

Explanatory Memorandum to The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Equality Act 2010 (General Qualifications Bodies Regulator and Relevant Qualifications) (Wales) Regulations 2010**.

Leighton Andrews, Minister for Children, Education and Lifelong Learning

06 September 2010

1. Description

These Regulations prescribe, for the purposes of section 96 of the Equality Act 2010, the Welsh Ministers as the appropriate regulator for qualifications bodies that confer relevant qualifications in Wales. They also prescribe as relevant qualifications Advanced Extension Awards; Entry level certificate qualifications; Free Standing Maths Qualifications; Functional Skills; GCE (A and AS levels); GCSE; The International Baccalaureate; Key Skills and Essential Skills Wales; Principal Learning and Project Qualifications; The Welsh Baccalaureate Qualification Core Certificate.

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

The Equality Act 2010 ("the 2010 Act") received Royal Assent on 8 April 2010. It has two main purposes - to harmonise discrimination law and to strengthen the law to support progress on equality.

The 2010 Act consolidates (amongst others) the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995. Ultimately, those Acts will be repealed by the 2010 Act which will re-state the provisions in those Acts whilst extending the law in a number of areas.

The focus of this legislation is on Part 6 of the 2010 Act which concerns education and, specifically, sections 96 and 97 which relate to "*qualifications bodies*".

Section 96 of the 2010 Act makes it unlawful for a "*qualifications body*" to discriminate against, harass or victimise a person in the arrangements the body makes for deciding on whom to confer qualifications and the terms on which those qualifications are conferred. A qualifications body is also under a duty to make 'reasonable adjustments' for disabled people.

To the extent that they enable subordinate legislation to be made, section 96(10) and (11) and section 97 of the 2010 Act came into force on 6 July 2010 by virtue of the Equality Act 2010 (Commencement No.1) Order 2010 (S.I. 2010/1736).

The relevant legal powers are the powers conferred by sections 96(10)(b) and 97(3)(b) of the Equality Act 2010. Those powers are powers of the Welsh Ministers.

Section 96(10)(b) empowers the Welsh Ministers to prescribe, in regulations, the appropriate regulator in relation to qualifications bodies that confer relevant qualifications in Wales.

Section 97(3)(b) empowers the Welsh Ministers to prescribe, in regulations, the description of a relevant qualification for qualifications conferred in Wales.

The Regulations are subject to annulment, i.e. they will follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

The policy objectives are to:

- prescribe, in regulations, the Welsh Ministers as the appropriate regulator in relation to qualifications bodies that confer relevant qualifications in Wales;
- prescribe, in regulations, a 'relevant qualification' as being Advanced Extension Awards; Entry level certificate qualifications; Free Standing Maths Qualifications; Functional Skills; GCE (A and AS levels); GCSE; The International Baccalaureate; Key Skills and Essential Skills Wales; Principal Learning and Project Qualifications; The Welsh Baccalaureate Qualification Core Certificate.

The Regulations, to a large extent, reflect those being developed by the Department for Education (DfE) for England.

These Regulations relate to general qualifications only. Vocational qualifications are covered by sections 53 and 54 of the Equality Act 2010.

Section 96(6) of the 2010 Act places a duty on qualifications bodies to make reasonable adjustments for disabled people. However, the appropriate regulator (as prescribed by the Welsh Ministers) may specify matters which are not subject to the reasonable adjustments duty. The appropriate regulator may also specify which reasonable adjustments should not be made.

Qualifications bodies currently make reasonable adjustments for disabled people. 'Competence standards' are used to define what can and cannot be adjusted in relation to vocational qualifications (section 53 Equality Act 2010). This is effective in vocational qualifications, but less straightforward in general qualifications with a compensatory scheme of assessment. The 2010 Act creates greater transparency over roles and responsibilities in identifying and agreeing reasonable adjustments for general qualifications.

Prescribing the Welsh Ministers as the appropriate regulator will enable them, working with the other qualifications regulators, and following appropriate consultation, to specify what can and cannot be reasonably adjusted in relevant general qualifications. In doing so the Welsh Ministers will need to 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.

The importance of (a) is generally acknowledged. However, by giving equal importance to (b) and (c), the disabled learner can be assured that his or her qualification will be as highly regarded as other people's qualifications, and will not be regarded as inferior because reasonable adjustments have been made.

The Regulations will enable Welsh Assembly Government officials to work with regulatory colleagues and others, e.g. representatives of disability groups, to clarify the application of reasonable adjustments (and any exemptions from the requirement to make reasonable adjustments) in a broad range of general qualifications.

Risks/hazards if the regulations are not made or if they are annulled

As noted above, the 2010 Act states that the appropriate regulator may specify matters which are not subject to the reasonable adjustments duty. The appropriate regulator may also specify which reasonable adjustments should not be made. If the legislation is not made or is annulled, Welsh learners intending to follow, or following, a "relevant qualification" would be at a disadvantage. Different requirements would apply in relation to Welsh qualifications and they would not be represented at a regulatory level when decisions about what can and cannot be reasonably adjusted are made.

5. Consultation

The development of these Regulations has been discussed within the Welsh Assembly Government and with Department for Education (DfE) and Ofqual officials developing similar regulations for England. There has been no broader consultation because these Regulations of themselves do not change the current position. The qualifications bodies caught remain the same as those caught under the Disability Discrimination Act 1995, and before the Welsh Ministers exercise any of the powers under section 96 to specify provisions, criteria or practices, they will consult with relevant persons as required by section 96(9)(a).

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these Regulations impose no costs or savings on public, private, charities or voluntary sectors: they simply appoint the regulator and set out relevant qualifications. As noted above, there will be consultation before provisions, criteria or practices are specified under section 96(9)(a) of the Equality Act 2010.

The Regulations are consequential on provisions made by the Equality Act, and the impact on public, private, charities or voluntary sectors is minimal. The Regulations do not of themselves make any changes for the learners and

qualifications bodies affected. The final Impact Assessment for the Equality Act is available at <http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>