

Title: Amendments to the Equality Act 2010 (General Qualifications bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010 IA No: DfE091 RPC Reference No: RPC-3569(1)-DfE Lead department or agency: Department for Education Other departments or agencies:	Impact Assessment (IA)			
	Date: 29/11/2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: Stephen Rogers stephen.rogers@education.gov.uk				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0m	£0m	£0m	Not in scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Equality Act 2010 places a duty on awarding organisations to make reasonable adjustments to the delivery of their qualifications to ensure that they are accessible to candidates with disabilities. Ofqual, the independent exams regulator, is permitted to specify limitations on this duty for qualifications offered in England to ensure candidates with disabilities do not get an unfair advantage and to protect public confidence in the qualifications. Ofqual published an updated set of limitations on 1 December 2016 and the list of qualifications to which these apply also needs to be updated to reflect changes to the qualifications in use in England since the original legislation was enacted.

What are the policy objectives and the intended effects?

We are adding three types of qualifications to the list because they are typically used as alternatives to qualifications on the existing list: Cambridge IGCSEs, International GCSEs and ESOL (English for Speakers of Other Languages) qualifications. Including them will help ensure there is a consistent approach to reasonable adjustments across qualifications that are used for similar purposes. In addition, a number of qualifications that are no longer offered in England will be removed. The effect will be to ensure candidates are treated fairly between comparable qualifications - currently it is up to individual awarding organisations to ensure this through use of their discretion to refuse adjustments which would give an unfair advantage.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 – Do nothing - this would result in Ofqual's limitations applying to an out-of-date list of qualifications. This could potentially lead to an unfair application of adjustments to candidates with disabilities for similar qualifications, as the awarding organisations would have to continue making judgements as to how 'reasonable' a requested adjustment is.

Option 2 (preferred option) – update the list of qualifications to which the limitations apply. This will remove the potential for awarding organisations to apply different reasonable adjustments to similar qualifications by more clearly defining what is and isn't permitted.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2021					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope?		Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **Dat e:** Nick Gibb
23rd June 2017

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	0		0		0
Description and scale of key monetised costs by 'main affected groups' None					
Other key non-monetised costs by 'main affected groups' None					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	0		0		0
Description and scale of key monetised benefits by 'main affected groups' The potential impact on schools comes from no longer having to provide a type of reasonable adjustment (such as a reader or scribe), thereby making an ongoing saving in the cost of providing such adjustments. Such savings are negligible (recorded as zero as less than £100,00 per year).					
Other key non-monetised benefits by 'main affected groups' There is a potential saving to awarding organisations due to a reduction in administration as a result of the legislation – as they will no longer have to apply the same level of assessment to the requests for adjustments that fall within the legislation, the process will be simpler. We estimate this saving to be negligible.					
Key assumptions/sensitivities/risks					Discount rate
That the proportion of candidates currently being granted or refused adjustments in the qualifications to be added to the list is the same as for similar qualifications where the rules already apply, such as GCSEs.					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net: <0.1m	0

Evidence Base (for summary sheets)

Rationale for intervention and intended effects

The Equality Act 2010 (“the Act”) places a duty on awarding organisations to make reasonable adjustments to the delivery of their qualifications 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 exam papers in braille or with an enlarged font. Section 96 of the Act also allows Ofqual, the independent exams regulator, to specify limitations on this duty for qualifications offered in England to ensure candidates with disabilities 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.

Ofqual defines the limitations it deems necessary in published specifications, and it published updated specifications on 1 December 2016 following extensive public consultation. The list of qualifications to which the specifications apply is defined in the Equality Act 2010 (General Qualifications bodies) (Appropriate Regulator and Relevant Qualifications) Regulations 2010 (“the 2010 Regulations”). The Secretary of State for Education is responsible for making any amendments to these Regulations.

This list in the 2010 Regulations needs to be updated to reflect changes to the qualifications landscape. Following its consultation, Ofqual has recommended an updated list to the Department and we now intend to amend the legislation accordingly.

Ofqual has proposed adding three types of qualifications to the list because they are typically used by schools and colleges as alternatives to qualifications on the existing list:

- Cambridge IGCSEs – used as an alternative to GCSEs
- International GCSEs - also used as an alternative to GCSEs
- ESOL (English for Speakers of Other Languages) qualifications – used in place of Functional Skills English qualifications

Including them will help ensure there is a consistent approach to reasonable adjustments across qualifications that are used for similar purposes.

In addition, a number of qualifications that are no longer offered in England will be removed. These are:

- Certificate in Adult Literacy
- Certificate in Adult Numeracy
- General National Vocational Qualifications
- Key skills
- Welsh Baccalaureate Qualification Core Certificate.

The legislation is about equality; ensuring that candidates for similar qualifications are treated in the same way with regards to reasonable adjustments. Current awarding organisations have more discretion over what adjustments can be allowed for Cambridge IGCSEs, International GCSEs and ESOL qualifications than for qualifications on the existing list such as GCSEs, A levels and Functional Skills.

The impact on business from this legislation is difficult to quantify with any degree of precision, but we estimate that it will have zero impact under the BIT.

Removing qualifications from the list will have no impact on business, as the qualifications are no longer offered in England.

Businesses that could potentially be affected by the inclusion of the new qualifications are independent schools and the awarding organisations themselves.

Initial assessment of impact on business

Independent schools

The potential impact on schools comes from not having to provide a type of reasonable adjustment (such as a reader or scribe) where previously they would have been required to provide it, thereby making an ongoing saving in the cost of providing such adjustments. Ofqual does not collect data on reasonable adjustments requested in ESOL and IGCSEs / International GCSEs but we can estimate the impact by looking at the number of candidates currently being granted or refused adjustments in similar qualifications where the rules already apply, such as GCSEs:

- Out of 5 million GCSE entries in 2014/15 there were 87,450 requests for readers, scribes, practical assistants and other arrangements (1.7% of total entries). 11,200 (13%) of those requests were refused.
- There were 234,000 ESOL certificates issued over the 12 months to June 2016 and just under 500,000 entries to IGCSEs and other International GCSEs in summer 2016. This gives a total of 734,000 entries across all three kinds of qualifications for 2016.
- If we assume the same proportion of requests and refusals across the three types of qualifications as those for GCSEs, then we would expect to see around 13,000 requests for reasonable adjustments with around 1,700 requests each year refused.
- Ofqual data also show that just 4.3% of requests for reasonable adjustments across GCSEs, AS and A levels come from independent schools. Again assuming the same proportion applies to ESOL, IGCSE and International GCSEs, we would expect to see just 560 requests for adjustments from independent schools with 72 of those requests being refused. Some (but by no means all) of these refusals will be because they were prohibited by Ofqual's limitations under Section 96 of the Equality Act.
- Combined, this implies there may be around 72 assessments per year for which schools will no longer need to provide adjustments. If we assume each assessment lasts around 2 hours and apply standard assumptions adopted in previously approved impact assessments for the cost of teachers' time per hour (£32¹) this implies a potential saving of around £4,608 per year across the independent sector as a whole.
- There are unlikely to be significant familiarisation costs associated with these changes as independent schools are already very familiar with processes and procedures for assessing and applying reasonable adjustments. This will only represent a very minor adjustment to their ways of working as they will be able to make decisions about whether to request an adjustment more quickly.

The likely effect is further reduced because as part of the assessment of whether a particular adjustment is 'reasonable' in a specific case, the awarding organisations will already prohibit many of the requests which will in the future be subject to the limitations set out by Ofqual. The legislation simply removes the need to make the judgement.

To illustrate this, Ofqual asked Cambridge International Examinations (CIE) to look at all of its 35 IGCSE qualifications and identify where reasonable adjustments that have been permitted over the last three years would have been refused under the new rules. Ofqual established that CIE has granted no such adjustments over the last three years, across all school types.

¹ In previous IAs in which the department has valued the hourly labour cost of teachers in independent schools we have used average hourly salary and non-wage labour costs of teachers in state schools. This is consistent with evidence that suggests there is little difference in salaries between teachers in independent and state schools. For more detail please refer to previously cleared impact assessment 'keeping Children Safe in Education (Parts 1 and 2) policy update'.

We can therefore be confident that an extremely small number of candidates in independent schools will be affected by this legislation and that the impact on the schools will therefore be negligible. If the estimates above, which are likely to be an upper bound, were applied to the EANDCB calculator, the estimates would be rounded to less than £0.1m and therefore have a zero impact under the EANDCB and BIT scores.

Awarding organisations

There is a potential saving to awarding organisations due to a reduction in administration as a result of the legislation – as they will no longer have to apply the same level of assessment to the requests for adjustments that fall within the legislation, the process will be simpler.

We estimate that around 13,000 requests are made for reasonable adjustments in the relevant qualifications but it is difficult to calculate how many of these requests would be affected by the legislation. In practice, the legislation is unlikely to impact on the process that the awarding organisations undertake to consider requests for reasonable adjustments in any meaningful way as they will still want to be confident that they only grant requests that are fair. The impact will therefore be negligible.

EANDCB & BIT Assessment

This measure is a qualifying regulatory provision and is deregulatory. The annual direct saving to business is expected to fall below £0.1m per year meaning we have scored the EANDCB and BIT score as zero.