

EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION (GENERAL QUALIFICATIONS BODIES)
(RELEVANT QUALIFICATIONS, REASONABLE STEPS AND PHYSICAL
FEATURES) (AMENDMENT) REGULATIONS 2008

2008 No. 2159

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations update the list of relevant qualifications covered by chapter 2A of Part 4 of the Disability Discrimination Act 1995 to include Functional Skills qualifications and the 14-19 Diplomas. The regulations also make it clear that where an exemption from a component of a qualification has been granted to a disabled candidate, as this is the only reasonable adjustment that could be made, it will also always be a reasonable step for the general qualifications body to assess the disabled candidate as if they had only been examined on those components for which no exemption was granted.

3. Matters of special interest to the Joint Committee on Statutory Instruments

This instrument is being made and laid during recess because, until now, we have been endeavouring to reach agreement with the awarding bodies, disability rights groups, and the Scottish government, and it is important that disabled candidates know the position as soon as possible. However, the regulations will not come into force until 24th October.

4. Legislative Background

The Regulations are being made because new qualifications are being introduced which need to be covered by the legislation. The provisions concerning assessment of the candidate are to allay fears expressed by the general qualifications bodies about the lawfulness of assessing candidates only in relation to those components that have not been granted an exemption.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The policy is for general large entry qualifications to be subject to the legislation in Chapter 2A of Part 4 of the Disability Discrimination Act 1995. Functional Skills

qualifications and the 14 – 19 Diplomas are new qualifications that need to be made subject to that Act.

7.2 It was thought, when the Disability Discrimination (General Qualifications Bodies) (Relevant Qualifications, Reasonable Steps and Physical Features) Regulations 2007 were made, that where a general qualifications body granted a disabled candidate an exemption in accordance with those Regulations, they would assess the candidate only in relation to those components that were not exempted. However, it subsequently became clear that general qualifications bodies would not do this without legislation requiring them to do so, as they feared they would be in breach of the Disability Discrimination Act 1995 if they did so.

7.3 These Regulations ensure that disabled candidates are assessed only in relation to those components not exempted, so that they do receive the benefit of the reasonable adjustment that is made by the granting of the exemption.

7.4 The general qualifications bodies, the Qualifications and Curriculum Authority and the disability lobby, as well as the Scottish and Welsh Ministers have all been consulted about these Regulations.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as we anticipate that there should be a negligible impact in terms of cost and burden on general qualifications bodies.

9. Contact

Rory Kennedy at the Department for Children, Schools and Families Tel: 020 7925 5788 or e-mail: rory.kennedy@dcsf.gsi.gov.uk can answer any queries regarding the instrument.