1. **Reasonable Adjustments**

A higher education institution will be acting unlawfully if it fails to comply with a duty to make reasonable adjustments in relation to:

- deciding who is offered admission as a student;
- the provision of education;
- access to a benefit, facility or service;
- deciding on whom a qualification is conferred;
- a qualification that the institution confers.

The reasonable adjustment requirements of disabled students are wide-ranging and include changes to provisions, criteria or practices, the provision of auxiliary aids and services and making adjustments to physical features.

A provision, criterion or practice does **not** include the application of a competence standard. Therefore the duty to make reasonable adjustments does **not** include a duty to make reasonable adjustments to the application of a competence standard.

2. **Competence Standards**

The Act defines a ‘competence standard’ as **an academic, medical, or other standard applied by or on behalf of an education provider for the purpose of determining whether or not a person has a particular level of competence or ability**. A higher education institution will **not** be required to make any reasonable adjustments to the application of a competence standard.

Education providers are likely to impose various requirements and conditions in respect of courses. However, any such requirement or condition only amounts to a competence standard if its purpose is to demonstrate a particular level of a relevant competence or ability such as a requirement that a person has a particular level of knowledge of a subject.

The following are examples which are unlikely to amount to competence standards in most cases:

- being able to cope with the demands of a programme
- having good health and/or fitness (if this is unnecessary for the programme)
• attendance requirements
• speaking or writing clearly

Example: The admission criteria for a course in choreography include a requirement to demonstrate ‘a high level of physical fitness’. The course itself, however, is predominately theory-based and does not involve any strenuous physical activity. This is unlikely to be a competence standard.

Example: The requirement for students studying for a law degree to demonstrate a particular standard of knowledge of certain areas of law in order to obtain the degree is a competence standard.

On the other hand, a condition that a person can, for example, do something within a certain period of time will not be a competence standard if it does not determine a particular level of competence or ability.

Example: A requirement that a person completes a test in a certain time period is not a competence standard unless the competence being tested is the ability to do something within a limited time period.

Although there is no duty to make reasonable adjustments to the application of a competence standard, such a duty does apply to the process by which competence is assessed. So although an education provider has no duty to alter a competence standard, it needs to consider whether or not a reasonable adjustment could be made to some aspect of the process by which it assesses a competence standard.

Example: When assessing the competence standard of a person’s ability to read French it would be a reasonable adjustment to provide a visually impaired student with text in large font (if that was the adjustment the student required).

However, there may be an overlap between a competence standard and any process by which an individual is assessed against that standard.

Example: A woman taking a written test for a qualification in office administration asks the education provider for extra time for the test because she has dyslexia. This is likely to be a reasonable adjustment for the education provider to make. She also asks if she can leave out the questions asking her to write a business letter and to précis a document, because she feels that these questions would substantially disadvantage her because of her dyslexia. The
An education provider would not have to make this adjustment because these questions are there to determine her competence at writing and précising, so are part of the competence standard being tested.

Sometimes the process of assessing whether a competence standard has been achieved is inextricably linked to the standard itself. The passing of an assessment may be conditional upon having a practical skill or ability which must be demonstrated by completing a practical test. Therefore, in relatively rare circumstances, the ability to take the test may itself amount to a competence standard. This is particularly relevant to programmes where the competence standards may be prescribed by an external professional body (e.g. medicine and veterinary science) and may be linked to fitness to practice.

**Example:** An assessment for a practical course in car maintenance cannot be done solely as a written test, because the purpose of the test is to ascertain whether someone can complete car repairs.

**Example:** An applicant for a veterinary degree has a disability impacting on her ability to cope with the practical elements of the programme, and asks if somebody could undertake the practical aspects of the programme under her direction. The ability to be able to perform a complete clinical examination is a fundamental learning outcome. It is also a competence standard set by the external professional body, the Royal College of Veterinary Surgeons. In this case, the requirement to make reasonable adjustments would not apply as this is a justifiable competence standard.

The duty to make reasonable adjustments therefore does not include a duty to make reasonable adjustments to the application of a competence standard. For this reason it is imperative that any intended learning outcomes are in themselves justifiable as competence standards under the Equality Act; they will not then be subject to the requirement to make reasonable adjustments. If something is considered to be a competence standard, consideration should be given to the specific purpose of the competence standard and whether this purpose is legitimate. What must also be properly examined is the adverse impact applying the standard has, or could have, on disabled students. By thoroughly considering all alternative less discriminatory or non-discriminatory standards, providers should be able to determine whether or not a standard is justifiable and, consequently, lawful.

### 3. Further information

Please contact the Equality and Diversity Team if you need further advice on this area.

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