10), a qualification is conferred in a part of Great Britain if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are or will be assessed for those purposes wholly or mainly in that part.

To see the Act in full, please go to:

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

Appendix 2: General qualifications in England covered by section 96 (as set by the Secretary of State for Education)

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

	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 Maths 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 3: Related publications and guidance

The Equality Act 2010

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

The Final Impact Assessment for the Equality Act

[www.equalities.gov.uk/pdf/Equality per cent20Act per cent20Impact.pdf](http://www.equalities.gov.uk/pdf/Equality%20per%20cent20Act%20per%20cent20Impact.pdf)

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

www.oqps.gov.uk/legislation/ssi/201003

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

[www.jcq.org.uk/attachments/published/538/22. per cent20AARASC per cent201011.pdf](http://www.jcq.org.uk/attachments/published/538/22.%20per%20cent20AARASC%20per%20cent201011.pdf)

Fair Access by Design, DCELLS, Ofqual, CCEA

www.ofqual.gov.uk/files/fair_access_by_design.pdf

Single Equality Scheme, Ofqual

<http://comment.ofqual.gov.uk/single-equality-scheme>

*Principles for the Use of Exemptions for GCSE, GCE and Entry Level Qualifications
and for Principal Learning qualifications, Ofqual, CCEA, DCELLS*

www.ofqual.gov.uk/for-awarding-organisations/96-articles/261-principles-for-the-use-of-exemptions-for-gcse-gce-and-entry-level-qualifications-and-for-principal-learning-qualifications

*Code of Practice in relation to Trade Organisations, Qualifications Bodies and
General Qualifications Bodies, Equality and Human Rights Commission (not yet
updated to reflect changes made by 2010 Equality Act)*

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

*Key Stage 2 Access Arrangements Guide, National Curriculum Assessment,
Qualifications and Curriculum Development Agency*

www.qcda.gov.uk/assessment/3798.aspx

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