

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Education

Chapter 3: General qualifications bodies

Section 95: Application of this Chapter

Effect

317. This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation by qualifications bodies, does not make it unlawful for such bodies to discriminate against or harass people in the circumstances covered because of marriage or civil partnership status.

Background

318. This section is designed to replicate the effect of similar provisions in previous legislation subject to modifications that include placing a responsibility on the appropriate regulator.

Section 96: Qualifications bodies

Effect

319. This section makes it unlawful for a qualifications body to discriminate against, harass or victimise a person in the arrangements it makes for deciding on whom to confer qualifications, and the terms on which those qualifications are conferred. Qualifications bodies are defined in section 97.
320. It also places a duty on qualifications bodies to make reasonable adjustments for disabled people. The section includes a power for a Minister of the Crown, the Secretary of State, Scottish Ministers and Welsh Ministers to designate an “appropriate regulator”, which may then specify matters which are not subject to the reasonable adjustments duty. For example, it could be specified that the requirement to achieve a particular mark to gain a particular qualification is not subject to reasonable adjustments. The appropriate regulator may also specify which reasonable adjustments should not be made. For example, it may be appropriate to allow additional time to complete the exam or to provide a reader, but not to give an exemption from part of an exam. In doing so, the appropriate regulator must have regard to the need to minimise the extent to which disabled persons are disadvantaged, and the need to protect the integrity of, and maintain public confidence in the qualification. It is important that the disabled candidate knows 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. Before specifying any such matter, the regulator must consult anyone it thinks appropriate and it must publish the specified matters.

Background

321. These provisions are designed to make similar provision to those in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this Chapter. There are some changes to the provisions concerning when reasonable adjustments do not need to be made for disabled candidates. Previously, awarding bodies were not required to make reasonable adjustments to a competence standard, but there was some confusion as to what was a competence standard in these qualifications. Under these provisions it is the regulator that will make the decision, after consultation, about what cannot be reasonably adjusted and – as noted in paragraph 320 above - will be under specific duties in making that decision. This will create more transparency and consistency in the application of reasonable adjustments.

Examples

- A qualifications body refuses to allow a girl to undertake a GCSE in woodwork because of her sex. This would be direct discrimination.
- A visually impaired candidate is granted a modified paper (enlarged font) by a qualifications body in order that she can read her English GCSE exam.
- The regulator publishes, after appropriate consultation, a requirement that qualifications bodies cannot make reasonable adjustments by granting an exemption from components of the qualification which exceed a specified percentage of the total marks.
- The regulator publishes, after appropriate consultation, a requirement on qualifications bodies not to use a specific reasonable adjustment, such as a reader in the independent reading element of a GCSE English exam. This would not be unlawful discrimination against a disabled candidate who would otherwise have been entitled to this specific adjustment.

Section 97: Interpretation

Effect

322. This section explains what is meant by terms used in section 96. It defines a qualifications body as an authority or body which awards a qualification, and sets out what it is not. It also defines a qualification as a certificate or authorisation of a set description.

Background

323. This section is designed to replicate the effect of provisions in previous legislation.

Examples

- Edexcel is an example of a qualifications body.
- A GCSE is an example of a qualification.