

SCHEDULES

SCHEDULE 1

Section 6

DISABILITY: SUPPLEMENTARY PROVISION

PART 1

DETERMINATION OF DISABILITY

Impairment

- 1 Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

Long-term effects

- 2 (1) The effect of an impairment is long-term if—
 - (a) it has lasted for at least 12 months,
 - (b) it is likely to last for at least 12 months, or
 - (c) it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
- (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

Severe disfigurement

- 3 (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.
- (2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.
- (3) The regulations may, in particular, make provision in relation to deliberately acquired disfigurement.

Status: This is the original version (as it was originally enacted).

Substantial adverse effects

- 4 Regulations may make provision for an effect of a prescribed description on the ability of a person to carry out normal day-to-day activities to be treated as being, or as not being, a substantial adverse effect.

Effect of medical treatment

- 5 (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
- (a) measures are being taken to treat or correct it, and
 - (b) but for that, it would be likely to have that effect.
- (2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.
- (3) Sub-paragraph (1) does not apply—
- (a) in relation to the impairment of a person’s sight, to the extent that the impairment is, in the person’s case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;
 - (b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

Certain medical conditions

- 6 (1) Cancer, HIV infection and multiple sclerosis are each a disability.
- (2) HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

Deemed disability

- 7 (1) Regulations may provide for persons of prescribed descriptions to be treated as having disabilities.
- (2) The regulations may prescribe circumstances in which a person who has a disability is to be treated as no longer having the disability.
- (3) This paragraph does not affect the other provisions of this Schedule.

Progressive conditions

- 8 (1) This paragraph applies to a person (P) if—
- (a) P has a progressive condition,
 - (b) as a result of that condition P has an impairment which has (or had) an effect on P’s ability to carry out normal day-to-day activities, but
 - (c) the effect is not (or was not) a substantial adverse effect.
- (2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.
- (3) Regulations may make provision for a condition of a prescribed description to be treated as being, or as not being, progressive.

Past disabilities

- 9 (1) A question as to whether a person had a disability at a particular time (“the relevant time”) is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time.
- (2) The relevant time may be a time before the coming into force of the provision of this Act to which the question relates.

PART 2

GUIDANCE

Preliminary

- 10 This Part of this Schedule applies in relation to guidance referred to in section 6(5).

Examples

- 11 The guidance may give examples of—
- (a) effects which it would, or would not, be reasonable, in relation to particular activities, to regard as substantial adverse effects;
 - (b) substantial adverse effects which it would, or would not, be reasonable to regard as long-term.

Adjudicating bodies

- 12 (1) In determining whether a person is a disabled person, an adjudicating body must take account of such guidance as it thinks is relevant.
- (2) An adjudicating body is—
- (a) a court;
 - (b) a tribunal;
 - (c) a person (other than a court or tribunal) who may decide a claim relating to a contravention of Part 6 (education).

Representations

- 13 Before issuing the guidance, the Minister must—
- (a) publish a draft of it;
 - (b) consider any representations made to the Minister about the draft;
 - (c) make such modifications as the Minister thinks appropriate in the light of the representations.

Parliamentary procedure

- 14 (1) If the Minister decides to proceed with proposed guidance, a draft of it must be laid before Parliament.
- (2) If, before the end of the 40-day period, either House resolves not to approve the draft, the Minister must take no further steps in relation to the proposed guidance.

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- (3) If no such resolution is made before the end of that period, the Minister must issue the guidance in the form of the draft.
- (4) Sub-paragraph (2) does not prevent a new draft of proposed guidance being laid before Parliament.
- (5) The 40-day period—
 - (a) begins on the date on which the draft is laid before both Houses (or, if laid before each House on a different date, on the later date);
 - (b) does not include a period during which Parliament is prorogued or dissolved;
 - (c) does not include a period during which both Houses are adjourned for more than 4 days.

Commencement

15 The guidance comes into force on the day appointed by order by the Minister.

Revision and revocation

- 16 (1) The Minister may—
- (a) revise the whole or part of guidance and re-issue it;
 - (b) by order revoke guidance.
- (2) A reference to guidance includes a reference to guidance which has been revised and re-issued.