

Disability Discrimination Act 1995

(as modified by Schedule 8 thereof for
application in Northern Ireland)

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



Office of the

**First Minister and
Deputy First Minister**

www.ofmdfmni.gov.uk

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**(as modified by Schedule 8 thereof for
application in Northern Ireland)**

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Laid in draft before the Northern Ireland Assembly by
the Office of the First Minister and deputy First Minister
under section 3(6) of the Disability Discrimination Act 1995
(as modified by Schedule 8 thereof for application
in Northern Ireland)

Published by TSO (The Stationery Office) and available from:

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www.tsoshop.co.uk

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Printed in the United Kingdom for The Stationery Office
PC2166 03/08

Printed on Paper containing 75% fibre content minimum

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

	Status and purpose of the guidance	2
Part 1	Introduction	4
	The Disability Discrimination Act 1995	4
	The Special Educational Needs and Disability (NI) Order 2005	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	8
	Section A: Definition of disability and meaning of “impairment”	8
	Main elements of the definition of disability	8
	Meaning of “impairment”	8
	Mental illness	11
	Persons deemed to be disabled	12
	Exclusions from the definition	12
	People who have had a disability in the past	13
	Section B: Substantial	16
	Meaning of “substantial adverse effect”	16
	The time taken to carry out an activity	16
	The way in which an activity is carried out	17
	Cumulative effects of an impairment	17

Effects of behaviour	19
Effects of environment	21
Effects of treatment	21
Progressive conditions	23
Severe disfigurements	26
Section C: Long term	28
Meaning of “long-term effects”	28
Meaning of “likely”	28
Recurring or fluctuating effects	29
Likelihood of recurrence	31
Assessing whether a past disability was long-term	32
Section D: Normal day-to-day activities	34
List of “capacities”	34
Meaning of “normal day-to-day activities”	35
Work-related and other specialised activities	36
Indirect effects	38
Children with a disability	40
List of capacities with examples of normal day-to-day activities:	43
Mobility	45
Manual dexterity	47
Physical co-ordination	49
Continence	50
Ability to lift, carry or otherwise move everyday objects	52
Speech, hearing or eyesight	53
Memory or ability to concentrate, learn or understand	58
Perception of the risk of physical danger	61

Status and purpose of the guidance

Status and purpose of the guidance

This guidance is issued by the Office of the First Minister and deputy First Minister under section 3 of the Disability Discrimination Act 1995, as amended.³ In this document, any reference to “the Act” means the Disability Discrimination Act 1995 (as amended) as it applies in Northern Ireland by virtue of section 70(6) and Schedule 8 thereof.

This guidance concerns the definition of disability in the Act which is also used in Part III of the Special Educational Needs and Disability (NI) Order 2005 (“the Order”). Section 3 of the Act enables the Office of the First Minister and deputy First Minister to issue guidance about matters to be taken into account in determining whether a person is a disabled person. The guidance gives examples.

This guidance does not impose any legal obligations in itself, nor is it an authoritative statement of the law. However, section 3(3) 4 of the Act requires that courts and tribunals determining for any purpose of the Act or Order 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 Northern Ireland only. Similar, but separate, guidance applies to England, Wales and Scotland.

³ Including by the Special Educational Needs and Disability (Northern Ireland) Order 2005, the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 and the Disability Discrimination (Northern Ireland) Order 2006.

⁴ Section 3(3) as amended by Article 48(4) of the Special Educational Needs and Disability (Northern Ireland) Order 2005.

Part 1

Introduction

The Disability Discrimination Act 1995

**The Special Educational Needs and Disability
(Northern Ireland) Order 2005**

The Disability Discrimination Act 1995

The Special Educational Needs and Disability (Northern Ireland) Order 2005

1. The Act and Order prohibit discrimination against disabled people in a range of circumstances, covering employment and occupation, transport, the provision of goods, facilities, services, premises, the exercise of public functions and education. Only those people who are defined as disabled in accordance with section 1 of the Act, and the associated Schedules and Regulations made thereunder, will be entitled to the protection that the Act and Order provide.

Using the guidance

2. This guidance is primarily designed for courts and tribunals which determine cases brought under the Act or Order. The definition of who is a disabled person for the purposes of the Act is a legal definition and it is only courts and tribunals 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 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 or Order. 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 the Act or Order 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: 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 or Part III of the Order.

8. In order to be protected by the Act or Order, 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: Definition of disability and meaning of “impairment”

Main elements of the definition of disability

- A1. **The Act defines** a disabled person as a person with “physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities” (**S1**).
- A2. This means that, in general:
- the person must have an impairment that is either physical or mental (**see paragraphs A3 to A9 below**);
 - 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)** and **Schedule 2 (Sch2)**.

As already stated, 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.

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.
- 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;

- learning disabilities, such as Down's Syndrome;
 - learning or developmental difficulties, such as autistic spectrum disorders, developmental co-ordination disorders or dyslexia;
 - 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;
 - communication impairments such as aphasia or stammering; or
 - 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 alcoholism itself is expressly excluded from the scope of the definition of disability in 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).**

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.

Mental illness

- A9. The Act previously required that where an impairment arose from, or consisted of, a mental illness, that illness had to be clinically well-recognised in order for it to be regarded as a mental impairment for the purposes of the Act. **The Disability Discrimination (Northern Ireland) Order 2006 amends the original Act to remove this requirement.** However, anyone who has an impairment **including one resulting from a mental illness** will still need to meet the requirements of the definition as set out in paragraph A1, in order to demonstrate that they have a disability under the Act.

Persons deemed to be disabled

- A10. A person who has cancer, HIV infection or multiple sclerosis (MS) (**Sch1, Para 6A**) is 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. **See also paragraphs B16 to B19 (progressive conditions).**
- A11. Anyone who has an impairment which is not listed in A10 above will need to meet the requirements of the definition as set out in paragraph A1 in order to demonstrate that they have a disability under the Act.

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; and
 - voyeurism.

- A13. 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 activities.³
- 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.

People who have had a disability in the past

- A15. **The Act says** that Part I of the Act (disability), Part II (the employment field and members of district councils), Part III (discrimination in other areas⁴), Part III of the Order (education) and Part VA (public authorities⁵) also apply in relation to a person who previously has had a disability as defined in paragraphs A1 and A2. For this purpose, those Parts of the Act and Order are subject to the provisions in Schedule 2 to the Act (**S2, Sch2**).

³ The Disability Discrimination (Meaning of Disability) Regulations (Northern Ireland) 1996.

⁴ Part III covers goods, facilities, and services; public authorities; private clubs; and premises.

⁵ Part VA covers the *duties* of a public authority, as opposed to the *functions* of a public authority, which are dealt with in Part III.

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 those Parts of the Act listed above.

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 or Order as a person with a past disability.

- A16. A particular instance of someone who is treated under the Act or Order 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 (Northern Ireland) 1945.
- A17. The introduction of the employment provisions in the Disability Discrimination Act 1995 coincided with the abolition of the Quota scheme which had operated under the Disabled Persons (Employment) Act (Northern Ireland) 1945. Special provisions still apply, however, to any person who was registered under the Disabled Persons (Employment) Act (Northern Ireland) 1945. The Disability Discrimination Act 1995 says that anyone who was registered as a disabled person under the Disabled Persons (Employment) Act (Northern Ireland) 1945 and whose name appeared on the register both on 12 January 1995 and on 2 December 1996 (the date on which the employment provisions came into operation) was to be treated as

having a disability for the purposes of the Disability Discrimination Act 1995 during the period of three years starting on 2 December 1996. This applied regardless of whether the person otherwise met the definition of a “disabled person” during that period. As the three-year transitional period has ended, those people who were treated by this provision as being disabled are now treated as having had a disability in the past (**Sch1, Para 7**).

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 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. 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 man 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. However, 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 including 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.

A boy has a minor mobility impairment which has a slight effect on his physical co-ordination. He is involved in an accident which results in an irreversible but minor injury to a leg which further affects his mobility. When taken together, they have a substantial effect on his ability to carry out certain normal day-to-day activities such as climbing stairs or walking a short distance.

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 or 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.

A man has had a stammer since childhood. He does not stammer all the time, but his stammer can appear, particularly in telephone calls, going 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 strategy. He may try to avoid telephone calls where he believes he will stammer, or he may not speak as much during telephone calls. He may sometimes try to avoid stammering by substituting words, or by inserting extra words or phrases.

In determining whether he meets the definition of disability, consideration should be given to the things he cannot do or only do with difficulty.

- 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 below (effects of treatment), paragraph C8 (likelihood of recurrence) and D11 (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 C4 to C7, 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 the effect that it would have without the measures in question (**Sch1, Para 6(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 6(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 6 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 6(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 C9 regarding medical or other treatment that permanently reduces or removes the effects of an impairment.**

Progressive conditions

- B16. A progressive condition is one which is likely to change and develop over time. **The Act gives** examples of progressive conditions, including cancer, multiple sclerosis, and HIV infection. It should be noted that, following the amendments made by the Disability Discrimination (Northern Ireland) Order 2006 (**see paragraph A10**), persons with cancer, multiple sclerosis or HIV infection are all now deemed to be disabled persons, for the purposes of the Act, from the point at which they have that condition: thus effectively from diagnosis.
- B17. 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 **more likely than not** 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 C4 to C7 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).

- B18. Further 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 girl aged 8 has been experiencing muscle cramps and some weakness. The effects are quite minor at present, but she has been diagnosed as having muscular dystrophy. Eventually it is expected that the resulting muscle weakness will cause substantial adverse effects on her 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.

- 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.

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

B20. **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 piercing.⁶

B21. Examples of disfigurements include scars, birthmarks, limb or postural deformation (including restricted bodily development), or diseases of the skin. Assessing

⁶ The Disability Discrimination (Meaning of Disability) Regulations (Northern Ireland) 1996.

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).

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 has lasted at least 12 months (**Sch2, Para 5**).

Meaning of “likely”

- C2. It is likely that an event will happen if it is more probable than not that it will happen.
- C3. 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 court or tribunal 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

- C4. **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 other words, it is more likely than not that the effect will 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); Sch2, Para 5**).
- C5. 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 disorders, 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 10-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.

- C6. 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.

- C7. Regulations specifically exclude seasonal allergic rhinitis (e.g. hayfever) except where it aggravates the effects of an existing condition.⁷ For example, this may occur in some cases of asthma. **See also paragraph A12 (exclusions).**

Likelihood of recurrence

- C8. 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), paragraph B10 (effects of environment); and paragraphs B11 to B15 (effects of treatment).**

⁷ The Disability Discrimination (Meaning of Disability) Regulations (Northern Ireland) 1996.

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.

- C9. 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

- C10. **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 (**S2, Sch2, Para 5**). **For the forms of discrimination covered by this provision see paragraph A15. For examples of how this provision works, see above at C5.**

Section D : Normal day-to-day activities

List of “capacities”

D1. **The Act states** that an impairment is to be taken to affect the ability of a person to carry out normal day-to-day activities **only** if it affects that person in respect of one or more of the following (**Sch1, Para 4**):

- mobility;
- manual dexterity;
- physical co-ordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

For the purposes of this guidance, the above list will be referred to as a list of “capacities”.

D2. The list of capacities should be looked at in a broad sense, and applied equally to both physical and mental impairments. For example, it is often assumed that for people with a mental impairment the relevant capacity will be “memory or ability to concentrate, learn or understand”. The capacities of mobility and physical co-ordination, for example, are often seen as relevant only where there is a physical impairment.

However, in many instances this will not be the case. A person with a mental impairment may also have difficulties carrying out activities that involve mobility or other “physical” skills, and people with a physical impairment may also have effects that involve mental processes such as the ability to concentrate (for example, as a result of pain or fatigue).

- D3. **An impairment will only be treated as affecting a normal day-to-day activity if it involves at least one of the capacities set out at D1.** The substantial effect is determined by looking at the effect on the particular day-to-day activity, not the relevant capacity. So, for example, an inability to go shopping because of restricted mobility is in itself a substantial effect on a normal day-to-day activity: it is not necessary to show that all or any other aspects of the capacity of mobility are substantially affected.

Meaning of “normal day-to-day activities”

- D4. **It should be noted that the list of capacities set out in D1 is not a list of day-to-day activities.** It is not possible to provide an exhaustive list of day-to-day activities, although guidance on this matter is given here. 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.
- D5. 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.

- D6. 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

- D7. 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.
- D8. 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.

- D9. **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.

D10. 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 activities which involve the capacities of mobility and ability to lift and carry 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 and at least one capacity in the list in D1.

Indirect effects

D11. 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 capacity 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 either at the time or, as a delayed reaction, the next day. 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

D12. The effects of impairments may not be apparent in babies and young children because they are too young to have developed the ability to act in a way which falls within the capacities listed in D1. Regulations provide that where an impairment to a child under six years old does not have an effect in respect of any of the capacities, it 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.⁸

⁸ The Disability Discrimination (Meaning of Disability) Regulations (Northern Ireland) 1996.

A six-month-old girl has mobility impairment. She is not yet at the stage of crawling or walking. So far the impairment does not have an apparent effect on her mobility. However, it is to be treated as having a substantial and long-term adverse effect on her mobility as it would normally have such an effect on a person aged six years or over to carry out normal day-to-day activities.

D13. Children aged six and older are subject to the normal requirements of the definition.

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. The capacities of mobility, speech, and perception of risk are all affected.

D14. Since September 2005, Part III of the Special Educational Needs and Disability (NI) Order 2005 has extended disability discrimination legislation to cover every aspect of education.⁹ These provisions provide protection for disabled pupils and students by

⁹ The Special Educational Needs and Disability (Northern Ireland) Order 2005 introduces legislation to prevent discrimination against disabled people in their access to education.

preventing discrimination against them at school or in post-16 education 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 the Order. The duties for schools in the Order 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, the Supplement to the Code (September 2005)¹⁰, the Disability Discrimination Code of Practice for Schools (January 2006)¹¹ and the Disability Discrimination Code of Practice for Further and Higher Education (January 2006)¹².

10 The Special Educational Needs Code of Practice (September 1998) and the Supplement to the Code (September 2005) Department of Education.

11 Disability Discrimination Code of Practice for Schools (January 2006) issued by the Equality Commission for Northern Ireland.

12 Disability Discrimination Code of Practice for Further and Higher Education (January 2006) issued by the Equality Commission for Northern Ireland.

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. Sometimes there can be outbursts of temper. He does not understand why other pupils avoid him and exclude him from their play.

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. The capacity affected is “memory, or ability to concentrate, learn or understand”.

List of capacities, with examples of normal day-to-day activities

D15. The following section looks at the **list of capacities**, and provides examples of normal day-to-day activities which might affect those capacities. The examples

given are purely illustrative and should not in any way be considered as a prescriptive list of activities related to a specific capacity.

- D16. Examples are given of circumstances where it **would be reasonable** to regard the effect 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.
- D17. 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 or 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 of an impairment).**
- D18. The examples describe the effect which would occur when the various factors described in Sections A, B and C above have been allowed for, including, for example, the effects of a person making such modifications of behaviour as might reasonably be expected, or of disregarding the impact of medical or other treatment.
- D19. Some of the examples 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, and mental impairments can have physical manifestations.**

Mobility

D20. This covers moving or changing position in a wide sense. Account should be taken of the extent to which, because of either a physical or a mental impairment, a person finds difficult 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.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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;
- 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.

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 Down's Syndrome 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 restricted ability to travel and move around affects the capacity of mobility and has a substantial adverse effect on the ability to carry out normal day-to-day activities.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

Manual dexterity

D21. This covers the ability to use hands and fingers with precision. Account should be taken of the extent to which a person can manipulate the fingers on each hand or co-ordinate the use of both hands together to do a task. This includes the ability 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.

Examples

- It would be reasonable to regard as having a substantial adverse effect:
- 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.

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 these normal day-to-day activities and it has an impact on the capacity of manual dexterity.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

Physical co-ordination

D22. This covers balanced and effective interaction of body movement, including hand and eye co-ordination and swallowing function/co-ordination. 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. In any case, account should be taken of the ability to carry out “composite” (combined) activities such as walking and using hands at the same time.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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 or impaired ability to swallow foods and/or liquids safely;
- inability to place a key in a lock without unusual concentration or requiring assistance.

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 affecting manual dexterity.

As a result of a stroke a man has developed swallowing difficulties and is no longer able to eat or drink normally and no longer has clear speech. He receives most of his nutrition via a feeding tube directly into his stomach. It would be reasonable to regard this as a substantial adverse effect on normal day-to-day activities affecting physical co-ordination.

It would not be reasonable to regard as having a substantial adverse effect:

- simple clumsiness;
- inability to catch a tennis ball.

Continence

D23. This covers the ability to control urination and/or defecation. Account should be taken of the frequency and extent of the loss of control.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- infrequent loss of control of the bowels, if it is entirely unpredictable and leads to immediate 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.

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 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.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

Ability to lift, carry or otherwise move everyday objects

D24. Account should be taken of a person's ability to repeat such functions or, for example, to bear weights over a reasonable period of time. Everyday objects 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.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- difficulty picking up objects of moderate weight with one hand;
- difficulty opening a moderately heavy door;
- difficulty carrying a moderately loaded tray steadily.

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

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

Speech, hearing or eyesight

D25. This covers the ability to speak, hear or see and includes face-to-face, telephone and written communication. Account should be taken of the extent to which, as a result of either a physical or mental impairment, a person may have the capacity to speak, hear or see, but may nevertheless be substantially adversely affected in a range of activities involving one of these capacities as a result of the effects of his or her impairment.

(i) Speech

Account should be taken of how far a person is able to speak clearly and to understand someone else speaking normally in the person's native language. It is necessary to consider any effects on speech production or which impede the acquisition or processing of a person's native language. For example by someone who has dysphasia as a result of a stroke; a child with specific speech and language impairment (SLI); or an adult with profound multiple learning disabilities who never acquires speech.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- difficulty giving clear basic instructions ;
- difficulty using speech to indicate your wants and needs;
- difficulty asking specific questions to clarify instructions;
- taking longer than someone who does not have an impairment to say things.

A 6-year-old boy has verbal dyspraxia which adversely affects his ability to speak. He is unable to make himself clear to other people, including his friends and teachers at school.

A woman has cancer of the larynx (voice box) and, as a result, had to have her larynx removed. She is now unable to speak normally and must use an electronic device to simulate speech sounds. This affects her ability to talk to others as they often have difficulty in understanding what she is saying.

A woman has bipolar affective disorder. Her speech may sometimes become 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.

It would not be reasonable to regard as having a substantial adverse effect:

- inability to articulate due to a lisp
- 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.

(ii) Hearing

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.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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.

A woman has tinnitus which interferes with, and makes difficult, the ability to hear or understand normal conversation, 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.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

(iii) Eyesight

If a person's sight is corrected by spectacles or contact lenses, or could be corrected by them, what needs to be considered is the effect remaining while he or she is wearing such spectacles or lenses. (See also Paragraph B14)

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.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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).

A man has retinitis pigmentosa (RP), a heredity 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 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 adverse effects of this impairment on normal day-to-day activities are substantial.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

Memory or ability to concentrate, learn or understand

D26. Account should be taken of the person's ability to remember, organise his or her thoughts, plan a course of action and carry it out, take in new knowledge, and to understand 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. Account should be taken of whether the person has persistent and significant difficulty in reading and understanding text in his or her native language despite adequate educational opportunities or in reading and understanding straightforward numbers. The ability to learn or understand also covers the perception of what is meant by certain types of verbal communication such as the use of humour or sarcasm as well as non-verbal communication such as body language and facial expressions. Account should be taken of whether the inability to understand communication leads to difficulties in understanding and following verbal instructions.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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.

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 certain verbal communications 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, which involve the capacity of "memory or ability to concentrate, learn or understand".

It would not be reasonable to regard as having a substantial adverse effect:

- occasionally forgetting the name of a familiar person, such as a colleague;
- inability to concentrate on a task requiring application over several hours;

- inability to fill in a long, detailed, technical document without assistance;
- inability to read at faster than normal speed;
- some shyness or timidity;
- minor problems with writing or spelling.

Perception of the risk of physical danger

D27. This includes both the underestimation and overestimation of physical danger, including danger to well-being. Account should be taken of, for example, 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.

Examples

It would be reasonable to regard as having a substantial adverse effect:

- 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.

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. She fails to eat properly, and this results in a risk to her well-being. She has no regard for self-preservation, so her perception of physical danger is compromised.

A boy with Attention Deficit Hyperactivity Disorder (ADHD) can act impulsively and may dash out into traffic without considering the potential dangers.

In these cases, these people have an impaired appreciation of danger which results in a substantial adverse effect on their ability to carry out normal day-to-day activities.

It would not be reasonable to regard as having a substantial adverse effect:

- 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.

