



Llywodraeth Cymru
Welsh Government

Reasonable adjustments of general qualifications

Exercising Welsh Ministers' regulatory power under the
Equality Act 2010

www.cymru.gov.uk



Guidance

Guidance document no: 071/2012

Date of issue: April 2012

Reasonable adjustments of general qualifications

Audience	Awarding organisations; qualifications regulators; disability groups; centres entering learners for examinations and others with an interest in inclusive qualifications.
Overview	<p>Under Section 96(7) of the Equality Act 2010, the appropriate regulators (the Welsh Government in Wales, Ofqual in England and SQA in Scotland) are given the power to specify where reasonable adjustments to general qualifications should not be made. The Act is not applicable to Northern Ireland, which has separate equality legislation.</p> <p>Welsh Ministers have consulted on their proposals to exercise their power. Having considered the responses to this consultation, they are making the specifications set out in this document.</p>
Action required	Awarding organisations and examination centres should familiarise themselves with the specifications on the reasonable adjustment of general qualifications.
Further information	<p>For further information please contact:</p> <p>Nia Jones Qualifications and Learning Division Welsh Government Tŷ'r Afon Bedwas CF83 8WT Tel: 01443 663725 e-mail: infoquals@wales.gsi.gov.uk</p>
Additional copies	<p>This document can be accessed on the Welsh Government's website at www.wales.gov.uk/educationandskills</p> <p>The consultation documents can be accessed on the Welsh Government's website at www.wales.gov.uk/consultations</p>
Related documents	None.

Contents

Introduction	2
Specifications	4
Guidance	6
Implementation dates	14
Annex A: Equality Act 2010 (Section 96)	15
Annex B: The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010	17
Annex C: Related publications and guidance	19

Introduction

1. The Equality Act 2010 ('the Act') 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.
2. The Act gives the Welsh Ministers (as the appropriate regulator¹ in relation to a qualifications body that confers qualifications in Wales) power to specify where a reasonable adjustment to general qualifications should **not** be made.
3. The Welsh Ministers have the power to prescribe which qualifications conferred in Wales are included in the definition of 'relevant qualifications' under section 96 of the Act. These are set out in Annex A.
4. It should be noted that this power relates to general qualifications only. It does not relate to vocational qualifications which are covered by section 53 of the Act.
5. The Welsh Ministers have consulted on their power under section 96 of the Act. Having considered the responses to this consultation, and having undertaken an Equality Impact Assessment, the Welsh Ministers are making the specifications set out below.
6. In developing these specifications, Ministers have taken account of:
 - the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;
 - the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred;
 - the need to maintain public confidence in the qualification.
7. The making of specifications by the appropriate regulator only removes the duty on awarding organisations to make reasonable adjustments within the limited confines of those specifications.
8. Where the appropriate regulator has not made any relevant specifications, awarding organisations remain under a legal duty to make reasonable adjustments for disabled candidates. Awarding organisations must consider what adjustments might be reasonable in any particular set of circumstances. That an adjustment is not subject to a specification does not mean that it will necessarily be reasonable in any particular set of circumstances.

¹ In England the appropriate regulator is Ofqual, in Scotland the appropriate regulator is SQA. The Equality Act 2010 is not applicable to Northern Ireland, which has separate equality legislation.

9. Section 96(7) of the Act does not give the appropriate regulator responsibility for monitoring or enforcing equality law. Decisions concerning what constitutes discrimination are ultimately a matter for the courts. The Equality and Human Rights Commission (EHRC) is the public sector body responsible for promoting, monitoring and enforcing equality.
10. Section 96(7) of the Act does not create a power of appeal to the appropriate regulator for disabled candidates who are refused an adjustment. Where disabled candidates have been refused an adjustment by an awarding organisation, they may complain to the awarding organisation. Disabled candidates may be able to take such a complaint to court under equality legislation.
11. Current awarding organisation practice on the use of reasonable adjustments in general qualifications is based on the Joint Council for Qualifications' publication *Access Arrangements, Reasonable Adjustments and Special Consideration - General and Vocational Qualifications*, which is updated annually. References in this document to current practice are references to practice as detailed in *Access Arrangements, Reasonable Adjustments and Special Consideration - General and Vocational Qualifications*.

Specifications

Exemptions as a last resort

An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is appropriate.

The amount that can be exempted

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

For principal learning, 40 per cent of the qualification relates to 40 per cent of the guided learning hours.

Exemption of whole component

An exemption for part of a component must not be used as a reasonable adjustment.

Exemptions must only be provided for whole components where a candidate cannot access any part of that component.

Grade boundaries or pass marks

Awarding organisations are not subject to a duty to make reasonable adjustments to grade boundaries and/or pass marks for disabled candidates.

Readers

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

Scribes and voice recognition

Human scribes and voice recognition systems must not be used as a reasonable adjustment to demonstrate written skills where a candidate's writing ability is being assessed.

British Sign Language

British Sign Language must not be used as a reasonable adjustment where candidates are required to demonstrate their ability to speak or listen.

Practical assistants

Practical assistants must not be used as a reasonable adjustment where candidates are required to carry out physical tasks or demonstrate physical skills that form part of the qualification's assessment objectives.

The Welsh Baccalaureate Qualification

Within the Welsh Baccalaureate Qualification, awarding organisations are not subject to a duty to exempt candidates from:

- (a) the *Option* requirement;
- (b) the Key Skills/Essential Skills Wales; Wales, Europe and the World; Personal and Social Education; Work Related Education and Individual Investigation elements of the *Core*.

Guidance

Exemptions

An exemption must not be used as a reasonable adjustment, except where no other reasonable adjustment is appropriate.

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

For principal learning, 40 per cent of the qualification relates to 40 per cent of the guided learning hours.

An exemption for part of a component must not be used as a reasonable adjustment.

Exemptions must only be provided for whole components where a candidate cannot access any part of that component.

12. Around 100 exemptions are granted each year by JCQ awarding organisations. The vast majority of these are for GCSE qualifications.
13. An exemption is a reasonable adjustment used as a last resort, where no other reasonable adjustment is appropriate. It is an agreement reached with an awarding organisation, in advance of an assessment, that a disabled candidate can be exempted from a component (or components) of a qualification. When an exemption is granted, the candidate's performance on the components actually taken is considered to be the performance on the whole qualification.
14. Exemptions are used as a last resort because they do not allow candidates to demonstrate fully what they can achieve. Every effort should be made to identify reasonable adjustments that allow the candidate to participate in the assessment of all parts of a qualification. Where an exemption is given, this is indicated on the candidate's certificate.
15. Allowing exemptions minimises disadvantage to disabled candidates. Imposing certain limitations on their use helps maintain public confidence and helps ensure that the qualifications provide a reliable indication of the knowledge, skills and experience of candidates.
16. Currently, the maximum proportion of a qualification that can be exempted is 50 per cent. However, in practice the maximum applied for tends to be less, because of the assessment structure of many general qualifications, for example GCSEs with a 60:40 split between controlled assessment and external assessment. Our new specification places an upper limit of 40 per cent on exemptions.

17. Exemptions must only be provided for whole components where a candidate cannot access any part of that component. This specification reflects the current approach and is intended to ensure consistency across awarding organisations and help ensure that exemptions are used only as a last resort. As noted in paragraph 14, every effort should be made to identify reasonable adjustments that allow the candidate to participate in the assessment.

Example

A deaf candidate cannot access the listening component of an English examination. An exemption may be granted if:

- there is no other reasonable adjustment that would allow the candidate to demonstrate the skills in question
- the component forms less than 40 per cent of the qualification
- the candidate cannot access any part of the listening component.

Grade boundaries and pass marks

Awarding organisations are not subject to a duty to make reasonable adjustments to grade boundaries and/or pass marks for disabled candidates.

18. This specification makes no change to current arrangements.
19. Specifying that awarding organisations are not subject to a duty to make reasonable adjustments to grade boundaries and/or pass marks will help maintain public confidence and help ensure that qualifications provide a reliable indication of the knowledge, skills and experience of the candidate.
20. This approach does not disadvantage or advantage disabled candidates. Reasonable adjustments are intended to try to create a level playing field where a disabled candidate is placed at a substantial disadvantage in an assessment in comparison with candidates who are not disabled.
21. By having no adjustment to grade boundaries and/or pass marks, disabled candidates can be assured that they gain their qualifications on merit. The qualification/grade has the same value for all candidates.

Example

If the mark range for a grade C in GCSE Mathematics is 50-59 per cent, a disabled candidate and a non-disabled candidate achieving 59 per cent will both be awarded a grade C.

Readers

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

22. Readers may be human readers or computer/screen readers, all of which read out written assessment materials. Current practice is to disallow the use of human or computer/screen readers when a candidate's reading ability is being assessed. However, these can be used as a reasonable adjustment where the candidate's ability to read is not being assessed.
23. In an everyday working and classroom environment, learners may use assistive technologies such as screen readers to access written text. We want assessments to be consistent with the 'real world' provided this does not undermine the assessment objectives.
24. At present, human readers and assistive technologies are treated in the same way. There are important differences between them, however.
 - Assistive technologies and human readers do not interpret text in the same way. Human readers can add a layer of vocal interpretation (nuance and meaning), which could affect a candidate's response and therefore compromise the reliability of the qualification.
 - Assistive technologies allow for independence, whereas a human reader does not.
25. Our new specification takes account of these differences. When a candidate's reading ability is being assessed, the use of assistive technologies such as computer/screen readers in reading assessments will be allowed - a change from the present situation. However, the current practice of not allowing the use of human readers in such assessments will continue to ensure that the qualifications provide a reliable indication of candidates' knowledge, skills and understanding.

Example

In a GCSE Welsh or English reading examination designed to test the candidate's reading ability, a human reader should not be used. In this case, alternative reasonable adjustments such as the use of a computer/screen reader could be considered.

Scribes and voice recognition technologies

Human scribes and voice recognition systems must not be used as a reasonable adjustment to demonstrate written skills where a candidate's writing ability is being assessed.

26. Scribes and assistive technologies, such as voice recognition systems, are used where candidates cannot write or type using a word-processor. Scribes are people who write or word-process a candidate's dictated answers. Voice recognition systems produce an electronic file and a hard copy when the candidate dictates into a computer.
27. This specification reflects current practice. For most qualifications, the use of scribes and voice recognition systems is an appropriate reasonable adjustment. However, where qualifications explicitly assess the ability to write, such as GCSE Welsh, English and modern foreign language qualifications, the use of scribes or voice recognition systems can have a direct impact on the assessment objectives.
28. This specification does not preclude the use of scribes and voice recognition systems altogether. However, where scribes and/or voice recognition systems are used, marks allocated for spelling, punctuation and grammar (SPaG) will not be available to the candidate, unless the candidate spells out the letters of each word to the scribe. This ensures it is the candidate's language accuracy skills, not the scribe's, which are assessed.

Examples

- In an AS design and technology assessment, a voice recognition system or scribe may be used as a reasonable adjustment as the candidate's ability to write does not form part of the assessment objectives.
- In a GCSE French writing assessment, a voice recognition system must not be used as it would generate words and not allow the candidate to demonstrate their own ability to write accurately in French. As an alternative reasonable adjustment, a candidate could dictate answers into a recording during the assessment. They could then re-run the recording, spelling individual words to a scribe.
- In a GCSE English writing assessment, a scribe may be used as a reasonable adjustment. However, the candidate is not awarded marks for spelling and punctuation generated by the scribe.

British Sign Language

British Sign Language must not be used as a reasonable adjustment where candidates are required to demonstrate their ability to speak or listen.

29. Currently, the use of British Sign Language (BSL) is not available as a reasonable adjustment in speaking and listening components of most English, Welsh and modern foreign language general qualifications. This is because:
- BSL is recognised as a language in its own right.
 - Current GCSE qualification criteria in English, Welsh and modern foreign languages specifically reference the ability to *speak* and *listen*, but do not reference non-written communication in a wider sense.
30. In the longer term, we want to develop a more consistent approach to the use of BSL across all English, Welsh and modern foreign language qualifications. However, there are clear reasons for adopting different approaches which relate directly to existing assessment objectives. As these remain in place, our specification has to take account of these differences.

Example

In a GCSE German listening assessment, the provision of a BSL interpreter would not be allowed. To do so would mean the candidate was not demonstrating their ability to understand spoken German, which is one of the assessment objectives. Other reasonable adjustments such as a cued speech interpreter may be allowed, or where these are not appropriate, an exemption may be requested.

Practical assistants

Practical assistants must not be used as a reasonable adjustment where candidates are required to carry out physical tasks or demonstrate physical skills that form part of the qualification's assessment objectives.

31. Allowing practical assistants to demonstrate physical skills that form part of the assessment objectives would undermine public confidence in the qualification, since candidates would not be assessed on the basis of their own abilities.
32. This specification reflects current arrangements, and does not preclude the use of a practical assistant to perform tasks that are not part of the assessment objectives.

Examples

- Where candidates are being assessed on their ability to play a musical instrument in a music qualification a practical assistant is not allowed to demonstrate those skills on behalf of the candidate.
- Where a disabled candidate requires assistance to turn pages in a written examination, or to move equipment in a scientific practical assessment, a practical assistant may perform these tasks because such physical skills are not part of the assessment objectives.

The Welsh Baccalaureate Qualification (WBQ)

Within the Welsh Baccalaureate Qualification, awarding organisations are not subject to a duty to exempt candidates from:

- (a) the *Option* requirement;
- (b) the Key Skills/Essential Skills Wales; Wales, Europe and the World; Personal and Social Education; Work Related Education and Individual Investigation elements of the *Core*.

33. The WBQ comprises a Core, which all learners complete, and Options, which are chosen from the range of relevant qualifications that are approved for use in Wales.
34. The specification reflects current arrangements because they have proved effective and to change these could undermine public confidence in the WBQ.
35. For the Options, reasonable adjustments, including exemptions, apply as determined for the individual qualifications concerned. No exemption from the Option requirement of the WBQ can be granted. Considerable flexibility already exists as learners can choose their Options from the full range of relevant qualifications that are approved for use in Wales.
36. No exemption from the Key Skills/Essential Skills Wales (KS/ESW); Wales, Europe and the World (WEW); Personal and Social Education (PSE); Work Related Education (WRE) and Individual Investigation elements of the Core can be granted.
37. The WEW, PSE and WRE components of the WBQ Core do not have specific assessment criteria and the WBQ specifications provide for considerable flexibility in the ways in which these components can be completed. Whilst no exemption is allowed from these components of the WBQ Core, other reasonable adjustments are allowed as appropriate.
38. The assessment criteria for the Individual Investigation component of the Core are drawn up in a way that allows considerable scope for flexibility. Learners may present the Individual Investigation in either written or oral form. Whilst no exemption is allowed from this element of the WBQ Core, other reasonable adjustments are allowed as appropriate.

Example

A disabled candidate for Level 2 (intermediate) WBQ should not be exempted from the requirement to achieve four KS/ESW qualifications. However, the requirement to achieve all three of Communication, Application of Number and ICT may be waived: any two of these is acceptable.

Implementation dates

All the specifications with the exception of that relating to the amount of a qualification that can be exempted will come into effect from 1 April 2012.

Because the maximum amount of a qualification that can be exempted is being reduced from 50 per cent to 40 per cent, this will come into effect for learners who begin their qualification course in September 2012. This specification will not apply to learners who are currently embarked on a course which is due for completion in either Summer 2012 or Summer 2013.

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

The Welsh Government, working with the qualifications regulator in England (Ofqual), will review these specifications regularly and update them as required.

Annex A: Equality Act 2010 (Section 96)

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.

- (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.

Annex B: The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010

Statutory Instruments 2010 No. 2217 (W.193)

<i>Made</i>	<i>6 September 2010</i>
<i>Laid before the National Assembly for Wales</i>	<i>7 September 2010</i>
<i>Coming into force</i>	<i>1 October 2010</i>

The Welsh Ministers, in exercise of the powers conferred upon them by sections 96(10) and 97(3) of the Equality Act 2010, make the following Regulations:

Title, commencement and application

1. (1) The title of these Regulations is the Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010.
- (2) These Regulations come into force on 1 October 2010 and apply in relation to Wales.

The appropriate regulator

2. The Welsh Ministers are prescribed as the appropriate regulator in relation to a qualifications body that confers qualifications in Wales.

Relevant Qualifications

3. The qualifications listed in the Schedule are prescribed as relevant qualifications in relation to conferments of qualifications in Wales.

Leighton Andrews
Minister for Children, Education and Lifelong Learning, one of the Welsh Ministers
6 September 2010

Schedule

1	Advanced Extension Awards
2	Entry Level Certificate Qualifications
3	Free Standing Maths Qualifications
4	Functional Skills
5	General Certificate of Education Advanced level (A and AS levels)
6	General Certificate of Secondary Education
7	The International Baccalaureate
8	Key Skills and Essential Skills Wales
9	Principal Learning and Project Qualifications
10	The Welsh Baccalaureate Qualification Core Certificate

Explanatory note

(This note is not part of the Regulations)

These Regulations prescribe the Welsh Ministers as the appropriate regulator for the purposes of section 96 of the Equality Act 2010. The appropriate regulator may specify matters which are not caught by the duty on qualifications bodies under that section to make reasonable adjustments for disabled people.

These Regulations also prescribe that relevant qualifications, for the purposes of sections 96 and 97 of the Equality Act 2010, are those listed in the Schedule.

Annex C: Related publications and guidance

The Equality Act 2010 www.legislation.gov.uk

The final Impact Assessment for the Equality Act www.equalities.gov.uk

Equality Impact Assessment - Reasonable Adjustments of General Qualifications www.wales.gov.uk/topics/equality

The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010 www.legislation.gov.uk

Access Arrangements, Reasonable Adjustments and Special Consideration – General and Vocational Qualifications, Joint Council for Qualifications (updated annually) www.jcq.org.uk

Fair access by design, DfES, Ofqual, CCEA
www.wales.gov.uk/topics/educationandskills

Principles governing the use of exemptions on the grounds of disability for the Welsh Baccalaureate Qualification www.ngfl-cymru.org.uk

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

Codes of Practice revised by the 2010 Equality Act, Equality and Human Rights Commission www.equalityhumanrights.com

New Public Sector Equality Duty guidance, Equality and Human Rights Commission www.equalityhumanrights.com