



Response to Department of Education's consultation on draft disability Regulations on the use of mark enhancements in examinations.

November 2008

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on age, fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998, and the disability duties under the Disability Discrimination Act 1995.
2. The Commission welcomes the opportunity to respond to the Department of Education's ('the Department') consultation on draft Regulations on the use of mark enhancements, in cases where disabled students have been granted exemptions.
3. In general, the Commission welcomes the Department's proposal to introduce Regulations in relation to General Qualifications Bodies, which will ensure that whenever a disabled candidate is granted an exemption in an examination, because no other reasonable adjustment can be found, then their marks for the other parts of the examination will be enhanced. The Commission also welcomes the Department's proposals to bring the Regulations into operation on 1 January 2009, which will ensure that the amendments take effect prior to the summer exam season.
4. We note that where a disabled student is exempted from one or more components and their mark enhanced to show the level of achievement in the areas of the exam that the

candidate was able to take, the General Qualifications Body may put a note of the exemption on the certificate (a “certificate indication”). In response to a request for clarification as to the type of wording which is likely to appear on the face of the certificate, the Department has replied that it would indicate on the reverse of the certificate that “ the candidate was not required to demonstrate all of the assessment objectives. Further details may be obtained from the awarding body.”

5. The Commission recognises that in some circumstances, depending on nature of the certificate indication or the “further details obtained from the awarding body”, the type or severity of the disability experienced by the disabled candidate, will be apparent, including to prospective employers. This has the potential to place disabled pupils at a disadvantage in circumstances where they would otherwise have not disclosed their disability. The Commission awaits with interest the decision of the High Court in the Republic of Ireland brought by two former students with dyslexia against the Department of Education and Science under the Equal Status Acts 2000-2004, in relation to annotations on their Leaving Certificates.
6. It is also of note that paragraph 9.44 of the Equality and Human Rights Commission’s Revised Code of Practice for Trade Organisations, Qualifications Bodies and General Qualifications Bodies states as follows:-

“The regulations make it explicitly clear that such an exemption is an adjustment of last resort in that it is only to be considered where no other reasonable adjustment can be made. It would not, therefore, be reasonable to grant a component exemption where another adjustment could have been made to discharge the duty where it arises that would have allowed the disabled person to access the component(s) in question. The first consideration must be whether the duty to make reasonable adjustment arises and then what reasonable adjustments, other than component exemptions, can be made to discharge the duty, before even considering component exemptions.”

7. The Commission recommends that when issuing guidance to General Qualifications Bodies, schools and other relevant bodies, that the Department highlights the above mentioned points raised in the Code.

8. The Department will be aware that in its response to the Department's consultation in October 2007 on the draft 2007 Regulations affecting General Qualification Bodies, the Commission recommended that the Special Educational Needs and Disability (Northern Ireland) Order 2005 ('SENDO 2005') is amended to:-
- prohibit instructions and pressure to discriminate, as regards General Qualifications Bodies, and that the Commission is given power to take legal action in respect of unlawful instructions, or pressure to discriminate;
 - include a list of factors which may have a bearing on whether it is reasonable for General Qualifications Bodies to make a particular adjustment; and
 - extend the questionnaire procedure to complaints relating to General Qualifications Bodies.
9. The Department has indicated in its letter dated 3 April 2008 that it will give due consideration to amending SENDO 2005 to reflect any changes made in Great Britain (GB) as regards these matters. The Department has further indicated that the GB Government may use the Equality Bill to introduce these changes. The Commission recommends that the Department takes the earliest possible opportunity to address these legislative inconsistencies and also to ensure that if steps are taken in GB to address these matters, that similar steps are taken in Northern Ireland within a similar time scale.
10. In addition, it is essential that any other legislative changes introduced in GB which provide enhanced protection against disability discrimination for disabled pupils in schools, are introduced in Northern Ireland, within a similar time scale. In particular, the Department will be aware that the GB Government in its response to the Discrimination Law Review in June 2008 has highlighted a number of important changes to the Disability Discrimination Act 1995. These changes will, in combination, secure greater protection for disabled people in GB (including disabled pupils in schools) against discrimination, and a failure to make reasonable adjustments across the scope of the DDA. The Commission will be in

contact with the Department in the near future in order to highlight in more detail the need for urgent legislative reform in Northern Ireland and to ascertain the Department's views on this matter.