

**2011 No. 1159**

**EQUALITY**

**DISABLED PERSONS**

**The Equality Act 2010 (Guidance on the Definition of  
Disability) Appointed Day Order 2011**

*Made* - - - - *26th April 2011*

*Coming into force* - - *1st May 2011*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 6(5) and 207(1) and (4) of, and paragraphs 11 and 15 of Schedule 1 to, the Equality Act 2010(a), makes the following Order.

In accordance with paragraph 13 of Schedule 1 to that Act the Secretary of State has published a draft of the Guidance and has considered representations concerning the Guidance and modified it in the light of those representations.

In accordance with paragraph 14(1) of Schedule 1 to that Act the Secretary of State has laid a draft of the Guidance before both Houses of Parliament.

In accordance with paragraph 14(3) of Schedule 1 to that Act neither House has resolved not to approve the draft within a period of 40 days beginning with the day on which it was laid and the Secretary of State has issued the Guidance in the form of the draft.

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Equality Act 2010 (Guidance on the Definition of Disability) Appointed Day Order 2011.

(2) In this Order—

“Guidance” means the guidance on matters to be taken into account in determining questions relating to the definition of disability;

“the 1995 Act” means the Disability Discrimination Act 1995(b);

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(a) 2010 c.15, amended by the Equality Act 2010 (Commencement No.4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation Order 2010 (S.I. 2010 No.2317 (c.112))). The Equality Act 2010 (2010 c.15) has been amended by other statutory instruments made under it, but those amendments are not relevant to this Order.

(b) 1995 c.50, amended by the Disability Discrimination Act 2005 (2005 c.13) and the Special Educational Needs and Disability Act 2001 (2001 c.10). The Disability Discrimination Act 1995 (1995 c.50) has also been amended by other enactments and instruments but those amendments are not relevant to this Order. The Disability Discrimination Act 1995 (1995 c.50) has been repealed by the Equality Act 2010 (2010 c.15) but, by article 15 of S.I. 2010/2317 (see full title in footnote (a) of this Order), proceedings arising from a complaint about conduct that occurred wholly before 1<sup>st</sup> October

“the 2010 Act” means the Equality Act 2010;

“the 2010 Order” means the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010(a);

“the 1996 Guidance” means 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 under the 1995 Act on 29th March 2006(b);

“adjudicating body” has the same meaning as in section 3(3A) of the 1995 Act in relation to any proceedings brought under the 1995 Act, and is defined in paragraph 12(2) of Schedule 1 to the 2010 Act in relation to any proceedings brought under the 2010 Act.

### **Appointed Day**

2.—(1) 1st May 2011 is the day appointed for the coming into force of the Guidance laid before Parliament in draft on 10th February 2011 and issued under paragraph 14(3) of Schedule 1 to the 2010 Act on 7th April 2011.

(2) Paragraph (1) has effect subject to the provisions of article 3.

### **Transitional provision**

3.—(1) This article applies in relation to any proceedings arising from a complaint presented to an adjudicating body, whenever presented, alleging that a person has, before 1st May 2011, committed an act which is unlawful discrimination or harassment.

(2) A reference to an act in paragraph (1) of this article includes a reference to a continuing act which began before 1st May 2011.

(3) A reference to proceedings in paragraph (1) of this article is a reference to—

- (a) Proceedings brought under the 1995 Act by virtue of article 15 of the 2010 Order, or
- (b) Proceedings brought under the 2010 Act by virtue of article 7 of the 2010 Order, or
- (c) Proceedings brought under the 2010 Act otherwise than by virtue of article 7 of the 2010 Order, and in which the act complained of occurred, or in which the continuing act complained of began, before 1st May 2011.

(4) Where this article applies, the Guidance referred to in article 2(1) of this Order shall not have effect for the purposes of section 3 of the 1995 Act or paragraph 12(1) of Schedule 1 to the 2010 Act.

(5) Where this article applies, the 1996 Guidance is to continue to have effect for the purposes referred to in paragraph (4) of this article.

Signed by authority of the Secretary of State for Work and Pensions.

*Maria Miller*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

26th April 2011

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2010 are brought under the Disability Discrimination Act 1995 (1995 c.50) as if the Equality Act 2010 (2010 c.15) had not been commenced. Article 15 of S.I. 2010/2317 is referred to in article 3 of this Order.

(a) S.I. 2010/2317.

(b) ISBN No. 978-0-11-703686-4.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order appoints 1st May 2011 as the day for the coming into force of the Guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State on 7th April 2011 under paragraph 14(3) of Schedule 1 to the Equality Act 2010 (“the 2010 Act”).

The Guidance provides practical guidance on matters to be taken into account when considering whether a person is a disabled person for the purposes of the 2010 Act and replaces guidance on the same matters (ISBN 978-0-11-703686-4) which was issued by the Secretary of State under the now repealed Disability Discrimination Act 1995 on 29th March 2006.

Paragraph 12(1) of Schedule 1 to the 2010 Act requires an adjudicating body to take account of such guidance as it thinks is relevant.

The Equality Act repealed the Disability Discrimination Act 1995. The provisions of the Disability Discrimination Act 1995 were substantially re-enacted by the Equality Act. The Guidance reflects that paragraph 4 of Schedule 1 (classification of normal day to day activities by reference to a list of capacities) to the Disability Discrimination Act 1995 was not re-enacted in the 2010 Act. The Guidance also reflects developments in relevant case law since the guidance (ISBN 978-0-11-703686-4) issued by the Secretary of State under the now repealed Disability Discrimination Act 1995 on 29th March 2006.

Article 3 of this Order makes transitional provision in relation to proceedings arising from a complaint to an adjudicating body, whenever presented, under Part 9 of the 2010 Act concerning an alleged act of discrimination or harassment committed before 1st May 2011 or an alleged course of conduct amounting to discrimination or harassment that was commenced before 1st May 2011. The Guidance is not to have effect for the purposes of paragraph 12(1) of Schedule 1 to the 2010 Act in relation to such proceedings. The Guidance issued by the Secretary of State (ISBN 978-0-11-703686-4) under section 3 of the Disability Discrimination Act 1995 on 29th March 2006 is to continue to have effect in relation to such proceedings. Section 3(3) of the Disability Discrimination Act 1995 requires an adjudicating body to take into account any guidance which appears to it to be relevant.

A copy of the Guidance may be downloaded free of charge from the websites of the Equalities and Human Rights Commission (<http://www.equalityhumanrights.com/>), the Government Equalities Office (<http://equalities.gov.uk/>) and the Office for Disability Issues (<http://odi.dwp.gov.uk/>).

An impact assessment has not been prepared for this Order as it has no direct impact on the costs of the private sector and civil society organisations.

However, an impact assessment of the changes made by the removal of the classification of normal day to day activities by reference to a list of capacities, and the effect these changes would have on the costs of business was included in the full impact assessment for the 2010 Act. A copy of that impact assessment was published in April 2010. It is available in the libraries of both Houses of Parliament and can be downloaded free of charge from the Government Equalities Office website: <http://equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>

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£4.00