

# **Equality Act 2017**

## Guidance

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

Cabinet Office

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## Status and purpose of the guidance

This guidance is issued by the Cabinet Office under section 7(5) of the Equality Act 2017. In this document, any reference to 'the Act' means the Equality Act 2017.

This guidance concerns the definition of disability in the Act. Section 7(5) of the Act enables a Department 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 body<sup>1</sup> 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 the Isle of Man.

This guidance is based on guidance issued by the [UK Office for Disability Issues](#) and contains public sector information licensed under [the Open Government Licence v.3.0](#). The guidance has been adapted to reflect Isle of Man law.

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# Part 1: Introduction

## The Equality Act 2017

1. The Equality Act 2017 prohibits discrimination against people with the protected characteristics that are specified in section 5 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 disabled people who are defined as disabled in accordance with section 7 of the Act, and the associated Schedules and regulations made under that section, will be entitled to the protection that the Act provides to disabled people. However, the Act also provides protection for non-disabled people who are subjected to direct discrimination or harassment because of their association with a disabled person or because they are wrongly perceived to be disabled.

## Using the guidance

2. This guidance is primarily designed for adjudicating bodies which determine cases brought under the Act. The definition of disability 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.**
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4. The Act generally 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. Therefore, the general 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.** It is important not to consider any individual element in isolation.

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 necessarily relevant but may assist adjudicating bodies when determining whether someone is a disabled person in accordance with the definition in this Act.

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7. There is a range of services, concessions, schemes and financial benefits for which disabled people may qualify. These include, for example: Department of Health and Social Care services for disabled people; the Blue Badge parking scheme; tax concessions; 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. However, having eligibility for such benefits may assist a person to demonstrate that they meet the definition in the Act.
8. **In order to be protected by the Act, a person must have an impairment that meets the Act's definition of disability, or be able to establish that any less favourable treatment or harassment is because of another person's disability or because of a perceived disability.**

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

## Section A: The Definition

### 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 (**S7(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 (Sch. 1)**.

**All of the factors above must be considered when determining whether a person is disabled.**

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### 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. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. 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 and in particular whether they are long-term. 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. An exception to this is a person with severe disfigurement (**see paragraph B24**). 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. 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, and forms of dementia;
  - auto-immune conditions such as systemic lupus erythematosus (SLE);
  - organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
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- developmental, such as autistic spectrum disorders (ASD), dyslexia, dysgraphia and dyspraxia;
- learning disabilities;
- mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post-traumatic stress disorder, and some self-harming behaviour;
- mental illnesses, such as depression and schizophrenia;
- produced by injury to the body, including to the brain.

- A6. **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.
- A7. **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 regulations issued under the Act. What it 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).**)

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A woman is obese. Her obesity in itself is not an impairment, but it causes breathing and mobility difficulties which substantially adversely affect her ability to walk.

A man has a borderline moderate learning disability which has 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.

- A8. 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, for example some mental health conditions and learning disabilities.

## 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 B18 to 23 (progressive conditions).**)

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### 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 and long-term adverse 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 disability<sup>2</sup>. **(Sch1, Para 7)**
- A11. Anyone who has an impairment which is not covered by paragraphs 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 A16 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<sup>3</sup>. 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.

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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. It is important to determine the basis for the alleged discrimination. If the alleged discrimination was a result of an excluded condition, the exclusion will apply.

However, if the alleged discrimination was specifically related to the actual disability which gave rise to the excluded condition, the exclusion **will not** apply. Whether the exclusion applies will depend on all the facts of the individual case.

A secondary school student has been diagnosed as having autism. As a consequence of this condition, excessive noise in the classroom sometimes causes the student to have a 'meltdown'. This is a consequence of the student becoming overwhelmed with frustration arising from an inability to express wants and needs which results in a sensory overload.

The condition, as an impairment has a substantial and long-term adverse effect on the student's ability to carry out normal day-to-day activities, would be a disability for the purposes of the Act.

The student is entitled to the protection of the Act in relation to any discrimination experienced as a consequence of his autism. The exclusion does not apply to the student as the behaviour resulting from the autism is no fault of the student and is a manifestation of that condition. The student is entitled to any reasonable adjustments that are required as a consequence of those effects.

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A young man has Attention Deficit Hyperactivity Disorder (ADHD) which manifests itself in a number of ways, including exhibitionism and an inability to concentrate. 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.

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.

However, he would be protected in relation to any discrimination that he experiences in relation to the non-excluded effects of his condition, such as inability to concentrate. For example, he would be entitled to any reasonable adjustments that are required as a consequence of those effects.

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- A14. 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.
- A15. 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 activities<sup>4</sup>. (**See also paragraphs B24 to B26.**)

## People who have had a disability in the past

- A16. **The Act says** that, except for section 149 (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 (S7(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. Also protected would be someone who continues to experience debilitating effects as a result of treatment for a past disability.

Four years ago, a woman experienced a mental illness that had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities, so it met the Act's definition of disability. She has experienced no recurrence of the condition, but if she is discriminated against because of her past mental illness she is still entitled to the protection afforded by the Act, as a person with a past disability.

## Section B: Substantial

**This section should not be read in isolation but must be considered together with sections A, C and D. 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 adverse effect of the person's impairment on the carrying out of normal day-to-day activities is substantial and long term.**

### 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 more than a minor or trivial effect. This is stated in the **Act at S3(2)**. 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 uncoordinated 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. He has the ability to carry out everyday activities such as these, but everything takes much 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 compared with someone who does not have the impairment.

A person who has obsessive compulsive disorder (OCD) constantly checks and rechecks that electrical appliances are switched off and that the doors are locked when leaving home. A person without the disorder would not normally carry out these frequent checks. The need to constantly check and recheck has a substantial adverse effect.



### 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. However, it is important to consider whether its effects on more than one activity, when 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, going for a walk 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. 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 the impairment having a substantial adverse effect on carrying out normal day-to-day activities.**

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- 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**.

A person has a mild learning disability. This means that his assimilation of information is slightly slower than that of somebody without the impairment. He also has a mild speech impairment that slightly affects his ability to form certain words. Neither impairment on its own has a substantial adverse effect, but the effects of the impairments taken together have a substantial adverse effect on his ability to converse.

## Effects of behaviour

- B7. Account should be taken of how far a person can **reasonably** be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.
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For example, a person who needs to avoid certain substances because of allergies may find the day-to-day activity of eating substantially affected. Account should be taken of the degree to which 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. (**See also paragraph B12.**)

When considering modification of behaviour, it would be reasonable to expect a person who has chronic back pain to avoid extreme activities such as skiing. It would not be reasonable to expect the person to give up, or modify, more normal activities that might exacerbate the symptoms; such as shopping, or using public transport.

- B8. Similarly, it would be reasonable to expect a person with a phobia to avoid extreme activities or situations that would aggravate their condition. It would not be reasonable to expect him or her to give up, or modify, normal activities that might exacerbate the symptoms.

A person with acrophobia (extreme fear of heights which can induce panic attacks) might reasonably be expected to avoid the top of extremely high buildings, such as the Eiffel Tower, but not to avoid all multi-storey buildings.

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- B9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things 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.**

In order to manage her mental health condition, a woman who experiences panic attacks finds that she can manage daily tasks, such as going to work, if she can avoid the stress of travelling in the rush hour.

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 personal life.

- B10. In some cases, people have coping or avoidance 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 B12 to B17 (effects of treatment), paragraphs C9 to C11 (likelihood of recurrence) and paragraph D22 (indirect effects).)**

## Effects of environment

- B11. Environmental conditions may exacerbate or lessen 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 of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities. **(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. The effect on her ability to carry out normal day-to-day activities fluctuates according to the weather conditions. The effects are particularly bad during autumn and winter months when the weather is cold and damp. Symptoms are mild during the summer months. It is necessary to consider the overall impact of the arthritis, and the extent to which it has a substantial adverse effect on her ability to carry out day-to-day activities such as walking, undertaking household tasks, and getting washed and dressed.

# Effects of treatment

B12. **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)**). In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs. (**See also paragraphs B7 and B16.**)

B13. 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.

B14. 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 should be decided by reference to what the effects of the condition would be if he or she were not taking that

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medication or following the required diet.

**A person with long-term depression is being treated by counselling. The effect of the treatment is to enable the person to undertake normal day-to-day activities, like shopping and going to work. If the effect of the treatment is disregarded, the person's impairment would have a substantial adverse effect on his ability to carry out normal day-to-day activities.**

- B15. **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. (**Sch1, Para 5(3)**). 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.
- B16. Account should be taken of where the effect of the continuing medical treatment is to create a permanent improvement rather than a temporary improvement. It is necessary to consider whether, as a consequence of the treatment, the impairment would cease to have a substantial adverse effect. 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 substantial effects remain. (**See also paragraph C11, regarding medical or other treatment that permanently reduces or removes the effects of an impairment.**)
- B17. However, if a person receives treatment which cures a condition that would otherwise meet the definition of a disability, the person would be protected by the Act as a person who had a disability in the past. (**See paragraph A16.**)

### Progressive conditions

- B18. Progressive conditions, which are conditions that have effects which increase in severity over time, 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 actually has that effect.
- B19. 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 long- term condition of the definition. (**Sch1, Para 2**)
- B20. Examples of progressive conditions to which the special provisions apply include systemic lupus erythematosus (SLE), various types of dementia, and motor neurone disease. This list, however, is not exhaustive.



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**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 systemic lupus erythematosus (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 relating to progressive conditions. She will also need to meet the 'long-term' condition of the definition in order to be protected by the Act.**

- B21. 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. **(See paragraph A9.)**

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- B22. As set out in paragraph B19, in order for the special provisions covering progressive conditions to apply, there only needs to be **some** adverse effect on the person's ability to carry out normal day to day activities. It does not have to be a substantial adverse effect. If a person with a progressive condition is successfully treated (for example by surgery) so that there are no longer any adverse effects, the special provisions will not apply. However, if the treatment does not remove all adverse effects the provisions will still apply. In addition, where the treatment manages to treat the original condition but leads to other adverse effects the provisions may still apply.

A man has an operation to remove the colon because of progressing and uncontrollable ulcerative 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.

This requirement for an appliance substantially affects his ability to undertake a normal day-to-day activity and should be taken into account as an adverse effect arising from the original impairment.

- B23. Whether the effects of any treatment can qualify for the purposes of **Sch1, Para 8**, which provides that a person with a progressive condition is to be regarded as having an impairment that has a substantial adverse effect on his or her ability to carry out normal day-to-day activities, will depend on the circumstances of the individual case.

### Severe disfigurements

- B24. **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).**

A lady has significant scarring to her face as a result of a bonfire accident. The woman uses skin camouflage to cover the scars as she is very self-conscious about her appearance. She avoids large crowds and bright lights including public transport and supermarkets and she does not socialise with people outside her family in case they notice the mark and ask her questions about it.

This amounts to a substantial adverse effect. However, the Act does not require her to show that her disfigurement has this effect because it provides for a severe disfigurement to be treated as having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

- B25. 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 which may involve taking into account factors such as the nature, size, and prominence 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).
- B26. 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 piercing<sup>5</sup>.
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## Section C: Long-term

**This section should not be read in isolation but must be considered together with sections A, C and D. 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 adverse effect of the person's impairment on the carrying out of normal day-to-day activities is substantial and 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
  - which is likely to last for at least 12 months; or
  - which is likely to last for the rest of the life of the person affected (**Sch1, Para 2**).

Special provisions apply when determining whether the effects of an impairment that has fluctuating or recurring effects are long-term. (**See paragraphs C5 to C11**). Also a person who is deemed to be a disabled person does not need to satisfy the long-term requirement. (**See paragraphs A9 to A10.**)

- 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.

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A man experienced an anxiety disorder. This had a substantial adverse effect on his ability to make social contacts and to visit particular places. The disorder lasted for eight months and then developed into depression, which had the effect that he was no longer able to leave his home or go to work. The depression continued for five months. As the total period over which the adverse effects lasted was in excess of 12 months, the long-term element of the definition of disability was met.

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), see also paragraph C1**);
- whether an impairment has a recurring effect (**Sch1, Para 2(2), see also paragraphs C5 to C11**);
- whether adverse effects of a progressive condition will become substantial (**Sch1, Para 8, see also paragraphs B18 to B23**); 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), see also paragraphs B7 to B17**).

In these contexts, 'likely', should be interpreted as meaning that it could well happen.

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- C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. 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 paragraphs C3 to C4 (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 the example at paragraph B11.** 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 beyond 12 months, or where effects can be sporadic, include Ménière'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. 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.
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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).

In contrast, 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 experiences 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.

However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond the 12-month period, she would satisfy the long term requirement.

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- 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.

A person has Ménière's disease. This results in his experiencing mild tinnitus at times, which does not adversely affect his ability to carry out normal day-to-day activities. However, it also causes temporary periods of significant hearing loss every few months. The hearing loss substantially and adversely affects his ability to conduct conversations or listen to the radio or television. Although his condition does not continually have this adverse effect, it satisfies the long-term requirement because it has substantial adverse effects that are likely to recur beyond 12 months after he developed the impairment.

- C8. Regulations specifically exclude seasonal allergic rhinitis (e.g. hayfever) except where it aggravates the effects of an existing condition<sup>6</sup>. For example, this may occur in some cases of asthma. (**See also paragraphs A12 to A15 (exclusions).**)



## 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.
- C10. 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, this may be because an avoidance routine is difficult to adhere to, or itself adversely affects the ability to carry out day-to-day activities, or because 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 B10 (effects of behaviour), paragraph B11 (environmental effects); paragraphs B12 to B17 (effect of treatment); and paragraphs C3 to C4 (meaning of likely).)**
- C11. 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

- C12. **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 (**S7(4) and Sch1, Para 2**). **For the forms of discrimination covered by this provision see paragraph A16.**

A person was diagnosed with a digestive condition that significantly restricted her ability to eat. She received medical treatment for the condition for over a year, but eventually required surgery which cured the condition. As the effects of the condition had lasted for over 12 months, and they had a substantial adverse effect on her ability to carry out a normal day-to-day activity, the condition met the Act's definition of a disability.

The woman is entitled to the protection of the Act as a person who has had a past disability.

## Section D: Normal day-to-day activities

**This section should not be read in isolation but must be considered together with sections A, B and C. 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 adverse effect of the person's impairment on the carrying out of normal day-to-day activities is substantial and long term.**

- D1. The Act looks at a person's impairment and whether it substantially and adversely 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.
- D3. 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. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.
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A person works in a small retail store. His duties include maintaining stock in a stock room, dealing with customers and suppliers in person and by telephone, and closing the store at the end of the day. Each of these elements of the job would be regarded as a normal day-to-day activity, which could be adversely affected by an impairment.

- D4. 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 carried out by people on a daily or frequent basis. In this context, 'normal' should be given its ordinary, everyday meaning.
- D5. 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 breast-feeding or applying make-up, and cannot therefore be said to be normal for most people. They would nevertheless be considered to be normal day-to-day activities.
- D6. Also, whether an activity is a normal day-to-day activity should not be determined by whether it is more normal for it to be carried out at a particular time of day. For example, getting out of bed and getting dressed are activities that are normally associated with the morning. They may be carried out much later in the day by workers who work night shifts, but they would still be considered to be normal day-to-day activities.
- D7. In considering the ability of a child aged six or over to carry out a normal day-to-day activity, it is necessary to take account of the level of achievement which would be normal for a person of a similar age. **(See also Section E (Disabled children).)**
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### Specialised activities

- D8. Where activities are themselves highly specialised or involve highly specialised levels of attainment, they would not be regarded as normal day-to-day activities for most people. In some instances work-related activities are so highly specialised that they would not be regarded as normal day-to-day activities.

**A watch repairer carries out delicate work with highly specialised tools. He develops tenosynovitis. This restricts his ability to carry out delicate work though he is able to carry out activities such as general household repairs using more substantial tools.**

**Although the delicate work is a normal working activity for a person in his profession, it would not be regarded as a normal day-to-day activity for most people.**

- D9. The same is true of other specialised activities such as playing a musical instrument to a high standard of achievement; taking part in activities 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. Where activities involve highly specialised skills or levels of attainment, they would not be regarded as normal day-to-day activities for most people.

**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. This does not prevent her from playing the piano, but she cannot achieve such a high standard.**

**This restriction would not be an adverse effect on a normal day-to-day activity, because playing the piano to such a specialised level would not be normal for most people.**

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- D10. However, many types of specialised work-related or other activities may still involve normal day-to-day activities which can be adversely affected by an impairment. For example they may involve normal activities such as: sitting down, standing up, walking, running, verbal interaction, writing, driving; using everyday objects such as a computer keyboard or a mobile phone, and lifting, or carrying everyday objects, such as a vacuum cleaner.

The work of the watch repairer referred to above also includes preparing invoices and counting and recording daily takings. These are normal day-to-day activities. The effects of his tenosynovitis increase in severity over time resulting in greater restriction of movement in his hands. As a consequence he experiences substantial difficulties carrying out these normal day-to-day activities.

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

- D11. 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.**
- D12. 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.
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D13. 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).**)

D14. The examples in this section describe the effect which would occur when the various factors described in Sections A, B and C have been allowed for, including for example disregarding the impact of medical or other treatment.

D15. 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. **Physical impairments can result in mental effects and mental impairments can have physical manifestations.**

- A person with a physical impairment may, because of pain or fatigue, experience difficulties in carrying out normal activities that involve mental processes.

A journalist has recurrent severe migraines which cause her significant pain. Owing to the pain, she has difficulty maintaining concentration on writing articles and meeting deadlines.

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- A person with a mental impairment or learning disability may experience difficulty in carrying out normal day-to-day activities that involve physical activity.

**A young man with severe anxiety and symptoms of agoraphobia is unable to go out more than a few times a month. This is because he fears being outside in open spaces and gets panic attacks which mean that he cannot remain in places like theatres and restaurants once they become crowded.**

**This has a substantial adverse effect on his ability to carry out normal day-to-day activities such as social activities.**

**A woman has Downs Syndrome and is only able to understand her familiar local bus route. This means that she is unable to travel unaccompanied on other routes, because she gets lost and cannot find her way home without assistance.**

**This has a substantial adverse effect on her ability to carry out the normal day-to-day activity of using public transport.**

D16. Normal day-to-day activities also include activities that are required to maintain personal well-being or to ensure personal safety, or the safety of other people. Account should be taken of whether the effects of an impairment have an impact on whether the person is inclined to carry out or neglect basic functions such as eating, drinking, sleeping, keeping warm or personal hygiene; or to exhibit behaviour which puts the person or other people at risk.

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

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**A man has had paranoid schizophrenia for five years. 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 has a substantial adverse effect on his ability to carry out the normal day-to-day activity of crossing the road safely.**

- D17. Some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day communication activities. For example, they may adversely affect whether 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. Some impairments 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 such factors can have an adverse effect on normal day-to-day activities.

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**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.**

**A man has had a stammer since childhood. He does not stammer all the time, but his stammer, particularly in telephone calls, goes 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 avoidance strategies. 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.**

**In these cases there are substantial adverse effects on the person's ability to carry out normal day-to-day communication activities.**

**A man has Asperger's syndrome, a form of autism. 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. 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.**

**This has a substantial adverse effect on his ability to carry out normal day-to-day communication.**

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- D18. A person's impairment may have an adverse effect on day-to-day activities that require an ability to co-ordinate their movements, to carry everyday objects such as a kettle of water, a bag of shopping, a briefcase, or an overnight bag, or to use standard items of equipment.

**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.**

**This has a substantial adverse effect on his ability to carry out normal day-to-day activities such as making a drink and eating.**

**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 everyday items like a vacuum cleaner, and he cannot reach a standard height sink or washbasin without a step to stand on.**

**This has a substantial adverse effect on his ability to carry out normal day-to-day activities, such as cleaning, washing up and washing his hands.**

- D19. A person's impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects 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.
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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 or filling in a form without being constantly distracted from the task. Consequently, it takes her significantly longer than a person without the disorder to complete these types of task.

Therefore there is a substantial adverse effect on normal day-to-day activities.

## Environmental effects

- D20. Environmental conditions may have an impact on how an impairment affects a person's ability to carry out normal day-to-day activities. Consideration should be given to the level and nature of any environmental effect. Account should be taken of whether it is within such a range and of such a type that most people would be able to carry out an activity without an adverse effect. For example, whether background noise or lighting is of a type or level that would enable most people to hear or see adequately. (**See also paragraph B11.**)

A woman has tinnitus which makes it difficult for her to hear or understand normal conversations. 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 taking part in a conversation.

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**A man has retinitis pigmentosa (RP), a hereditary eye disorder which affects the retina. 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.**

**This has a substantial adverse effect on his ability to carry out normal day-to-day activities such as socialising in a cinema or lowly-lit restaurant.**

- D21. Consideration should be given to whether there may also be an adverse effect on the ability to carry out a normal day-to-day activity outside of that particular environment.

**A man works in a factory where chemical fumes cause him to have breathing difficulties. He is diagnosed with occupational asthma. This has a substantial adverse effect while he is at work, because he is no longer able to work where he would be exposed to the fumes.**

**Even in a non-work situation he finds any general exertion difficult. This has some adverse effect on his ability to carry out a normal day-to-day activity like changing a bed.**

**Although the substantial effect is only apparent while he is at work, where he is exposed to fumes, the man is able to demonstrate that his impairment has an adverse effect on his ability to carry out normal day-to-day activities.**

### Indirect effects

D22. 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 effect on how the person carries out those activities. For example:

- pain or fatigue: where an impairment causes pain or fatigue, the person may have the ability to carry out a normal day-to-day activity, but may be restricted in the way that it is carried out because of experiencing 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 B10 (effects of behaviour)**);

A man with osteoarthritis experiences significant pain in his hands undertaking tasks such as using a keyboard at home or work, peeling vegetables, opening jars and writing.

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

A man has had chronic fatigue syndrome for several years. Although he has the physical capability to walk and to stand, he finds these very difficult to sustain for any length of time because he experiences overwhelming fatigue. 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.

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- 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 B12 to B17 (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 carrying moderately heavy items or standing for more than a few minutes at a time.

This has a substantial adverse effect on her carrying out a range of normal day-to-day activities such as shopping or standing to address her pupils for a whole lesson.

- frequency: some impairments may require the person to undertake certain activities, or functions at such frequent intervals that they adversely affect the ability to carry out normal day-to-day activities.

A young woman is a sales representative. She 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 drive, including for the purposes of her job, 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.

## Effect of treatment or correction measures

- D23. Except as explained below, where a person is receiving treatment or correction measures for an impairment, the effect of the impairment on day-to-day activities is to be taken as that which the person would experience without the treatment or measures. (**See also paragraphs B12 to B17.**)

A man has a hearing impairment which has the effect that he cannot hold a conversation with another person even in a quiet environment. He has a hearing aid which overcomes that effect. However, it is the effect of the impairment without the hearing aid that needs to be considered.

In this case, the impairment has a substantial adverse effect on the day-to-day activity of holding a conversation.

- D24. 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 the person is wearing spectacles or lenses.



## Section E: Disabled children

- E1. The effects of impairments may not be apparent in babies and young children because they are too young to have developed the ability to carry out activities that are normal for older children and adults. 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 activities<sup>7</sup>.

**A six month old girl has an impairment that results in her having no movement in her legs. She is not yet at the stage of crawling or walking. So far the impairment does not have an apparent effect on her ability to move around. However, the impairment is to be treated as having a substantial and long-term adverse effect on her ability to carry out a normal day-to-day activity like going for a walk. This is because it would normally have such an adverse effect on the ability of a person aged six years or over to carry out normal day-to-day activities.**

- E2. Children aged six and older are subject to the normal requirements of the definition. That is, that they must have an impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. However, in considering the ability of a child aged six or over to carry out a normal day-to-day activity, it is necessary to take account of the level of achievement which would be normal for a person of a similar age.

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**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. When going somewhere new or taking a different route he can become very anxious. Each of these factors amounts to a substantial adverse effect on his ability to carry out normal day-to-day activities, such as holding a conversation or enjoying a day trip, even for such a young child.**

- E3. 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.
- E4. The duties for schools in the Act, includes the duty for schools to make reasonable adjustments for disabled children. The Act enables disabled children to be treated more favourably than non-disabled children.
- E5. The Department of Education, Sport and Culture (DESC), schools and University College Isle of Man shall have due regard to the UK Equality and Human Rights Commission's guidance for schools in England entitled 'Reasonable Adjustments for Disabled Pupils' as well as any other guidance, policies, standards or instructions issued or promoted by DESC.

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

**A 10-year-old girl has a learning disability. She has a short attention span and has difficulty remembering facts from one day to the next. She can read only a few familiar words. Each of these factors has a substantial adverse effect on her ability to participate in learning activities.**

**A 14-year-old boy has been diagnosed as having attention deficit hyperactivity disorder (ADHD). He often finds it difficult to concentrate and skips from task to task forgetting instructions.**

**Either of these factors has a substantial adverse effect on his ability to participate in class and join in team games in the playground.**

**A 12-year-old boy has cerebral palsy and has limited movement in his legs. This has a substantial adverse effect on his ability to move around the school and take part in physical sports activities.**

## Section F: Disability as a particular protected characteristic or as a shared protected characteristic

- F1. The Act provides protection from discrimination based on a range of protected characteristics and disability, as defined in the Act and related, is a protected characteristic.
- F2. Certain provisions in the Act apply where a person has a “particular” protected characteristic. In the case of disability, **the Act states** that a reference to a person with a particular protected characteristic is a reference to a person who has a particular disability (**S7(3)**).

A disabled man has a mobility impairment. This has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities like shopping and gardening. Therefore he is protected by the Act in general because he has the protected characteristic of disability.

However, for the purposes of the provisions of the Act that apply specifically to people with a particular protected characteristic, he would have the particular characteristic of being mobility impaired.

- F3. Some provisions in the Act apply where persons share a protected characteristic. In the case of disability, **the Act states** that a reference to persons who share a particular characteristic is a reference to persons who have the same disability (**S7(3)**).
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**For the purposes of the provisions that apply specifically to people who share a protected characteristic, the disabled man would share the protected characteristic with other people who have mobility impairments.**

F4. This may be illustrated by reference to the following provisions in the Act.

- Schedule 9 paragraph 1 of the Act provides that it is not discrimination, under a range of work provisions, for it to be an occupational requirement that the job holder has a particular protected characteristic.

**A charitable organisation that provides services to people with HIV and Aids has vacancies for counsellors for which being HIV positive is an occupational requirement.**

**It is not discriminatory for the organisation to only appoint people who have a particular protected characteristic which, in this instance, is having the particular disability of being HIV positive.**

- Schedule 16 paragraph 1 relating to associations or clubs for people who have a single protected characteristic, apply where persons share a protected characteristic.

**A group of people with hearing impairments form a private club that provides advice, support and recreational activities specifically for people who have that particular impairment.**

**For the purposes of the Act, a reference to people who share a protected characteristic would, in this instance, be to people who have hearing impairments.**

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## Appendix

An illustrative and non-exhaustive list of factors which, if they are experienced by a 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.

In the following examples, the effect described should be thought of as if it were the **only** effect of the impairment.

- Difficulty in getting dressed, for example, because of physical restrictions, a lack of understanding of the concept, or low motivation;
- Difficulty carrying out activities associated with toileting, or caused by frequent minor incontinence;
- Difficulty preparing a meal, for example, because of restricted ability to do things like open cans or packages, or because of an inability to understand and follow a simple recipe;
- Difficulty eating; for example, because of an inability to co-ordinate the use of a knife and fork, a need for assistance, or the effect of an eating disorder;
- Difficulty going out of doors unaccompanied, for example, because the person has a phobia, a physical restriction, or a learning disability;
- Difficulty waiting or queuing, for example, because of a lack of understanding of the concept, or because of pain or fatigue when standing for prolonged periods;

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- Difficulty using transport; for example, because of physical restrictions, pain or fatigue, a frequent need for a lavatory or as a result of a mental impairment or learning disability;
  - Difficulty in going up or down steps, stairs or gradients; for example, because movements are painful, fatiguing or restricted in some way;
  - A total inability to walk, or an ability to walk only a short distance without difficulty; for example because of physical restrictions, pain or fatigue;
  - Difficulty entering or staying in environments that the person perceives as strange or frightening;
  - Behaviour which challenges people around the person, making it difficult for the person to be accepted in public places;
  - Persistent difficulty crossing a road safely, for example, because of physical restrictions or a failure to understand and manage the risk;
  - Persistent general low motivation or loss of interest in everyday activities;
  - Difficulty accessing and moving around buildings; for example because of inability to open doors, grip handrails on steps or gradients, or an inability to follow directions;
  - Difficulty operating a computer, for example, because of physical restrictions in using a keyboard, a visual impairment or a learning disability;
  - Difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand;
  - Inability to converse, or give instructions orally, in the person's native spoken language;
  - Difficulty understanding or following simple verbal instructions;
  - Difficulty hearing and understanding another person speaking clearly over the voice telephone (where the telephone is not affected by bad reception);
  - Persistent and significant difficulty in reading or understanding written material where this is in the person's native written language, for example because of a mental impairment, or learning disability, or a visual impairment (except where that is corrected by glasses or contact
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lenses);

- Intermittent loss of consciousness;
- Frequent confused behaviour, intrusive thoughts, feelings of being controlled, or delusions;
- Persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder;
- Persistent difficulty in recognising, or remembering the names of, familiar people such as family or friends;
- Persistent distractibility or difficulty concentrating;
- Compulsive activities or behaviour, or difficulty in adapting after a reasonable period to minor changes in a routine.



An illustrative and non-exhaustive list of factors which, if they are experienced by a person, **it would not 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.

- Experiencing some discomfort as a result of travelling, for example by car or plane, 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;
- Minor problems with writing or spelling;
- Inability to reach typing speeds standardised for secretarial work;
- Inability to read very small or indistinct print without the aid of a magnifying glass;
- Inability to fill in a long, detailed, technical document, which is in the person's native language, without assistance;
- Inability to speak in front of an audience simply as a result of nervousness;
- Some shyness and timidity;
- Inability to articulate certain sounds due to a lisp;
- Inability to be understood because of having a strong accent;
- Inability to converse orally in a language which is not the speaker's native spoken language;

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- Inability to hold a conversation in a very noisy place, such as a factory floor, a pop concert, sporting event or alongside a busy main road;
- Inability to sing in tune;
- Inability to distinguish a known person across a substantial distance (e.g. across the width of a football pitch);
- Occasionally forgetting the name of a familiar person, such as a colleague;
- Inability to concentrate on a task requiring application over several hours;
- Occasional apprehension about significant heights;
- 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;
- Simple inability to distinguish between red and green, which is not accompanied by any other effect such as blurring of vision;
- Infrequent minor incontinence;
- Inability to undertake activities requiring delicate hand movements, such as threading a small needle or picking up a pin.

# Endnotes

- 1 An 'adjudicating body' is a court or tribunal (Schedule 1, Para 12).
  - 2 Regulation 8 of the Equality Act 2017 (Disability) Regulations 2020 (SD 2020/0044)
  - 3 Regulations 4 and 5 of the Equality Act 2017 (Disability) Regulations 2020 (SD 2020/0044)
  - 4 Regulation 6 of the Equality Act 2017 (Disability) Regulations 2020 (SD 2020/0044)
  - 5 See Note 4.
  - 6 Regulation 5 of the Equality Act 2017 (Disability) Regulations 2020 (SD 2020/0044)
  - 7 Regulation 7 of the Equality Act 2017 (Disability) Regulations 2020 (SD 2020/0044)
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