

EXPLANATORY MEMORANDUM TO
THE DISABILITY DISCRIMINATION (GUIDANCE ON THE DEFINITION OF
DISABILITY) REVOCATION ORDER 2006

2006 No. 1007

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order revokes, with effect from 1st May 2006, the ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’ which was issued by the Secretary of State for Education and Employment on 25th July 1996. That Guidance is intended to give practical guidance to adjudicating bodies¹ which are determining whether a person is a disabled person for the purposes of the Disability Discrimination Act 1995 (1995 Act).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 3 of the 1995 Act enables the Secretary of State to issue Guidance about matters to be taken into account in determining whether a person is a disabled person for the purposes of the 1995 Act. The Guidance does not impose any legal obligations in itself, nor is it an authoritative statement of the law, but section 3(3) of the 1995 Act provides that it must be taken into account, where relevant, by an adjudicating body which is determining, for any purpose of the Act, whether a person is a disabled person.

4.2 Guidance was first issued by the Secretary of State for Education and Employment on 25th July 1996. That Guidance has now been revised and a draft version of the revised Guidance was laid before Parliament on 7th February 2006 in accordance with the procedure in section 3(6) of the 1995 Act. Subject to the transitional provision described in paragraph 4.3 below, this Order revokes the 1996 Guidance with effect from 1st May 2006. The revised Guidance will be brought into force on 1st May 2006 by virtue of The Disability Discrimination (Guidance on the Definition of Disability) Appointed Day Order 2006 (S.I. 2006/ 1005).

¹ Section 3(3A) of the Disability Discrimination Act 1995 defines an ‘adjudicating body’ as a court, tribunal, or any other person who, or body which, may decide a claim under Part 4 (education provisions) of the Act.

4.3 Article 3 of the present Order includes transitional provision: the 1996 Guidance (referred to in article 2 of the Order) is to continue to have effect for the purposes of section 3(3) of the DDA in relation to any proceedings arising from an act of unlawful discrimination alleged to have taken place before the 1st May 2006.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 1995 Act prohibits discrimination against disabled people in a range of circumstances, including in employment and occupation, education, transport, and the provision of goods, facilities and services. Only those people who meet the requirements of the definition of disability set out in the 1995 Act are entitled to the protection that it provides.

7.2 Guidance on the meaning of disability, for the purposes of the 1995 Act was first issued in 1996. This required updating to reflect legislative changes since 1996, including provisions of the Disability Discrimination Act 2005 which came into force on 5 December 2005. It also needed to take account of developments in case law and a commitment given by the Government during the passage of the Disability Discrimination Act 2005 through Parliament that it would consider how the Guidance might make clearer how people with a mental impairment can be covered by the 1995 Act. Following consultation on a revised draft, the Guidance was laid before both Houses of Parliament on 7 February 2006 in accordance with the requirements of section 3(6) of the 1995 Act.

7.3 No consultation was appropriate in relation to this Order.

7.4 It is not expected that there will be significant public interest in this Order as the Guidance to which it refers is primarily used by adjudicating bodies, though it may sometimes be used by organisations that advise disabled people.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order as it does not have any direct impact on business, charities, or voluntary bodies.

8.2 The impact on the public sector is nil.

9. **Contact**

Carol Foster-Middleton at the Department for Work and Pensions, Tel: 0207 712 2157 or e-mail: Carol.Foster-Middleton@dwp.gsi.gov.uk, can answer any queries regarding the Guidance.