

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (GENERAL QUALIFICATIONS BODIES)
(APPROPRIATE REGULATOR AND RELEVANT QUALIFICATIONS)
(AMENDMENT) REGULATIONS 2017

2017 No. 705

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Section 96 of the Equality Act 2010 places a duty on qualification bodies such as awarding organisations to make reasonable adjustments to take account of pupils' disabilities when they are taking certain qualifications. Section 96(7) of that Act allows the appropriate qualifications regulator - Ofqual in England - to limit or remove the obligation to make reasonable adjustments in certain circumstances. These Regulations update the list of relevant qualifications that are subject to these limits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As these Regulations are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010 ("the 2010 Regulations") currently define the qualifications to which the limits on the need to make reasonable adjustments apply. These Regulations set out the qualifications to be added to or deleted from the main Regulations.

5. Extent and Territorial Application

- 5.1 The instrument extends to England, Wales and Scotland.
5.2 The instrument applies to England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 All awarding organisations have a duty under The Equality Act 2010 to make reasonable adjustments to the way their qualifications are delivered, to ensure that they are accessible to candidates with disabilities. These commonly include extra time to complete an exam, a scribe to write answers or question papers in braille or with an enlarged font.
- 7.2 Ofqual can set limitations on this duty for qualifications offered in England to ensure that disabled candidates do not get an unfair advantage and to protect public confidence in the qualifications. For example, one such limitation is that a human reader cannot be used in an assessment where reading is the skill being tested – allowing a human reader in these circumstances would give that candidate an advantage over others. Ofqual defines these limitations on the general duty in ‘specifications’ and it published updated specifications¹ on 1 December 2016 following a full public consultation.
- 7.3 The list of qualifications to which Ofqual's specifications apply is now being updated to reflect changes to qualifications since the 2010 Regulations came into force. The list consists of the types of general qualifications that students undertake in school and which are not qualifications in relation to a particular trade or profession (which are covered in section 53 of the Equality Act 2010). The original list is:
- 14–19 Diploma Principal Learning
 - Advanced Extension Awards
 - Cambridge International Certificate
 - Cambridge Pre-University qualification
 - Certificate in Adult Literacy
 - Certificate in Adult Numeracy
 - Entry level certificates in GCSE subjects
 - Extended projects
 - Foundation Projects
 - Free Standing Maths Qualifications
 - Functional Skills
 - General Certificate of Education Advanced level (Advanced and Advanced Subsidiary levels)
 - General Certificate of Secondary Education
 - General National Vocational Qualifications
 - Higher projects
 - International Baccalaureate Diploma
 - Key Skills

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

- Welsh Baccalaureate Qualification Core Certificate

- 7.4 These Regulations add three types of qualifications to the list: Cambridge IGCSEs², International GCSEs and ESOL (English for Speakers of Other Languages) qualifications. This is because they are typically used by schools and colleges as alternatives to qualifications on the existing list. Cambridge IGCSEs and International GCSEs are used as alternatives to GCSEs and ESOL qualifications are used as alternatives to Functional Skills qualifications.
- 7.5 In addition, the Regulations remove from the list a number of qualifications that are no longer offered in England (Certificates in Adult Literacy and Numeracy, General National Vocational Qualifications, Key Skills and Welsh Baccalaureate Qualifications Core Certificate). The overall effect will be to update the list to reflect the current qualifications landscape in England and ensure that candidates are treated fairly across comparable qualifications.
- 7.6 Awarding organisations already have discretion to refuse requests for reasonable adjustments in relation to any qualification where that would undermine the integrity of the qualification. In practice, therefore, the kinds of reasonable adjustments which these Regulations would prevent are unlikely to be approved currently. The Regulations will however remove any uncertainty over how any requests for such reasonable adjustments should be treated in relation to Cambridge IGCSEs, International GCSEs and ESOL qualifications, by removing this discretion and putting the same clear rules in place that apply to similar qualifications such as GCSEs, A levels and Functional Skills qualifications.

8. Consultation outcome

- 8.1 The amendments to the list of qualifications were subject to a full public consultation between May 2016 and July 2016, as part of Ofqual's consultation³ on the changes to its specifications. The consultation included a full equalities impact assessment.
- 8.2 There were 36 responses in total to the consultation. Of the 34 that responded to the question about the list of qualifications, 26 agreed or strongly agreed that the proposed changes to the list were appropriate, with 7 neither agreeing nor disagreeing. Only one respondent disagreed.

9. Guidance

- 9.1 On 1 December 2016 Ofqual published its updated specifications setting out the limitations on when reasonable adjustments should not be made. Alongside its specifications, Ofqual published guidance about how each would apply⁴. The guidance will be updated to reflect the new list of qualifications once the Regulations come into force.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is on independent schools and is considered to be minimal.

² IGCSE is the registered trademark of Cambridge International Examinations

³ <https://www.gov.uk/government/consultations/ofquals-consultation-on-specifications-on-reasonable-adjustments>

⁴ See link at footnote 1

- 10.2 The impact on the public sector is on Ofqual and state funded schools, and this impact is also minimal.
- 10.3 A Validation Stage Regulatory Impact Assessment will be published alongside this Explanatory Memorandum on the legislation.gov.uk website. The potential impact on independent schools comes from no longer having to provide a type of reasonable adjustment for the qualifications that are being added to the list by these Regulations, and therefore making a saving in the cost of providing such adjustments. In practice, as explained at paragraph 7.6, it is unlikely that any such adjustments are currently being made – if they are, the number will be small. The impact assessment therefore estimated a potential regulatory saving of less than £5,000 across the independent sector as a whole.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The legislation has a very small deregulatory effect in so much as it is updating existing regulation rather than imposing any new burden. Therefore no specific action is proposed.

12. Monitoring & review

- 12.1 The legislation should ensure that Ofqual is able both to maintain the standards of qualifications and to ensure reasonable adjustments are made where appropriate. Ofqual must report to Parliament on its performance annually.

13. Contact

- 13.1 Stephen Rogers at the Department for Education email: Stephen.rogers@education.gov.uk can answer any queries regarding the instrument.