EXPLANATORY MEMORANDUM TO

THE EQUALITY ACT 2010 (GENERAL QUALIFICATIONS BODIES) (APPROPRIATE REGULATOR AND RELEVANT QUALIFICATIONS) REGULATIONS 2010

2010 No. 2245

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

2. Purpose of the instrument

2.1 Section 96 of the Equality Act 2010 ("the Act") requires qualifications bodies (defined in section 97(2) of the Act as an authority or body which can confer relevant qualifications) not to discriminate, and to make reasonable adjustments for disabled people in relation to relevant qualifications that they may confer. Section 96 also allows an appropriate regulator (appointed under section 96(10)) to specify provisions, criteria and practices which are not subject to the duty to make reasonable adjustments, and those which are subject to the duty but in relation to which specified reasonable adjustments that should not be made. The regulator must publish this information. These Regulations prescribe the relevant qualifications, prescribe the appropriate regulator and specify where an appropriate regulator must publish the information on reasonable adjustments.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 These Regulations prescribe the relevant qualifications in relation to which qualifications bodies must not discriminate in England; the appropriate regulator in relation to qualifications bodies which confer qualifications in England ; and where the appropriate regulators (for England, Wales and Scotland) must publish the matters that they specify are not subject to the duty to make reasonable adjustments and those which are subject to the duty but in relation to which specified reasonable adjustments must not be made.

5. Territorial Extent and Application

5.1 Regulation 2 applies to England, Wales and Scotland.

5.2 Regulations 3 and 4 apply to England only. Wales and Scotland will be making comparable regulations specifying a similar list of qualifications and naming the appropriate regulator for Wales and Scotland respectively.

6. European Convention on Human Rights

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

7. Policy background

7.1 Section 96 of the Act 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 relevant qualifications, and the terms on which those qualifications are conferred.

7.2 These Regulations prescribe the relevant qualifications. These are qualifications which are not qualifications in relation to a particular trade or profession, which are covered by section 53 of the Act. They are the types of general qualifications that students undertake in school, and the prescribed qualifications are largely similar to those that were prescribed under the Disability Discrimination Act 1995.

7.2 Section 96 of the Act also places a duty on qualifications bodies to make reasonable adjustments for disabled people in accordance with section 20 of the Act. Under section 96(10) of the Act, regulations may designate an "appropriate regulator", and these Regulations provide that the Office of Qualifications and Examinations Regulation (Ofqual) is the appropriate regulator for a qualifications body which confers relevant qualifications in England. Under section 96(7) of the Act Ofqual may specify provisions, criteria or practices which are not subject to the duty to make reasonable adjustments. For example, it could be specified that the criterion of having to achieve a particular mark to gain a particular qualification is not subject to the duty to make reasonable adjustments.

7.3 The appropriate regulator may also specify which reasonable adjustments should not be made in relation to provisions, criteria and practices that are subject to the duty to make reasonable adjustments. For example, the practice of assessing a candidate by means of written questions in a specified time may be subject to the duty to make reasonable adjustments. Reasonable adjustments for a candidate with dyslexia may include allowing additional time to complete the exam and allowing a scribe to write the answers for the dyslexic candidate. Ofqual may for example specify that it is not reasonable to allow a scribe in these circumstances. The intention is to ensure that Ofqual, which has responsibility for maintaining standards, can ensure that the needs of those with disabilities are maintained whilst also ensuring the standards of qualifications are maintained. Under section 96(9) of the Act Ofqual cannot specify any matter under section 96(7) unless it has consulted such persons as it considers appropriate.

7.4 These Regulations require Ofqual to publish the matters it so specifies on its website. This will ensure that disabled candidates are aware of matters in relation to which they cannot expect reasonable adjustments to be made when deciding whether or not to take any particular relevant qualification.

7.5 These provisions are designed to make similar provision to those in the Disability Discrimination Act 1995 (which is repealed by the Act) and to extend protection to all the protected characteristics covered by Chapter 3 of Part 6 to the Act. The way matters that are not subject to the duty to make reasonable adjustments are determined under the Act differs from the way it was carried out under the Disability Discrimination Act. The fact that Ofqual determines these matters under the Act ensures that there is transparency and also consistency between qualifications bodies.

8. Consultation outcome

8.1 Ofqual have been consulted on the qualifications to be included and their role as the appropriate regulator. The fact that Ofqual would be prescribed as the appropriate regulator was made clear during the Parliamentary debates on the passage of the legislation. The types of qualifications to be included were also made clear during the passage of the legislation and those prescribed largely replicate those qualifications previously prescribed under the Disability Discrimination Act.

9. Guidance

9.1 There is no currently no guidance on these matters. However, Ofqual will be consulting shortly on how they will exercise the powers they have under this Act (in accordance with section 96(9) of the Act.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is solely on Ofqual, and this impact is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The measure should ensure that Ofqual is able both to maintain the standards of qualifications as well as ensuring reasonable adjustments

are made where appropriate. Ofqual must report on its performance annually.

13. Contact

Paul Baker at the Department for Education email: paul.baker@education.gsi.gov.uk can answer any queries regarding the instrument.