

# Decisions on Ofqual’s specifications on reasonable adjustments under section 96 of the Equality Act 2010 and related issues



We consulted<sup>1</sup> between 25 May and 31 July 2016 on amendments and additions to our *Specifications in relation to the reasonable adjustment of general qualifications* which we publish under Section 96 of the Equality Act 2010, and related issues. Our specifications prohibit or limit the extent to which awarding organisations must make or allow reasonable adjustments for disabled students, in specified general qualifications. The consultation set out the draft wording for each of our proposed specifications and sought views on these.

## Our proposals

We proposed minor amendments to the wording of our existing specifications<sup>2</sup> to make them clearer and to ensure they remain up to date.

We also proposed to introduce one new specification, to restrict the provision of resources and materials to students as a reasonable adjustment (such as calculators or copies of texts) where these are not routinely made available to students in an assessment.

We set out a list of qualifications to which our specifications should apply, that we proposed to recommend to the Department for Education (DfE).

We also proposed that where an exemption is applied as a reasonable adjustment, this should be indicated on the student's certificate.

## Our decisions

There were 36 respondents to the consultation, who supported most of our proposals. Respondents provided a number of comments. In many instances, these were about refinements to the wording of our draft specifications, to improve their clarity. In particular, respondents suggested improvements to the clarity of our specifications on the use of readers and practical assistants. Respondents also suggested that we

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<sup>1</sup> <https://www.gov.uk/government/consultations/ofquals-consultation-on-specifications-on-reasonable-adjustments>

<sup>2</sup> <https://www.gov.uk/government/publications/specifications-in-relation-to-the-reasonable-adjustment-of-general-qualifications>

include guidance and examples alongside our specifications to help users understand them.

Although we have not set out every response below, we have considered all responses in arriving at our decisions. We have published an analysis of responses to our consultation alongside this document<sup>3</sup>.

We set out our decisions for each of the areas covered by our consultation below.

## **Exemptions**

We proposed three specifications relating to exemptions. We proposed that exemptions are only:

- used as a last resort, where no other reasonable adjustment is available;
- permitted from a maximum of 40% of the total marks for a qualification;
- allowed in respect of whole components.

We also proposed to set requirements for qualifications with separately reported assessments. We proposed that where an exemption is granted for the separately reported assessment, no other exemption can apply. Separately reported assessments currently exist for GCSE (9 to 1) English language spoken language assessments, GCE biology, chemistry and physics practical assessments, and GCE geology practical skills assessments.

We proposed that where an exemption is applied, this should be indicated on the student's certificate and that we would consult further on this requirement.

The majority of respondents supported our proposal that exemptions should only be used as a last resort. One respondent suggested that the wording of the specification be amended to make it clearer.

A majority of respondents supported our proposal that we should limit the maximum amount of a qualification from which a student can be exempted to 40%. Two respondents commented that in some instances, 40% may not be sufficient to allow a student to access a qualification, for example where a student cannot complete speaking or listening assessments and these make up more than 40% of the qualification.

In relation to our proposal for qualifications with separately reported assessments, the majority of respondents either agreed, or expressed no preference either way. Some respondents agreed that our proposal was appropriate and that students would be

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

less likely to require exemptions from the written assessments, as other reasonable adjustments would be suitable, whilst some commented that the rule we proposed to prevent further exemptions applying for students that are exempted from the practical assessments, may prevent some students with complex disabilities from accessing the qualification.

The majority of respondents also agreed with our proposals to only allow exemptions from whole components, and only where a student cannot access any part of the relevant component. Some respondents commented that this was necessary in order to make them manageable. A small number suggested that this could potentially place a student who can access part of a component, at a greater disadvantage than one who could not access any part of the component. In addition, a small number of respondents suggested other qualifications which we should refer to specifically in our specifications.

We have considered the comments made and we have decided to implement these specifications on which we consulted (including in respect of those qualifications for which we proposed specific provisions). We believe these strike the right balance between reducing or removing the disadvantage to disabled students, and making sure the assessment gives a reliable indication of the student's knowledge, skills and understanding. We have decided not to make specific provision in respect of other qualifications as we do not believe it necessary in light of the rules currently in place for these qualifications.

We consider that our specifications for exemptions are clear as currently drafted.

Most respondents agreed with our proposal that the provision of an exemption should be indicated on the student's certificate. Those who disagreed suggested that it could be unfair to students, as they could be treated differently if it was known that they had not completed all parts of an assessment, when it is not their fault that the qualification was not accessible. We will consider our approach to updating our Additional Certificate Requirements in light of the comments made and will consult on that approach in due course.

### **Grade boundaries and pass marks**

We proposed a specification to prevent awarding organisations from making changes to grade boundaries, pass-marks or to the marks awarded for particular aspects of knowledge, skills and understanding, as a reasonable adjustment.

The majority of respondents supported this proposal, noting that it is important to ensure that there is a level playing field for all students. Respondents noted that changing grade boundaries could give some students an advantage over others and lead to a perception of there being an 'easier' version of the qualification.

Respondents who disagreed with the proposal commented that because a disabled student and a non-disabled student's normal way of working may be different, it would be appropriate to apply different grade boundaries as a reasonable adjustment. They commented that it is not possible, with other reasonable adjustments, to achieve absolute parity, therefore an adjustment to grade boundaries should be permitted.

We have decided to implement the specification on which we consulted. The reason for this is that allowing changes to the standard of the qualification for disabled students would risk undermining the value of their qualifications. It could prevent the qualification giving a reliable indication of a student's knowledge, skills and understanding.

### **Readers**

We proposed to put in place a specification requiring that where a student's reading ability is being assessed, the student must not use a reader if this would prevent the awarding organisation from assessing that ability.

In our proposed specification, we did not make a distinction between human and electronic readers, which is a distinction that exists in our current specification. We had not sought to change the meaning of the specification by doing this, but had intended to make it clearer that the focus was on what the reader did on behalf of the student, rather than the nature of the adjustment itself.

Respondents told us it was important that the distinction between human and electronic readers is retained, because of the different way in which these reasonable adjustments are used in practice. They told us that removing this distinction from the wording of the specification itself, could have the unintended effect of eroding the provision of electronic readers.

In addition, respondents commented on the need to understand what is meant by reading ability. In many cases, assessments which test a student's reading ability do not do so in isolation. They often do so by assessing the student's understanding of the material being read - their comprehension.

We have decided to amend the specification on which we consulted to retain the distinction between human readers and electronic readers. We will also refer to reading ability being assessed 'in whole or in part', to make clear that reading is not always assessed in isolation. To ensure our specification is as clear as possible and to avoid unnecessary restrictions that could have arisen from our original wording and improve consistency with our other specifications, we will also refer in our specification to accessing marks.

Our specification will now read as follows:

*Where an assessment seeks (in whole or in part) to test a Learner's reading ability, a human reader must not be used as a reasonable adjustment to allow a Learner to access marks in relation to any aspect of that reading ability save where the Learner demonstrates the relevant knowledge, skills and understanding in the assessment him or herself.*

## **Scribes**

We proposed to put in place a specification so that a human scribe, speech recognition system or other writing aid cannot be used as a reasonable adjustment to allow a student to access marks, unless the student demonstrates the particular skill being assessed themselves.

Most respondents supported our approach. A number of respondents did however make specific comments on the wording of our draft specification, suggesting ways it could be made clearer. These included referring to speech recognition 'technology' as opposed to 'system'. Other comments referred to the fact that scribes could be used differently in different qualifications and that our specification should allow for this, where appropriate.

Our intention was to make our specification clearer and reflect what happens in practice, but not change the nature of what happens. We have made some minor changes to the wording of our draft specification to take account of the comments made. The specification will now read:

*Where an assessment seeks (in whole or in part) to test a Learner's written communication skills, a human scribe, speech recognition system or other writing aid must not be used as a reasonable adjustment to allow a Learner to access marks in relation to any aspect of those written communication skills save where the Learner demonstrates the relevant knowledge, skills and understanding in the assessment him or herself.*

## **Alternative languages (e.g. British Sign Language)**

We proposed that where an assessment is testing a student's knowledge or skills in a particular language, that they should not be allowed to use British Sign Language (BSL), or any other alternative language, to demonstrate these skills. This is because this would prevent the student from demonstrating their skills in the language being assessed.

Most respondents supported this proposal. We received a comment about the need for further guidance on students who use a combination of BSL and Sign-Supported English (SSE). We have decided to implement our specification as consulted on and provide guidance on it.

## **Practical assistants**

We proposed that students must not be allowed to use a practical assistant as a reasonable adjustment to demonstrate physical skills for which the student receives marks.

The majority of respondents supported our approach in this area, or expressed no preference. Respondents commented on the need for our specification to be clear about whether practical assistants were banned completely, or whether they would be allowed, but with a restriction on which marks are available to students in circumstances where they are used. Respondents also commented on the terminology used, noting that 'practical' tasks rather than 'physical' tasks would more accurately capture the range of activities that an assistant may perform.

One respondent who disagreed with our proposal commented that in practical assessments, students with a physical impairment should direct, through explicit verbal instructions, exactly what a practical assistant should do, which could allow them to demonstrate the required skills and knowledge, and access the component.

We intend to implement the approach consulted on as it reflects existing practice, which was our intention. As stated in the consultation, allowing a third party to carry out a task on behalf of a student would mean that it was the assistant being assessed, not the student. This would prevent the qualification measuring the extent to which the student has the knowledge, skills and understanding being measured.

However, we have decided to make some minor changes to the wording of our draft specification to take account of the comments made. The specification will read:

*Where an assessment seeks to test a Learner's skills in relation to carrying out practical tasks, or demonstrating practical abilities, a practical assistant must not be used as a reasonable adjustment to allow a Learner to access marks, or be awarded a result, in relation to carrying out those tasks or demonstrating those abilities save where the Learner demonstrates the relevant knowledge, skills and understanding in the assessment him or herself.*

## **Access to texts and other materials as a reasonable adjustment**

In our consultation, we proposed to put in place a new specification to restrict students being provided with materials (for example calculators or copies of texts) as a reasonable adjustment. This would apply where these are not normally made available to other students and where that provision would compromise the ability of the awarding organisation to make judgements on the learner's knowledge, skills and understanding being assessed. This would not prevent materials being provided in any circumstance, but it would be for awarding organisations to determine whether any such request would compromise the assessment. In our consultation, we also

described two alternative approaches (a complete ban and taking no action) which we had considered, but did not propose to implement.

Whilst the majority of respondents agreed with our proposal, there was a greater split than we saw in many other questions. A number of groups representing students with disabilities felt that this specification was appropriate, whilst some awarding organisations did not and preferred an outright ban. The rationale for this was that providing materials could compromise the assessment, and that if this was not the case, there was no reason why these could not be provided to any student.

We have decided to implement our proposed specification. We believe that due to the range of materials that could be requested, and the various ways in which they could affect an assessment, it would not be appropriate to ban them completely. We believe that awarding organisations are best placed to determine the extent to which access to any particular materials could affect the validity of an assessment. This does not mean however, that materials must be provided. Awarding organisations may decide not to make materials available, if they do not consider it to be a reasonable adjustment in any particular circumstance.

### **Oral language modifiers (OLMs)**

We did not propose to specify to prohibit the use of OLMs as a reasonable adjustment. We set out our reasons for this and sought views and any evidence about this.

Responses to this question were fairly evenly split, with slightly more respondents favouring the approach we proposed (no specification) than the number that thought we should make a specification. It was again noticeable that there was a split between awarding organisations and groups representing disabled students. Those that felt we should not specify commented that, for students that use them, an OLM is often the only reasonable adjustment available to allow them to access the assessment. Those who thought we should prohibit them commented on the risk to the assessment if not used appropriately and the increased provision of more clearly worded, accessible papers, which has reduced the frequency of OLM use.

We have decided, as proposed in our consultation, not to specify in this area. Whilst we note the concerns raised, we believe that potential disadvantage to disabled students that would be caused by prohibiting their use would outweigh the potential risk to the assessment for the small number of students who require them. It should be noted that awarding organisations are not required to allow the use of OLMs as a reasonable adjustment. It is for awarding organisations to consider in any particular circumstance whether use of an OLM would be a reasonable adjustment.

### **Qualifications covered by our specifications**

We proposed in our specification to recommend to DfE that it updates the list of qualifications to which our specifications apply, in order to ensure it remains up to

date. This list is owned by DfE, not Ofqual, so these were recommendations only. DfE will take the final decision on any amendments to the list with any amendments subject to parliamentary scrutiny.

Most respondents agreed with the proposals we made, although we did receive some representations in relation to some qualifications and the potential implications of adding some qualifications to the list.

Having considered these, we have decided to recommend to DfE that the list is updated to reflect the proposals set out in our consultation. Whilst we recognise the potential for this to impact on awarding organisations offering those qualifications, the information we have suggests that in practice, the impact of doing so will be small. We have shared with DfE the concerns raised by those respondents that did not agree with our proposed amendments.

In addition to those amendments we proposed in the consultation, we have also decided to recommend to DfE that *Certificates in Adult Literacy* and *Certificates in Adult Numeracy* are removed from the list. The reason for this is that these qualifications are no longer offered.

### **Other issues**

A number of respondents commented that it would be helpful for our specifications to be supported by guidance, examples or both to help explain how they apply in practice. This is in line with how we have published our current specifications.

We will include additional guidance alongside our specifications when we publish them to make sure they are understood and are applied consistently.

### **Next steps**

We have published the following document formally introducing our new specifications. This replaces the version published in 2011 and will come in to effect on 1 January 2017.

- [Specifications in relation to the reasonable adjustment of general qualifications](#)