

# DISABILITY DISCRIMINATION ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 18: Meaning of “disability”*

180. Section 1 of the DDA defines a person as having a disability for the purposes of the DDA where he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. This definition is supplemented by Schedule 1 to the DDA, which elaborates on, and sets out other, circumstances in which a person is to be treated as disabled and therefore as meeting the definition in section 1. In particular, in Schedule 1 to the DDA: paragraph 1(1) deals with mental impairments; paragraph 7(5) deals with persons deemed to be disabled; and paragraph 8 provides that a person with a progressive condition such as HIV infection, multiple sclerosis (MS) or cancer is to be treated as disabled where the impairment has an effect on his ability to carry out normal day-to-day activities, even where it is less than substantial, provided that the effects are likely to become substantial in the future. All three of these supplementary provisions are affected by section 18.
181. [Section 18\(2\)](#) removes the requirement in paragraph 1(1) of Schedule 1 to the DDA that a mental illness must be “clinically well-recognised” before it can amount to a mental impairment for the purposes of section 1. The removal of this requirement does not affect the need for people with a mental illness to demonstrate that they have an impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities.
182. [Section 18\(3\)](#) inserts a new paragraph 6A into Schedule 1 to the DDA. New paragraph 6A(1) deems people with HIV, cancer or MS to be disabled before they experience any of the effects described in section 1 of, or paragraph 8 of Schedule 1 to, the DDA. New paragraph 6A(2) and (3) enable the Secretary of State to make regulations excluding persons who have cancer of a prescribed description from the provisions of sub-paragraph (1). This power could be exercised, for example, to exclude those types of cancer which do not require substantial treatment. Any regulations made under this power are subject to the affirmative resolution procedure: see the new section 67(4)(h) inserted by paragraph 33(5) of Schedule 1.
183. Paragraph 7(5) of Schedule 1 to the DDA contains a power to deem a person to have a disability in prescribed circumstances and hence to be a disabled person for the purposes of the DDA<sup>1</sup>. New paragraph 7(5A) is inserted into Schedule 1 to the DDA by section 18(4) in order to make it clear that there are no implied limitations on the power in paragraph 7(5) of that Schedule. Regulations made under paragraph 7(5) will then be able to deem any group of people to be disabled, even a group covered in some way by another provision of Schedule 1 to the DDA (such as persons with a progressive condition (other than MS, HIV infection or cancer) or persons who will, for some other reason, not be protected by either section 1 of, or Schedule 1 to, the DDA).

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<sup>1</sup> Regulations have been made under this power: see the [Disability Discrimination \(Blind and Partially Sighted Persons\) Regulations 2003 \(S.I. 2003/712\)](#).

*These notes refer to the Disability Discrimination Act  
2005 (c.13) which received Royal Assent on 7 April 2005*

184. [Section 18\(5\)](#) inserts a new paragraph 9 into Schedule 1 to the DDA to define HIV infection in recognition of the fact that there are two strains of the Human Immunodeficiency Virus recognised as capable of causing AIDS in human beings.