



Disability: what the law says

www.dorsetforyou.com/PMNS

Dorset County Council
Physical and Medical Needs Service
Telephone: 01305 224063



This booklet aims to give a detailed explanation of what a disability is, by law.

What is the legal definition of a disability?

Under the law (the Equality Act 2010) to be considered as having a disability, a person must have:

A **physical** or **mental impairment** that has a **substantial** and **long-term** adverse effect on their ability to carry out **normal day-to-day activities**.

Why is it important to have a legal definition of disability?

Disability is a protected characteristic under the Equality Act. This means that a child or young person is protected from discrimination due to their disability.

There are special guidelines that schools and other educational settings must follow for children and young people with disabilities.

Full details of the guidelines for schools and other educational settings can be found in the booklet, 'What should a school do if a pupil has a disability?'

All leaflets are available from the Physical and Medical Needs Service.

What is a 'physical or mental impairment'?

Physical or mental impairments can include:

- hearing and visual impairments;
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, chronic fatigue syndrome and epilepsy;
- progressive conditions like muscular dystrophy;
- auto-immune conditions;
- organ specific conditions such as asthma, cardiovascular diseases, stroke and heart disease;
- developmental impairments like autistic spectrum disorders, dyslexia and dyspraxia;
- learning difficulties;
- mental health conditions or mental illnesses;
- impairments resulting from injury to the body.

Some conditions automatically entitle a person to be considered as disabled under the Equality Act. These include:

- Cancer;
- HIV infection; and
- Multiple sclerosis (MS).

Temporary conditions like a broken leg or wearing glasses are not a disability.

What is a 'substantial effect'?

A substantial effect is anything that is more than minor or trivial.

For a child or young person, this might include how long it takes them to complete a normal day-to-day activity, for example:

A ten year old boy has cerebral palsy. The effects include muscle stiffness, poor balance and uncoordinated movements. The boy 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.

When thinking about whether an impairment has a substantial effect on a child or young person, it is helpful to think about whether they have to

do activities in a different way or what the cumulative effects of doing lots of activities might be.

What about conditions which become more severe over time?

Conditions which become more severe over time are known as 'progressive conditions'.

The Equality Act says that a child or young person with a progressive condition should be considered as having an impairment which has a substantial adverse effect on their ability to carry out normal day-to-day activities before it actually has that effect.

However, this only applies where it is **likely** that the future adverse effect will become substantial. For example:

A 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 Equality Act if it can be shown that the effects are likely to become substantial.



What does 'long term' mean?

The Equality Act defines a long-term effect of an impairment as one:

- which has lasted at least 12 months; or
- where the total period for which it lasts is likely to be at least 12 months; or
- which is likely to last for the rest of the life of the person affected.

What is meant by 'normal day to day activities'?

There is no specific list of 'normal day-to-day activities' but in general, this means things that people do on a regular or daily basis, and for children and young people in school this can include:

- reading and writing,
- having a conversation;
- going to the toilet;
- washing their hands;
- getting dressed after physical activities;
- eating;
- walking;
- following instructions;
- using a computer; and
- keeping to a timetable.

The following example shows a child with an impairment that has a substantial and long-term adverse effect on her ability to carry out learning tasks (a normal day-to-day activity) in school:

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.

The following example shows a child with an impairment that has a substantial and long-term adverse effect on his ability to participate in class and join team games at school (normal day-to-day 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.

Are there different rules for very young children?

It can be difficult to find out what the effects of impairments may be in babies and young children because they are too young to take part in activities that are normal for older children and adults.

As such, the law says that a child under six with an impairment should be treated as though this has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities if this were to be the case if they were over six years old.