

Number: WG12843



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation Document

Reasonable adjustments of general qualifications

Exercising Welsh Ministers' regulatory power under the Equality Act 2010

Date of issue: **11 July 2011**

Action required: Responses by **03 October 2011**

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

Reasonable adjustments of general qualifications

Overview

The Welsh Government wants to make sure that general qualifications, for example GCSEs and A levels, are as accessible as possible to all learners, including those with disabilities.

The Equality Act 2010 places a duty on qualifications bodies to make reasonable adjustments for disabled candidates. Treating candidates fairly, while making sure the qualification remains valid, is an important consideration.

The Equality Act 2010 also gives the Welsh Ministers (the qualifications regulators in Wales) power to specify where a reasonable adjustment should **not** be made.

How to respond

The consultation response form is available for completion at www.wales.gov.uk/consultations

Responses to this consultation should be emailed/posted to the address below to arrive by **03 October 2011**.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be accessed on the Welsh Government website at www.wales.gov.uk/consultations

Contact details

For further information, please contact:

Nia Jones
Qualifications and Learning Division
Welsh Government
Ty'r Afon
Bedwas
CF83 8WT

e-mail: info.qual@wales.gsi.gov.uk

Tel: 01443 663725

Data protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

	Page
Introduction	1
What are the main issues?	2
Where are we now?	3
Why are we proposing change?	4
Timing	5
Annexes	
1. Our proposals	
• Exemptions	
• Pass marks and grade boundaries	
• Readers	
• Scribes and voice recognition technologies	
• British Sign Language	
• Practical assistants	
• The Welsh Baccalaureate Qualification	
2. Consultation Response Form	
3. Glossary	
4. The Equality Act 2010 (Section 96)	
5. The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010	
6. Related publications	

Introduction

This consultation document is about the Welsh Ministers' proposed approach to exercising their new power under section 96 of the Equality Act 2010 ('the Act'). This power relates to the reasonable adjustment of general qualifications for disabled candidates and enables the Welsh Ministers to specify when reasonable adjustments should not be made.

This consultation gives you an opportunity to tell us what you think about our proposals for fulfilling this power.

The new power under section 96 of the Act relates only to general qualifications, for example GCSEs and A levels. Vocational qualifications are covered by section 53 of the Act and are not considered in this consultation.

Section 96 of the Act came into force on 01 October 2010. This section is applicable in Wales, England and Scotland.

A list of the general qualifications in Wales covered by section 96 of the Act is shown in Annex 5.

What are the main issues?

The [Equality Act 2010](#) places a duty on employers and service providers to make reasonable adjustments for disabled people.

The Act places the following duties on awarding bodies:

- the duty to make reasonable adjustments for disabled candidates;
- the duty not to discriminate against, harass or victimise disabled people in the arrangements for conferring qualifications.

This consultation relates to the duty to make reasonable adjustments.

This is not a new duty. For a number of years awarding bodies have made reasonable adjustments for disabled candidates. Such reasonable adjustments can be broadly grouped as:

- *presentational* - e.g. provision of modified or Braille papers;
- *scheduling* - e.g. provision of additional time;
- *response* - e.g. allowing candidates to speak or sign their answers.

The reasonable adjustment of qualifications for disabled candidates is part of what are commonly known as '*Access Arrangements*'. These, however, include a broader range of measures such as the use of bilingual dictionaries for candidates with English as an additional language.

The Equality Act 2010 recognises that reasonable adjustments may not always be possible in relation to qualifications. This is because qualifications are designed to assess what a candidate knows, understands and can do, and a qualification may only be adjusted up to a certain point before the value of that qualification is undermined.

We can make a distinction between the skills that are being assessed (e.g. the ability to analyse historical data in a history assessment) and the skills required to access the assessment (e.g. the ability to turn the pages of the history examination paper).

The requirements for accessing an assessment may be subject to reasonable adjustment without causing any problems. However, it is important that the assessment objectives – i.e. the skills, knowledge and understanding being assessed by the qualification – are not compromised by any reasonable adjustment.

Where are we now?

The Welsh Ministers expect qualifications to be as accessible as possible – to give all learners the fairest possible opportunities to show what they know, understand and can do. The Department for Education and Skills (DfES) works with the qualifications regulators in England, Northern Ireland and Scotland, and with awarding bodies, to try to make sure that all learners get the results they deserve, and that the qualifications they receive are valued.

DfES is involved in a broad range of work to help achieve these goals. Some examples follow.

Fair access by design

DfES has lead on the production of *'Fair access by design: guidance for qualifications regulators and awarding bodies on designing inclusive qualifications'* which can be found [here](#).

Access to Assessment and Qualifications Advisory Group

DfES manages the *Access to Assessment and Qualifications Advisory Group* (AAQAG) on behalf of the qualifications regulators. The AAQAG includes representatives of disability groups and awarding bodies and focuses on issues affecting disabled learners taking general and vocational qualifications.

JCQ Guidance

Each year the Joint Council for Qualifications (JCQ) publishes [Access Arrangements, Reasonable Adjustments and Special Consideration](#). This document covers reasonable adjustments for disabled candidates and access arrangements and special considerations for other groups.

Guidance on exemptions

When no other reasonable adjustment is suitable, disabled candidates may be granted an exemption from one or more components of a qualification. DfES, along with Ofqual in England and CCEA in Northern Ireland, has developed guidance on [exemptions within GCSE, GCE and Entry Level qualifications](#). DfES has also produced guidance on [exemptions within the Welsh Baccalaureate Qualification](#) (WBQ).

Qualification criteria

Qualification criteria set out the requirements that must be met when an awarding body develops a qualification. Criteria for GCSEs and GCEs (A levels) are published by Ofqual on behalf of the regulators in England, Wales and Northern Ireland and can be found on the [Ofqual website](#).

Where qualification criteria have been recently reviewed, the approach to reasonable adjustments has been considered as part of this process. It is our intention to ensure

that when qualification criteria are reviewed in future, they are assessed for accessibility and inclusion.

Access Arrangements Online

[Access Arrangements Online](#) (AAO) is a web-based system used by centres to apply for access arrangements, including reasonable adjustments. The system provides quick responses to straightforward applications and ensures a consistent approach across awarding bodies. More complex cases are dealt with by individual awarding bodies.

Why are we proposing change?

The Equality Act 2010: a new power for qualifications regulators

Under section 96 of the Equality Act 2010, the Welsh Ministers have been given a new power in relation to general qualifications.

Section 96 (7) gives the Welsh Ministers the power to specify where reasonable adjustments should not be made.

In making such specifications, the Welsh Ministers must think about the need to:

- (a) minimise the extent to which disabled persons are disadvantaged;
- (b) ensure that the qualification gives a reliable indication of knowledge, skills and understanding;
- (c) maintain public confidence in the qualification.

(Section 96 (8))

The exact wording of sections 96 (7) and (8) can be found in Annex 4.

What section 96 of the Equality Act 2010 does not cover

It is important to note that the Welsh Ministers' new regulatory power does not replace the duty on awarding bodies to make reasonable adjustments. Awarding bodies are still under a legal duty to make reasonable adjustments for disabled candidates where the Welsh Ministers do not make any specifications.

Section 96 does not give the Welsh Ministers appeals powers. Where an awarding body refuses a request for a reasonable adjustment, a complaint can be made directly to the awarding body. The complaint may also be taken to court under equality legislation.

Section 96 does not give the Welsh Ministers responsibility for monitoring or enforcing equality law, nor can the Welsh Ministers make decisions regarding what may or may not constitute discrimination. These decisions are a matter for the judicial system, and the [Equality and Human Rights Commission](#) (EHRC) is the body responsible for promoting, monitoring and enforcing equality legislation.

What we want to do

Under the regulatory power provided by sections 96 (7) and (8) of the Equality Act 2010 we want to make specifications where we believe there is evidence and/or justification that reasonable adjustments should not be made.

This will not be an exhaustive list, so awarding bodies will still be able to consider individuals' requests for reasonable adjustments.

We are seeking your views on our proposals (in Annex 1), in line with section 96(9) of the Act which requires the Welsh Ministers to consult such persons as they think appropriate before publishing specifications.

Timing

Awarding bodies, centres and learners need time to prepare for any changes. Current arrangements are set out by the JCQ in [Access Arrangements, Reasonable Adjustments and Special Consideration](#). These will continue to apply until any specifications made by the Welsh Ministers are implemented.

Where our specifications make no change to the current arrangements, we propose that these be brought into effect immediately on publication of the final specifications.

Where our specifications make a change to current arrangements, we will publish these at least one year before the academic year in which the changes come into effect. This will allow time for awarding bodies, centres and learners to prepare and plan for the changes.