

Equality Act 2010

Guidance

Guidance on matters to be taken into account in determining questions relating to the definition of disability

Contents

Status and purpose of the guidance	3
Part 1: Introduction	4
The Equality Act 2010	4
Using the guidance	4
Other references to ‘disability’	5
Part 2: Guidance on matters to be taken into account in determining questions relating to the definition of disability	6
Section A: General	6
Main elements of the definition of disability	6
Meaning of ‘impairment’	7
Persons with HIV infection, cancer and Multiple Sclerosis	9
Persons deemed to be disabled	9
Exclusions from the definition	10
People who have had a disability in the past	12
Disability as a particular protected characteristic or as a shared protected characteristic	13

Section B: Substantial	15
Meaning of ‘substantial adverse effect’	15
The time taken to carry out an activity	15
The way in which an activity is carried out	16
Cumulative effects of an impairment	16
Effects of behaviour	18
Effects of environment	19
Effects of treatment	20
Progressive conditions	22
Severe disfigurements	24
Section C: Long-term	25
Meaning of ‘long-term effects’	25
Meaning of ‘likely’	26
Recurring or fluctuating effects	27
Likelihood of recurrence	29
Assessing whether a past disability was long-term	30
Section D: Normal day-to-day activities	31
Meaning of ‘normal day-to-day activities’	31
Work-related and other specialised activities	32
Indirect effects	34
Children with a disability	35
Adverse effects on the ability to carry out normal day-to-day activities	37
Appendix	47
An illustrative and non-exhaustive list of factors which, if they are experienced by a disabled person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.	47
An illustrative and non-exhaustive list of factors which, if they are experienced by a disabled person, it would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.	50

Status and purpose of the guidance

This guidance is issued by the Secretary of State under section 6(5) of the Equality Act 2010. In this document, any reference to ‘the Act’ means the Equality Act 2010.

This guidance concerns the definition of disability in the Act. Section 6(5) of the Act enables a Minister of the Crown to issue guidance about matters to be taken into account in determining whether a person is a disabled person. The guidance gives illustrative examples.

This guidance does not impose any legal obligations in itself, nor is it an authoritative statement of the law. However, Schedule 1, paragraph 12 to the Act requires that an adjudicating body¹ which is determining for any purpose of the Act whether a person is a disabled person, must take into account any aspect of this guidance which appears to it to be relevant.

This guidance applies to England, Wales and Scotland. Similar, but separate, guidance applies to Northern Ireland.

1 Schedule 1, Para 12 defines an ‘adjudicating body’ as a court, tribunal, or a person (other than a court or tribunal) who may decide a claim relating to a contravention of Part 6 (education).

Part 1: Introduction

The Equality Act 2010

1. The Equality Act 2010 prohibits discrimination against people with the protected characteristics that are specified in section 4 of the Act. Disability is one of the specified protected characteristics. Protection from discrimination for disabled people applies to disabled people in a range of circumstances, covering the provision of goods, facilities and services, the exercise of public functions, premises, work, education, and associations. Only those people who are defined as disabled in accordance with section 6 of the Act, and the associated Schedules and regulations made under that section, will be entitled to the protection that the Act provides.

Using the guidance

2. This guidance is primarily designed for adjudicating bodies which determine cases brought under the Act. The definition of who is a disabled person for the purposes of the Act is a legal definition and it is only adjudicating bodies which can determine whether a person meets that definition. However, the guidance is also likely to be of value to a range of people and organisations as an explanation of how the definition operates.
3. **In the vast majority of cases there is unlikely to be any doubt whether or not a person has or has had a disability, but this guidance should prove helpful in cases where the matter is not entirely clear.**
4. The definition of disability has a number of elements. The guidance covers each of these elements in turn. Each section contains an explanation of the relevant provisions of the Act which supplement the basic definition. Guidance and illustrative examples are provided where relevant. Those using this guidance for the first time should read it all, as each part of the guidance builds upon the part(s) preceding it.

5. Throughout the guidance, descriptions of statutory provisions in the legislation are immediately preceded by bold text and followed by a reference to the relevant provision of the Act or to regulations made under the Act. References to sections of the Act are marked '**S**'; references to schedules are marked '**Sch**'; and references to paragraphs in schedules are marked '**Para**'.

Other references to 'disability'

6. The definition of disability set out in the Act and described in this guidance is the only definition relevant to determining whether someone is a disabled person for the purposes of the Act. References to 'disability' or to mental or physical impairments in the context of other legislation are not relevant to determining whether someone is a disabled person under this Act and should be disregarded.

7. There is a range of services, concessions, schemes and financial benefits for which disabled people may qualify. These include, for example: local authority services for disabled people; the Blue Badge parking scheme; tax concessions for people who are blind; and disability-related social security benefits. However, each of these has its own individual eligibility criteria and qualification for any one of them does not automatically confer entitlement to protection under the Act, nor does entitlement to the protection of the Act confer eligibility for benefits, or concessions. Similarly, a child who has been identified as having special educational needs is not necessarily disabled for the purposes of the Act.

8. In order to be protected by the Act, a person must meet the Act's definition of disability as explained below.

Part 2: Guidance on matters to be taken into account in determining questions relating to the definition of disability

Section A: General

Main elements of the definition of disability

- A1. **The Act defines** a disabled person as a person with a disability. A person has a disability for the purposes of the Act if he or she has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (**S6(1)**).
- A2. This means that, in general:
- the person must have an impairment that is either physical or mental (**see paragraphs A3 to A8**);
 - the impairment must have adverse effects which are substantial (**see Section B**);
 - the substantial adverse effects must be long-term (**see Section C**); and
 - the long-term substantial adverse effects must be effects on normal day-to-day activities (**see Section D**).

This definition is subject to the provisions in **Schedule 1 (Sch1)**.

Meaning of ‘impairment’

- A3. The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.
- A4. Whether a person is disabled for the purposes of the Act is generally determined by reference to the **effect** that an impairment has on that person’s ability to carry out normal day-to-day activities. It is not possible to provide an exhaustive list of conditions that qualify as impairments for the purposes of the Act. Any attempt to do so would inevitably become out of date as medical knowledge advanced.
- A5. It is important to remember that not all impairments are readily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious.

- A6. A disability can arise from a wide range of impairments which can be:
- sensory impairments, such as those affecting sight or hearing;
 - impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
 - progressive, such as motor neurone disease, muscular dystrophy, forms of dementia and lupus (SLE);
 - organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
 - developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
 - learning difficulties;
 - mental health conditions and mental illnesses, such as depression, schizophrenia, eating disorders, bipolar affective disorders, obsessive compulsive disorders, as well as personality disorders and some self-harming behaviour;
 - produced by injury to the body or brain.
- A7. It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.
- A8. It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What is important to consider is the effect of an impairment not its cause – provided that it is not an excluded condition. **See also paragraph A12 (exclusions from the definition).**
-

A woman has obesity which gives rise to impairments such as mobility restrictions and breathing difficulties. She is unable to walk more than 50 yards without having to rest.

A man has borderline moderate learning difficulties which have an adverse impact on his short-term memory and his levels of literacy and numeracy. For example, he cannot write any original material, as opposed to slowly copying existing text, and he cannot write his address from memory.

It is the effects of these impairments that need to be considered, rather than the underlying conditions themselves.

Persons with HIV infection, cancer and Multiple Sclerosis

- A9. **The Act states** that a person who has cancer, HIV infection or multiple sclerosis (MS) is a disabled person. This means that the person is protected by the Act effectively from the point of diagnosis. (**Sch1, Para 6**). **See also paragraphs B16 to B19 (progressive conditions)**.

Persons deemed to be disabled

- A10. The Act provides for certain people to be deemed to meet the definition of disability without having to show that they have an impairment that has (or is likely to have) a substantial, adverse, long-term effect on the ability to carry out normal day-to-day activities. Regulations provide for a person who is certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist to be deemed to have a disability².

² The reference to blind and partially sighted persons includes people who were certified under the Disability Discrimination (Blind and Partially Sighted Persons) Regulations 2003 (S.I. 2003/712). Those provisions are to be consolidated in revised regulations. [Details of those regulations will be added.]

A11. Anyone who has an impairment which is not listed in A9 and A10 will need to meet the requirements of the definition as set out in paragraph A1 in order to demonstrate that he or she has a disability under the Act. **(But see paragraph A17 for details of some people who are treated as having had a past disability.)**

Exclusions from the definition

A12. Certain conditions are not to be regarded as impairments for the purposes of the Act. These are:

- addiction to, or dependency on, alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed);
- the condition known as seasonal allergic rhinitis (e.g. hayfever), except where it aggravates the effect of another condition;
- tendency to set fires;
- tendency to steal;
- tendency to physical or sexual abuse of other persons;
- exhibitionism;
- voyeurism.

A13. The exclusions apply where the tendency to set fires, tendency to steal, tendency to physical or sexual abuse of other persons, exhibitionism, or voyeurism constitute an impairment in themselves. The exclusions also apply where these tendencies arise as a consequence of, or a manifestation of, an impairment that constitutes a disability for the purposes of the Act.

A young man has Attention Deficit Hyperactivity Disorder (ADHD) which manifests itself in a number of ways, one of which is exhibitionism. The disorder, as an impairment which has a substantial and long-term adverse effect on the young person's ability to carry out normal day-to-day activities, would be a disability for the purposes of the Act. However, the young man is not entitled to the protection of the Act in relation to any discrimination he experiences as a consequence of his exhibitionism, because that is an excluded condition under the Act.

- A14. Also, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities³.
- A15. A person with an excluded condition may nevertheless be protected as a disabled person if he or she has an accompanying impairment which meets the requirements of the definition. For example, a person who is addicted to a substance such as alcohol may also have depression, or a physical impairment such as liver damage, arising from the alcohol addiction. While this person would not meet the definition simply on the basis of having an addiction, he or she may still meet the definition as a result of the effects of the depression or the liver damage.

³ Provisions in The Disability Discrimination (Meaning of Disability) Regulations 1996 are to be consolidated in revised regulations. [Details of those regulations will be added.]

People who have had a disability in the past

- A16. **The Act says** that, except for the provisions in Part 12 (Transport⁴) and section 190 (improvements to let dwelling houses), the provisions of the Act also apply in relation to a person who previously has had a disability as defined in paragraphs **A1 and A2 (S6(4) and Sch1, Para 9)**. This means that someone who is no longer disabled, but who met the requirements of the definition in the past, will still be covered by the Act. For example, a woman who, four years ago, experienced a mental illness that had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities, but who has experienced no recurrence of the condition, is still entitled to the protection afforded by the Act, as a person with a past disability.
- A17. A particular instance of someone who is treated under the Act as having had a disability in the past is someone whose name was on the register of disabled persons under provisions in the Disabled Persons (Employment) Act 1944⁵ on both 12 January 1995 and 2 December 1996. The Disability Discrimination Act 1995 provided for such people to be treated as having had a disability in the past, and those provisions are being saved so that they still apply.

4 Covering: taxis etc; public service vehicles and rail transport.

5 The Disability Discrimination Act 1995 (DDA) provided that any individual who was registered as a disabled person under the Disabled Persons (Employment) Act 1944 and whose name appeared on the register both on 12 January 1995 and 2 December 1996 was treated as having a disability for during the period of three years starting on 2 December 1996 (when the DDA employment provisions came into force). This applied regardless of whether the person met the DDA definition of a disabled person during that period. Following the end of the three-year transitional period, those persons who were treated by this provision as being disabled are now treated as having a disability in the past. This provision is being preserved for the purposes of the Equality Act 2010.

Disability as a particular protected characteristic or as a shared protected characteristic

A18. Certain provisions in the Act apply where a person has a particular protected characteristic. For example Schedule 1 paragraph 1 provides that it is not discrimination, under a range of work provisions, for it to be a requirement of the job that the job holder has a protected characteristic. **The Act states** that, in relation to the protected characteristic of disability, a reference to a person with a particular protected characteristic is a reference to a person who has a particular disability (**S6(3)**).

A charitable organisation that provides services to people with HIV Aids has a vacancy for a counsellor for whom personal experience of being HIV positive is a genuine occupational requirement. The requirement is to have a particular protected characteristic which in this instance is the particular disability of having been diagnosed as being HIV positive.

A19. Some provisions in the Act, for example those relating to single characteristic associations, apply where persons share a protected characteristic. **The Act states** that, in relation to the protected characteristic of disability, a reference to persons who share a particular characteristic is a reference to persons who have the same disability (**S6(3)**).

A group of people with hearing impairments forms a private club that provides advice, support and recreational activities specifically for people who share that particular impairment. For the purposes of the Act, a reference to people who share a protected characteristic would, in this instance, be people who have hearing impairments.

Section B: Substantial

Meaning of ‘substantial adverse effect’

- B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is greater than the effect which would be produced by the sort of physical or mental conditions experienced by many people which have only ‘minor’ or ‘trivial’ effects (this is stated in **the Act, S212(1)**). This section looks in more detail at what ‘substantial’ means. **It should be read in conjunction with Section D which considers what is meant by ‘normal day-to-day activities’.**

The time taken to carry out an activity

- B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

A ten-year-old child has cerebral palsy. The effects include muscle stiffness, poor balance and unco-ordinated movements. The child is still able to do most things for himself, but he gets tired very easily and it is harder for him to accomplish tasks like eating and drinking, washing, and getting dressed. Although he has the ability to carry out everyday activities such as these, everything takes longer compared to a child of a similar age who does not have cerebral palsy. This amounts to a substantial adverse effect.

The way in which an activity is carried out

- B3. Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity if he or she did not have the impairment.

A person who has obsessive compulsive disorder follows a complicated ritual of hand washing. When preparing a simple meal, he washes his hands carefully after handling each ingredient and each utensil. A person without the disorder might wash his or her hands at appropriate points in preparing the meal, for example after handling raw meat, but would not normally do this after every stage in the process of preparation.

Cumulative effects of an impairment

- B4. An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation, but its effects on more than one activity, taken together, could result in an overall substantial adverse effect.
- B5. For example, a person whose impairment causes breathing difficulties may, as a result, experience minor effects on the ability to carry out a number of activities such as getting washed and dressed, preparing a meal, or travelling on public transport. But taken together, the cumulative result would amount to a substantial adverse effect on his or her ability to carry out these normal day-to-day activities.

A man with depression experiences a range of symptoms that include a loss of energy and motivation that makes even the simplest of tasks or decisions seem quite difficult. For example, he finds it difficult to get up in the morning, get washed and dressed, and prepare breakfast. He is forgetful and cannot plan ahead. As a result he has often run out of food before he thinks of going shopping again. Household tasks are frequently left undone, or take much longer to complete than normal. Together, the effects amount to a substantial adverse effect.

- B6. A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities. For example, a minor impairment which affects physical co-ordination and an irreversible but minor injury to a leg which affects mobility, when taken together, might have a substantial effect on the person's ability to carry out certain normal day-to-day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long-term, **see section C**.

Effects of behaviour

- B7. Account should be taken of how far a person can **reasonably** be expected to modify his or her behaviour to prevent or reduce the effects of an impairment on normal day-to-day activities. If a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect on his or her ability to carry out normal day-to-day activities, the person would no longer meet the definition of disability. For example, when considering modification of behaviour, it would be reasonable to expect a person who has back pain to avoid extreme activities such as parachuting. It would not be reasonable to expect him or her to give up, or modify, more normal activities that might exacerbate the symptoms; such as moderate gardening, shopping, or using public transport.
- B8. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; because of a loss of energy and motivation. It would **not** be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do, or can only do with difficulty, rather than focussing on those things that a person can do.

In order to manage her condition, a woman with a persistent stammer uses coping strategies, such as avoiding using the telephone, not giving verbal instructions at work, limiting social contact outside her immediate family, and avoiding challenging situations with service providers. As a consequence, it may not be readily obvious that she has an impairment which adversely affects her ability to carry out normal day-to-day activities.

In determining whether she meets the definition of disability, consideration should be given to the extent to which it is reasonable to expect her to place such restrictions on her working and domestic life.

- B9. In some cases, people have coping strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.

See also paragraphs B11 to B15 (effects of treatment), paragraph C9 (likelihood of recurrence) and D9 (indirect effects).

Effects of environment

- B10. Environmental conditions may exacerbate the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects are substantial, the extent to which such environmental factors are likely to exacerbate the effects should, therefore, also be considered. **See also paragraphs C5 to C8, meaning of 'long-term' (recurring or fluctuating effects).**

A woman has had rheumatoid arthritis for the last three years and has difficulty carrying out day-to-day activities such as walking, undertaking household tasks, and getting washed and dressed. The effects are particularly bad during autumn and winter months when the weather is cold and damp. Symptoms are mild during the summer months. The effect on ability to carry out normal day-to-day activities fluctuates according to the weather conditions, but because the effect of the impairment is likely to recur, this person meets the definition of disability requirement on the meaning of 'long-term' (Sch1, Para 2(2)).

Effects of treatment

- B11. **The Act provides** that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (**Sch1, Para 5(1)**). **The Act states** that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid (**Sch1, Para 5(2)**).
- B12. This provision applies even if the measures result in the effects being completely under control or not at all apparent. Where treatment is continuing it may be having the effect of masking or ameliorating a disability so that it does not have a substantial adverse effect. If the final outcome of such treatment cannot be determined or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with **paragraph 5 of Schedule 1**.

- B13. For example, if a person with a hearing impairment wears a hearing aid the question as to whether his or her impairment has a substantial adverse effect is to be decided by reference to what the hearing level would be without the hearing aid. Similarly, in the case of someone with diabetes which is being controlled by medication or diet, or the case of a person with depression which is being treated by counselling, whether or not the effect is substantial should be decided by reference to what the effects of the condition would be if he or she were not taking that medication or following the required diet, or were not receiving counselling (the so-called 'deduced effects').
- B14. **The Act states** that this provision does not apply to sight impairments to the extent that they are capable of correction by spectacles or contact lenses. In other words, the only effects on the ability to carry out normal day-to-day activities which are to be considered are those which remain when spectacles or contact lenses are used (or would remain if they were used). This does not include the use of devices to correct sight which are not spectacles or contact lenses (**Sch1, Para 5(3)**).
- B15. Account should be taken of where the effect of the continuing medical treatment is to create a permanent improvement rather than a temporary improvement. For example, a person who develops pneumonia may be admitted to hospital for treatment including a course of antibiotics. This cures the impairment and no effects remain. **See also paragraph C10, regarding medical or other treatment that permanently reduces or removes the effects of an impairment.**

Progressive conditions

- B16. Progressive conditions are subject to the special provisions set out in **Sch1, Para 8**. These provisions provide that a person with a progressive condition is to be regarded as having an impairment which has a substantial adverse effect on his or her ability to carry out normal day-to-day activities **before** it does so. A person who has a progressive condition, will be treated as having an impairment which has a **substantial** adverse effect from the moment any impairment resulting from that condition first has **some** adverse effect on his or her ability to carry out normal day-to-day activities, provided that in the future the adverse effect is **likely** to become substantial. Medical prognosis of the likely impact of the condition will be the normal route to establishing protection under this provision. The effect need not be continuous and need not be substantial. **(See also paragraphs C5 to C8 on recurring or fluctuating effects)**. The person will still need to show that the impairment meets the requirements of **Sch1, Para 2** (meaning of long-term).
- B17. Examples of progressive conditions to which the special provisions apply include systemic lupus erythematosus (SLE), various types of dementia, rheumatoid arthritis, and motor neurone disease. This list, however, is not exhaustive.

A young boy aged 8 has been experiencing muscle cramps and some weakness. The effects are quite minor at present, but he has been diagnosed as having muscular dystrophy. Eventually it is expected that the resulting muscle weakness will cause substantial adverse effects on his ability to walk, run and climb stairs. Although there is no substantial adverse effect at present, muscular dystrophy is a progressive condition, and this child will still be entitled to the protection of the Act under the special provisions in Sch1, Para 8 of the Act if it can be shown that the effects are likely to become substantial.

A woman has been diagnosed with lupus (SLE) following complaints to her GP that she is experiencing mild aches and pains in her joints. She has also been feeling generally unwell, with some flu-like symptoms. The initial symptoms do not have a substantial adverse effect on her ability to carry out normal day-to-day activities. However, SLE is a progressive condition, with fluctuating effects. She has been advised that the condition may come and go over many years, and in the future the effects may become substantial, including severe joint pain, inflammation, stiffness, and skin rashes. Providing it can be shown that the effects are likely to become substantial, she will be covered by the special provisions in Sch1, Para 8. She will, however, still need to meet the 'long-term' condition of the definition in order to be protected by the Act.

- B18. As explained in **paragraph A9**, the Act provides for a person with one of the progressive conditions of cancer, HIV and multiple sclerosis to be a disabled person from the point at which they have that condition, so effectively from diagnosis.
- B19. A person with a progressive condition which has no effect on day-to-day activities because it is successfully treated (for example by surgery) may still be covered by **Sch1, Para 8** where the effects of that treatment give rise to a further impairment which does have an effect on normal day-to-day activities. For example, treatment for the condition may result in an impairment which has some effect on normal day-to-day activities and the effects of that impairment are likely to become substantial in the future.

A man has an operation to remove the colon because of progressing and uncontrollable ulcerative colitis. This is a treatment that is fairly routine for severe colitis. The operation results in his no longer experiencing adverse effects from the colitis. He requires a colostomy, however, which means that his bowel actions can only be controlled by a sanitary appliance. The effect of the incontinence should be taken into account as an effect arising from the original impairment.

- B20. Whether the effects of any treatment can qualify for the purposes of **Sch1, Para 8** will depend on the circumstances of the individual case.

Severe disfigurements

- B21. **The Act provides** that where an impairment consists of a severe disfigurement, it is to be treated as having a substantial adverse effect on the person's ability to carry out normal day-to-day activities. There is no need to demonstrate such an effect (**Sch1, Para 3**). Regulations provide that a disfigurement which consists of a tattoo (which has not been removed) is not to be considered as a severe disfigurement. Also excluded is a piercing of the body for decorative purposes including anything attached through the piercing⁶.
- B22. Examples of disfigurements include scars, birthmarks, limb or postural deformation (including restricted bodily development), or diseases of the skin. Assessing severity will be mainly a matter of the degree of the disfigurement. However, it may be necessary to take account of where the disfigurement in question is (e.g. on the back as opposed to the face).

⁶ See footnote 3.

Section C: Long-term

Meaning of ‘long-term effects’

C1. **The Act states** that, for the purpose of deciding whether a person is disabled, a long-term effect of an impairment is one:

- which has lasted at least 12 months; or
- where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months; or
- which is likely to last for the rest of the life of the person affected (**Sch1, Para 2**).

For the purpose of deciding whether a person has had a disability in the past, a long-term effect of an impairment is one which lasted at least 12 months (**Sch1, Para 9**).

C2. The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person. The substantial adverse effect of an impairment which has developed from, or is likely to develop from, another impairment should be taken into account when determining whether the effect has lasted, or is likely to last at least twelve months, or for the rest of the life of the person affected.

A woman developed a breathing condition that arose following a lung infection which had lasted seven months. The condition and the lung infection each had a substantial adverse effect on the woman's ability to carry out normal day-to-day activities. The breathing condition itself lasted some ten months. As the condition arose from, and therefore was related to, the lung infection, the effects of each should be aggregated when considering whether the disability was long-term. As the total period over which the effects lasted was in excess of twelve months, the long-term element of the definition of disability was met.

However where a person experiences, over a long period, adverse effects arising from two separate and unrelated conditions, for example a lung infection and a leg injury, these effects should not be aggregated.

Meaning of 'likely'

- C3. The meaning of 'likely' is relevant when determining whether an impairment has a long-term effect (**Sch1, Para 2(1)**), but also when determining whether an impairment has a recurring effect (**Sch1, Para 2(2)**) or how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour (**Sch1, Para 5(1)**). In this context, 'likely', should be interpreted as meaning that it could well happen, rather than it is more probable than not that it will happen.
- C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the total period for which the effect exists. This includes any time before the point at which the alleged incident of discriminatory behaviour which is being considered by the adjudicating body occurred. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).

Recurring or fluctuating effects

- C5. **The Act states** that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (**Sch1, Para 2(2)**). **See also C3 (meaning of likely)**.
- C6. For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission. **See also example at B10**. If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term. Other impairments with effects which can recur, or where effects can be sporadic, include Menière's disease and epilepsy as well as mental health conditions such as schizophrenia, bipolar affective disorder, and certain types of depression, though this is not an exhaustive list. It should be noted that some impairments with recurring or fluctuating effects may be less obvious in their impact on the individual concerned than is the case with other impairments where the effects are more constant.

A young man has bipolar affective disorder, a recurring form of depression. The first episode occurred in months one and two of a 13-month period. The second episode took place in month 13. This man will satisfy the requirements of the definition in respect of the meaning of long-term, because the adverse effects have recurred beyond 12 months after the first occurrence and are therefore treated as having continued for the whole period (in this case, a period of 13 months).

A woman has two discrete episodes of depression within a ten-month period. In month one she loses her job and has a period of depression lasting six weeks. In month nine she suffers a bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than 12 months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the 12-month period.

- C7. It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the ‘long-term’ element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. It may change: for example activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect may disappear altogether.
- C8. Regulations specifically exclude seasonal allergic rhinitis (e.g. hayfever) except where it aggravates the effects of an existing condition⁷. For example, this may occur in some cases of asthma. **See also paragraph A12 (exclusions).**

⁷ See footnote 3.

Likelihood of recurrence

- C9. Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence. For example, the person might reasonably be expected to take action which prevents the impairment from having such effects (e.g. avoiding substances to which he or she is allergic). This may be unreasonably difficult with some substances. In addition, it is possible that the way in which a person can control or cope with the effects of an impairment may not always be successful: for example, because a routine is not followed or the person is in an unfamiliar environment. If there is an increased likelihood that the control will break down, it will be more likely that there will be a recurrence. That possibility should be taken into account when assessing the likelihood of a recurrence. **See also paragraphs B7 to B9 (effects of behaviour, including coping strategies and medical advice), paragraph B10 (environmental effects); paragraphs B11 to B15 (effect of treatment); and C3 (meaning of likely).**

A woman experiences stress-related anxiety. She is able to manage her workload and meet normal deadlines provided that she avoids too much responsibility. She achieves this through careful monitoring of her workload and regular supervision by her manager. She can cope with the symptoms of her condition most of the time, provided that she is not exposed to stressful situations.

The possibility that she might be exposed to stressful situations should be taken into account when deciding whether there is a likelihood of recurrence.

- C10. If medical or other treatment is likely to permanently cure a condition and therefore remove the impairment, so that recurrence of its effects would then be unlikely even if there were no further treatment, this should be taken into consideration when looking at the likelihood of recurrence of those effects. However, if the treatment simply delays or prevents a recurrence, and a recurrence would be likely if the treatment stopped, as is the case with most medication, then the treatment is to be ignored and the effect is to be regarded as likely to recur.

Assessing whether a past disability was long-term

- C11. **The Act provides** that a person who has had a disability within the definition is protected from some forms of discrimination even if he or she has since recovered or the effects have become less than substantial. In deciding whether a past condition was a disability, its effects count as long-term if they lasted 12 months or more after the first occurrence, or if a recurrence happened or continued until more than 12 months after the first occurrence (**S6(4) and Sch2, Para 2**). **For the forms of discrimination covered by this provision see paragraph A16. For examples of how this provision works, see paragraph C6.**

Section D: Normal day-to-day activities

- D1. The Act looks at a person's impairment and whether it substantially affects the person's ability to carry out normal day-to-day activities.

Meaning of 'normal day-to-day activities'

- D2. **The Act does not define what is to be regarded as a 'normal day-to-day activity'**. It is not possible to provide an exhaustive list of day-to-day activities, although guidance on this matter is given here and illustrative examples of when it would, and would not, be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities are shown in the Appendix. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.
- D3. The term 'normal day-to-day activities' is not intended to include activities which are normal only for a particular person, or a small group of people. In deciding whether an activity is a normal day-to-day activity, account should be taken of how far it is normal for a large number of people, and carried out by people on a daily or frequent and fairly regular basis. In this context, 'normal' should be given its ordinary, everyday meaning.
- D4. A normal day-to-day activity is not necessarily one that is carried out by a majority of people. For example, it is possible that some activities might be carried out only, or more predominantly, by people of a particular gender, such as applying make-up or using hair curling equipment, and cannot therefore be said to be normal for **most** people. They would nevertheless be considered to be normal day-to-day activities.

Work-related and other specialised activities

- D5. Normal day-to-day activities do not include work of any particular form because no particular form of work is 'normal' for most people. In any individual case, the activities carried out might be highly specialised. For example, carrying out delicate work with specialised tools may be a normal working activity for a watch repairer, whereas it would not be normal for a person who is employed as a semi-skilled worker. The Act only covers effects which go beyond the normal differences in skill or ability.
- D6. The same is true of other specialised activities such as playing a musical instrument to a high standard of achievement; taking part in a particular game or hobby where very specific skills or level of ability are required; or playing a particular sport to a high level of ability, such as would be required for a professional footballer or athlete.
- D7. However, many types of work or specialised hobby, sport or pastime may still involve normal day-to-day activities. For example; sitting down, standing up, walking, running, verbal interaction, writing, making a cup of tea, using everyday objects such as a keyboard, and lifting, moving or carrying everyday objects such as chairs.

A woman plays the piano to a high standard, and often takes part in public performances. She has developed carpal tunnel syndrome in her wrists, an impairment that adversely affects manual dexterity. She can continue to play the piano, but not to such a high standard, and she has to take frequent breaks to rest her arms. This would not of itself be an adverse effect on a normal day-to-day activity. However, as a result of her impairment she also finds it difficult to operate a computer keyboard and cannot use her PC to send emails or write letters. This is an adverse effect on a normal day-to-day activity.

A man works in a warehouse, loading and unloading heavy stock. He develops heart problems and no longer has the ability to lift or move heavy items of stock at work. Lifting and moving such unusually heavy types of item is not a normal day-to-day activity. However, he is also unable to lift, carry or move moderately heavy everyday objects such as chairs, either at work or around the home. This is an adverse effect on a normal day-to-day activity.

- D8. The effects experienced by a person as a result of environmental conditions, either in the workplace or in another location where a specialised activity is being carried out, should not be discounted simply because there may be a work-related or other specialised activity involved. It is important to consider whether there may also be an adverse effect on the ability to carry out a normal day-to-day activity.

A middle-aged man works in a factory where chemical fumes cause him to have breathing difficulties, and this has made it impossible for him to continue to do his job. He has been diagnosed with occupational asthma, which has a substantial adverse effect while he is at work. As a result he is no longer able to work where he would continue to be exposed to the fumes. Even in a non-work situation he finds any general exertion difficult and this adversely affects his ability to carry out normal day-to-day activities like lifting and carrying everyday objects. The effects fluctuate, and when he is not at work his asthma attacks are very infrequent. Although the substantial effect is only apparent while at work, the man is able to demonstrate that his impairment has an adverse effect on normal day-to-day activities.

Indirect effects

D9. An impairment may not directly **prevent** someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how he or she carries out those activities. For example:

- pain or fatigue: where an impairment causes pain or fatigue in performing normal day-to-day activities the person may have the ability to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time. **See also paragraphs B7 to B9 (effects of behaviour);**

A man has had chronic fatigue syndrome for several years and although he has the physical capability to walk and to stand, he finds these very difficult to sustain for any length of time because of the overwhelming fatigue he experiences. As a consequence, he is restricted in his ability to take part in normal day-to-day activities such as travelling, so he avoids going out socially, and works from home several days a week. Therefore there is a substantial adverse effect on normal day-to-day activities.

- medical advice: where a person has been advised by a medical practitioner or other health professional, as part of a treatment plan, to change, limit or refrain from a normal day-to-day activity on account of an impairment or only do it in a certain way or under certain conditions. **See also paragraphs B11 to B15 (effects of treatment).**

A woman who works as a teacher develops sciatic pain which is attributed to a prolapsed inter-vertebral disc. Despite physiotherapy and traction her pain became worse. As part of her treatment plan her doctor prescribes daily pain relief medication and advises her to avoid repetitive bending or lifting, and to avoid carrying heavy items. This prevents her from carrying out a range of normal day-to-day activities such as shopping.

Children with a disability

- D10. Regulations provide that an impairment to a child under six years old is to be treated as having a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities where it would normally have a substantial and long-term adverse effect on the ability of a person aged six years or over to carry out normal day-to-day activities⁸.
- D11. Children aged six and older are subject to the normal requirements of the definition.

⁸ See footnote 3.

A six-year-old child has been diagnosed as having autism. He has difficulty communicating through speech and in recognising when someone is happy or sad. Without a parent or carer with him he will often try to run out of the front door and on to the road to look at the wheels of parked or sometimes passing cars, and he has no sense of danger at all. When going somewhere new or taking a different route he can become very anxious. This amounts to a substantial adverse effect on his ability to carry out normal day-to-day activities, even for such a young child.

- D12. **Part 6 of the Act** provides protection for disabled pupils and students by preventing discrimination against them at school or in post-16 education because of, or for a reason related to, their disability. A pupil or student must satisfy the definition of disability as described in this guidance in order to be protected by Part 6 of the Act. The duties for schools in the Act are designed to dovetail with duties under the Special Educational Needs (SEN) framework which are based on a separate definition of special educational needs. Further information on these duties can be found in the SEN Code of Practice and the Equality and Human Rights Commission's Code of Practice for Education.

Examples of children in an educational setting where their impairment has a substantial and long-term adverse effect on ability to carry out normal day-to-day activities:

A 10-year-old girl has learning difficulties. She has a short attention span and has difficulties remembering facts from one day to the next. She can read only a few familiar words and has some early mathematical skills. To record her work in class she needs to use a tape recorder, pictures and symbols.

A 14-year-old boy has been diagnosed as having attention deficit hyperactivity disorder (ADHD). He often forgets his books, worksheets or homework. In class he finds it difficult to concentrate and skips from task to task forgetting instructions. He often fidgets and makes inappropriate remarks in class or in the playground.

In both of these examples reading, writing and participating in activities in class and/or in the playground, which are all normal day-to-day activities, are adversely affected to a substantial degree.

Adverse effects on the ability to carry out normal day-to-day activities

- D13. This section provides guidance on what should be taken into account in deciding whether a person's ability to carry out normal day-to-day activities might be restricted by the effects of that person's impairment. The examples given are purely illustrative and **should not in any way be considered as a prescriptive or exhaustive list.**

- D14. In the Appendix, examples are given of circumstances where it **would be reasonable** to regard the adverse effect on the ability to carry out a normal day-to-day activity as substantial. In addition, examples are given of circumstances where it would **not be reasonable** to regard the effect as substantial. In these examples, the effect described should be thought of as if it were the **only** effect of the impairment.
- D15. The examples of what it would, and what it would not, be reasonable to regard as substantial adverse effects on normal day-to-day activities **are indicators and not tests**. They do not mean that if a person can do an activity listed then he or she does not experience any substantial adverse effects: the person may be affected in relation to other activities, and this instead may indicate a substantial effect. Alternatively, the person may be affected in a minor way in a number of different activities, and the cumulative effect could amount to a substantial adverse effect. **See also paragraphs B4 to B6 (cumulative effects)**.
- D16. The examples describe the effect which would occur when the various factors described in **Sections A, B and C** have been allowed for, including for example the effects of a person's making such modifications of behaviour as might reasonably be expected, or of disregarding the impact of medical or other treatment.
- D17. Some of the examples in this section show how an adverse effect may arise from either a physical or a mental impairment. Where illustrations of both types of impairment have not been given, this does not mean that only one type of impairment could result in that particular effect. **Regard should be given to the fact that physical impairments can result in mental effects – for example, a person with a physical impairment may, because of pain or fatigue, experience difficulties in concentrating. Similarly, mental impairments can have physical manifestations – for example, a person with a mental impairment may experience difficulty in carrying out activities that involve mobility.**

- D18. The effect of a person's physical or mental impairment may make it difficult for him or her to carry out such day-to-day activities as: getting around unaided or using a normal means of transport; leaving home with or without assistance; walking a short distance; climbing stairs; travelling in a car or completing a journey on public transport; sitting, standing, bending, or reaching; or getting around in an unfamiliar place.

A young man with severe anxiety and symptoms of agoraphobia is unable to go out because he fears being outside in open spaces and gets panic attacks in stressful situations such as shopping or travelling on a route that is less than familiar.

A woman with Downs Syndrome has learning difficulties, and finds difficulty in travelling unaccompanied because she often gets lost in areas that are slightly unfamiliar.

A man with Menière's disease experiences dizziness and nausea. This restricts his ability to move around within his home without some form of support.

In these cases, the effects of the impairment have a substantial adverse effect on the ability to carry out normal day-to-day activities.

- D19. The effect of a person's impairment may make it substantially difficult for him or her to carry out normal day-to-day activities that involve things like picking up or manipulating small objects, operating a range of equipment manually, or communicating through writing or typing on standard machinery. Loss of function in the dominant hand would be expected to have a greater effect than equivalent loss in the non-dominant hand.

A man with tenosynovitis experiences significant pain in his hands and lower arms when undertaking repetitive tasks such as using a keyboard at home or work, peeling vegetables, and writing.

The impairment substantially adversely affects the man's ability to carry out normal day-to-day activities.

- D20. A person's physical or mental impairment may have a substantial adverse effect on their ability to co-ordinate their movements or carry out more than one normal day-to-day activity in unison, such as walking and using hands at the same time. In the case of a child, it is necessary to take account of the level of achievement which would be normal for a person of a similar age.

A young man who has dyspraxia experiences a range of effects which include difficulty co-ordinating physical movements. He is frequently knocking over cups and bottles of drink and cannot combine two activities at the same time, such as walking while holding a plate of food upright, without spilling the food.

It would be reasonable to regard this as a substantial adverse effect on normal day-to-day activities.

- D21. Some impairments may affect the ability to control urination and/or defecation. Account should be taken of the frequency and extent of the loss of control when considering whether a person's ability to carry out normal day-to-day activities is adversely affected.

A young woman has developed colitis, an inflammatory bowel disease. The condition is a chronic one which is subject to periods of remission and flare-ups. During a flare-up she experiences severe abdominal pain and bouts of diarrhoea. This makes it very difficult for her to travel, go shopping, or go to work as she must ensure she is always close to a lavatory.

This has a substantial adverse effect on her ability to carry out normal day-to-day activities.

- D22. A person's impairment may have a substantial adverse effect on their ability to carry everyday objects that might include such items as books, a kettle of water, bags of shopping, a briefcase, an overnight bag, a chair or other piece of light furniture.

A man with achondroplasia has unusually short stature, and arms which are disproportionate in size to the rest of his body. He has difficulty lifting or manipulating everyday items like a vacuum cleaner, or bulky items of household furniture, and has difficulty opening moderately heavy doors, and operating revolving barriers at the entrance to some buildings.

It would be reasonable to regard this as a substantial adverse effect on normal day-to-day activities.

D23. Account should be taken of the extent to which, as a result of either a physical or mental impairment, a person may have the ability to speak, hear or see, but may nevertheless be substantially adversely affected in carrying out normal day-to-day activities.

For example, account should be taken of how far a person is able to speak clearly at a normal pace and rhythm and to understand someone else speaking normally in the person's native language. It is necessary to consider any effects on speech patterns or which impede the acquisition or processing of a person's native language, for example by someone who has had a stroke.

A man has had a stammer since childhood. He does not stammer all the time, but his stammer can appear, particularly in telephone calls, to go beyond the occasional lapses in fluency found in the speech of people who do not have the impairment. However, this effect can often be hidden by his coping strategy. He tries to avoid making or taking telephone calls where he believes he will stammer, or he does not speak as much during the calls. He sometimes tries to avoid stammering by substituting words, or by inserting extra words or phrases.

A six-year-old boy has verbal dyspraxia which adversely affects his ability to speak and make himself clear to other people, including his friends and teachers at school.

A woman has bipolar disorder. Her speech sometimes becomes over-excited and irrational, making it difficult for others to understand what she is saying.

In these cases it would be reasonable to regard these effects as substantial adverse effects on the person's ability to carry out normal day-to-day activities.

- D24. Account should be taken of effects where the level of background noise is within such a range and of such a type that most people would be able to hear adequately. If a person uses a hearing aid or similar device, what needs to be considered is the effect that would be experienced if the person were not using the hearing aid or device.

A woman has tinnitus which interferes with, and makes it difficult for her to hear or understand normal conversations, to the extent that she cannot hear and respond to what a supermarket checkout assistant is saying if the two people behind her in the queue are holding a conversation at the same time.

This has a substantial adverse effect on her ability to carry out the normal day-to-day activity of shopping.

- D25. If a person's sight is corrected by spectacles or contact lenses, or could be corrected by them, what needs to be considered is any adverse effect that the visual impairment has on the ability to carry out normal day-to-day activities which remains while he or she is wearing such spectacles or lenses.
- D26. If a person's eyesight is impaired sufficiently to lead to certification as a blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist he or she is deemed to be a disabled person⁹, and does not need to prove that he or she has an impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.
- D27. Account should be taken of the possible effects on a person who has monocular vision, particularly if the sight in the remaining eye is compromised in any way.

⁹ See footnote 2.

A man has retinitis pigmentosa (RP), a hereditary eye disorder which affects the retina. In RP sight loss is gradual but progressive. It is unusual for people with RP to become totally blind – most retain some useful vision well into old age. In this case the man has difficulty seeing in poor light and experiences a marked reduction in his field of vision (referred to as tunnel vision). As a result he often bumps into furniture and doors when he is in an unfamiliar environment, and can only read when he is in a very well-lit area. It would be reasonable to conclude that the effects of his impairment have a substantial adverse effect on his ability to carry out normal day-to-day activities.

- D28. Account should be taken of whether the person's impairment substantially affects his or her ability to carry out normal day-to-day activities such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge, and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.
- D29. Account should also be taken of whether the person has persistent and significant difficulty in carrying out day-to-day activities such as reading and understanding text in their native language despite adequate educational opportunities, or in reading and understanding straightforward numbers. An impairment can have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how this in turn can cause difficulties in normal day-to-day activities which require a person to understand and follow verbal instructions.

A man has Asperger's syndrome, a form of autism, and this causes him to have difficulty communicating with people. He finds it hard to understand non-verbal communications such as facial expressions, and non-factual communication such as jokes. He takes everything that is said very literally, and therefore has difficulty in making or keeping friends or developing close relationships. He is given verbal instructions during office banter with his manager, but his ability to understand the instruction is impaired because he is unable to isolate the instruction from the social conversation.

A woman with bipolar affective disorder is easily distracted. This results in her frequently not being able to concentrate on performing an activity like making a sandwich without being distracted from the task. Consequently, it takes her significantly longer than a person without the disorder to complete the task.

It would be reasonable to regard these impairments as having a substantial adverse effect on normal day-to-day activities.

- D30. Account should be taken of whether the impairment has an effect on a person's estimation or assessment of physical danger, including danger to personal well-being. This can include consideration, for example, of whether the person is inclined to neglect basic functions such as eating, drinking, sleeping, keeping warm or personal hygiene; reckless behaviour which puts the person or others at risk; or excessive avoidance behaviour without a good cause.

A man has had paranoid schizophrenia for five years, and one of the effects of this impairment is an inability to make proper judgements about activities that may result in a risk to his personal safety. For example, he will walk into roads without checking if cars are coming. This makes normal day-to-day activities such as shopping very difficult.

A woman has had anorexia, an eating disorder, for two years and the effects of her impairment restrict her ability to properly carry out the normal day-to-day activity of eating.

In these cases it would be reasonable to regard these impairments as having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

Appendix

An illustrative and non-exhaustive list of factors which, if they are experienced by a disabled person, **it would be reasonable** to regard as having a substantial adverse effect on normal day-to-day activities.

Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case. That is, whether the substantial adverse effect of the impairment on normal day-to-day activities is long-term.

- Difficulty in travelling a short journey as a passenger in a vehicle, because, for example, it would be painful getting in and out of a car, or sitting in a car for even a short time; the person has a frequent need for a lavatory; or perhaps, as a result of a mental impairment, the person would become distressed while in the car.
- A total inability to walk, or difficulty walking other than at a slow pace or with unsteady or jerky movements.
- Difficulty in going up or down steps, stairs or gradients; for example, because movements are painful, uncomfortable or restricted in some way.
- Difficulty using one or more forms of public transport; for example, as a result of physical restrictions, pain or fatigue, or as a result of a mental impairment.
- Difficulty going out of doors unaccompanied; for example, because the person has a phobia.
- Difficulty co-ordinating the use of a knife and fork at the same time.
- Difficulty preparing a meal because of problems doing things like opening cans or other packages; peeling vegetables; lifting saucepans; and opening the oven door.

- Difficulty opening doors which have door knobs rather than lever handles, or gripping handrails on steps or gradients.
- Difficulty pressing the buttons on keyboards or keypads at the same speed as someone who does not have an impairment.
- Difficulty in dealing with buttons and fasteners when dressing and activities associated with toileting.
- Ability to pour hot water into a cup to make a cup of tea only with unusual slowness or concentration.
- Difficulty placing food into one's own mouth with a fork or spoon, without unusual concentration or assistance.
- Inability to place a key in a lock without unusual concentration or requiring assistance.
- Infrequent loss of control of the bowels, if it is entirely unpredictable and leads to immediate major soiling.
- Loss of control of the bladder while asleep at least once a month.
- Frequent minor faecal incontinence or frequent minor leakage from the bladder, particularly if it is unpredictable.
- Difficulty picking up objects of moderate weight with one hand.
- Difficulty opening a moderately heavy door.
- Difficulty carrying a moderately loaded tray steadily.
- Difficulty giving clear basic instructions orally to colleagues or providers of a service.
- Difficulty asking specific questions to clarify instructions.
- Taking longer than someone who does not have an impairment to say things.
- Difficulty hearing someone talking at a sound level which is normal for everyday conversations, and in a moderately noisy environment.
- Difficulty hearing and understanding another person speaking clearly over the voice telephone (where the telephone is not affected by bad reception).

- Difficulty hearing or understanding normal conversations because of interference caused by auditory hallucinations as a result of a mental impairment.
- Inability to see to pass the eyesight test for a standard driving test (however where this is corrected by glasses, this is not a substantial adverse effect).
- Difficulty recognising by sight a known person across a moderately-sized room (unless this can be corrected by glasses).
- Inability to distinguish any colours at all.
- Difficulty reading ordinary newsprint (unless this can be corrected by reading glasses).
- Difficulty walking safely without bumping into things (unless this can be corrected by glasses).
- Intermittent loss of consciousness and associated confused behaviour.
- Persistent difficulty in remembering the names of familiar people such as family or friends.
- Difficulty in adapting after a reasonable period to minor changes in work routine.
- Persistent and significant difficulty with reading.
- Persistent difficulty in remembering the spelling and meaning of words in common usage.
- Considerable difficulty in following a short sequence such as a simple recipe or a brief list of domestic tasks.
- Significant difficulty taking part in normal social interaction or forming social relationships.
- Disordered perception of reality.
- Difficulty in safely operating properly-maintained equipment.
- Persistent difficulty crossing a road safely.
- Persistent failure to nourish oneself, where nourishment is available.
- Inability to recognise the physical dangers of touching an object which is very hot or cold.

An illustrative and non-exhaustive list of factors which, if they are experienced by a disabled person, **it would not be reasonable** to regard as having a substantial adverse effect on normal day-to-day activities.

- Experiencing some discomfort as a result of travelling in a car for a journey lasting more than two hours.
- Experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile.
- Inability to undertake activities requiring delicate hand movements, such as threading a small needle.
- Inability to reach typing speeds standardised for secretarial work.
- Inability to pick up a single small item, such as a pin.
- Simple clumsiness.
- Inability to catch a tennis ball.
- Infrequent (less than once a month) loss of control of the bladder while asleep.
- Infrequent and minor leakage from the bladder.
- Incontinence in a very young child who would not be expected to be able to control urination and/or defecation.
- Inability to carry heavy luggage without assistance.
- Inability to move heavy objects without a mechanical aid, such as moving a heavy piece of furniture without a trolley.
- Inability to articulate fluently due to a lisp or other minor speech impediment.
- Inability to speak in front of an audience simply as a result of nervousness.

- Inability to be understood because of having a strong accent.
- Inability to converse in a language which is not the speaker's native language.
- Inability to hold a conversation in a very noisy place, such as a factory floor, a pop concert or alongside a busy main road.
- Inability to sing in tune.
- Inability to read very small or indistinct print without the aid of a magnifying glass.
- Inability to distinguish a known person across a substantial distance (e.g. across the width of a football pitch).
- Simple inability to distinguish between red and green, which is not accompanied by any other effect such as blurring of vision.
- Occasionally forgetting the name of a familiar person, such as a colleague.
- Inability to concentrate on a task requiring application over several hours.
- Some shyness or timidity.
- Inability to fill in a long, detailed, technical document without assistance.
- Inability to read at faster than normal speed.
- Minor problems with writing or spelling.
- Fear of significant heights.
- Underestimating the risk associated with dangerous hobbies, such as mountain climbing.
- A person consciously taking a higher than normal risk on their own initiative, such as persistently crossing a road when the signals are adverse, or driving fast on highways for own pleasure.
- Underestimating risks – other than obvious ones – in unfamiliar workplaces.

This publication is also available in audio and Braille.
If you would like a copy in either format, please contact us.

Web: www.odi.gov.uk

Post: Office for Disability Issues
Ground Floor
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: office-for-disability-issues@dwp.gsi.gov.uk

Telephone: 020 7340 4000

Produced by the Office for Disability Issues

© Crown copyright

Produced in the UK, August 2010
