

How does the Equality Act define ‘disability’?

You’ll find this factsheet useful if you want to know how the Equality Act defines ‘disability’ – and whether the Act protects you from discrimination because of your deafness, hearing loss or tinnitus.

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i If you’d like this factsheet in Braille, large print or audio, please contact our Information Line – see last page for contact details.



Disclaimer

This information is not legal advice and you should not rely on it as such. You should consider taking independent legal advice from a solicitor or other qualified legal adviser. Action on Hearing Loss does not accept any liability for any actions that you or anyone else may take, or fail to take, on the basis of the information contained in this factsheet.

Note: In this factsheet we use the term 'hearing loss' to cover all forms of loss – from mild to profound.

What is the Equality Act?

The Equality Act 2010 is the law that bans discrimination (unfair treatment) and helps achieve equal opportunities in the workplace and in wider society.

Before the Equality Act, disability discrimination came under the Disability Discrimination Act 1995 (DDA).

The Equality Act protects people from discrimination because of certain 'protected characteristics'. It also promotes equality of opportunity to prevent discrimination arising.

The nine protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity

- race
- religion and belief
- sex
- sexual orientation.

The Equality Act applies to England, Wales and Scotland but not Northern Ireland, where the DDA still applies. If you live in Northern Ireland, visit the NI Direct website to find out more:

nidirect.gov.uk/information-and-services/people-disabilities/rights-and-obligations

Am I protected under the Equality Act?

The Equality Act protects you if:

- you currently have a disability
- you have previously had a disability.

In certain situations, it also protects you if:

- you are associated with a disabled person or are mistakenly thought to be disabled
- you have helped a disabled person to make a complaint.

How does the Equality Act define 'disability'?

The Equality Act says that a disabled person is someone who has, or has had, a disability.

A disability under the Equality Act is a physical or mental impairment that has a substantial and long-term adverse (negative) effect on your ability to carry out normal day-to-day activities.

If you come within this legal definition, you will have rights under the Equality Act, whether or not you use sign language, and even if you don't think of yourself as a disabled person.

What is a 'physical or mental impairment'?

This is not defined, but it covers a wide range of conditions such as:

- rheumatoid arthritis
- chronic fatigue syndrome
- diabetes (there may be some doubt about Type 2 diabetes)
- epilepsy
- forms of dementia
- heart disease
- learning difficulties
- depression
- eating disorders.

It includes sensory impairments (sight loss or hearing loss) and covers tinnitus. Some things are excluded, like alcohol addiction (although an accompanying condition such as liver disease would be covered).

What is important is the effect that the condition has on your daily life – see below.

What is a 'substantial adverse effect'?

'Substantial' means more than minor or trivial. If you have a relatively minor hearing loss, it's unlikely that you fit the definition of disability. But if it's not minor or trivial, it's treated as substantial.

Several issues may be relevant when deciding whether the effect is substantial. If you have a hearing loss, the most important of these include:

- the time it takes you to carry out a task
- how you carry out the task
- the combined effect of minor impairments, if you have more than one
- the effect of background noise – for example, it may be more difficult for you to hear if you're working in a noisy place rather than a quiet one.

Note: Any steps taken to treat or correct your hearing loss must be ignored for the purposes of the Equality Act. Importantly, this means that even if you use a hearing aid, your hearing without it is what counts.

What is a 'long-term effect'?

The Equality Act says that a long-term effect is one that has lasted, or is likely to last, for at least 12 months or for the rest of your life. 'Likely' means it could well happen.

Conditions that come and go over time, such as depression or arthritis, may also be covered, depending on how likely the condition is to come back, and on whether it meets other parts of the definition.

Progressive health conditions (those that tend to worsen with time), such as Ménière's disease, may also be a disability under the Equality Act, but it depends on the prognosis of the disease (the outlook for the future).

What are 'normal day-to-day activities'?

These are things that you do on a regular or daily basis, such as having a conversation, using a telephone, watching TV, using public transport, shopping or taking part in social activities.

They also include general work-related activities, and activities related to study or education, such as interacting with colleagues, following instructions, interviewing or keeping to a timetable.

What is likely to count as a substantial adverse effect?

If your hearing loss or tinnitus increases the time it takes to complete an activity

For example, you may use an amplified telephone, but phone conversations take longer than they would if you didn't have hearing loss and/or tinnitus, because you need parts of the conversation repeating.

If you are profoundly deaf, you may use a textphone to contact a friend or family member, but communicating in this way takes longer than if you could use and hear a voice telephone.

If your hearing loss affects how you carry out a task

If you use British Sign Language (BSL), you may find it more difficult to follow complex instructions in English – for example, when using a new piece of equipment – and may need to ask a hearing person for assistance.

If your hearing loss or tinnitus adds to the difficulties caused by other impairments

You may, for example, have arthritis, mild hearing loss and some difficulty reading. If the effects of all of these impairments are combined, they may amount to a substantial adverse effect.

Note: Please remember that these are only examples. Even if you can perform one or more day-to-day activities without difficulty, you may still experience substantial adverse effects with others.

What's important is to consider the things you cannot do, or can only manage with difficulty.

What government guidance is there?

The government's guidance on the definition of disability gives more examples of possible substantial adverse effects (see 'Gov.uk' on [page 8](#) for details of where you can get this).

The examples include:

- difficulty hearing and understanding another person speaking clearly over the voice telephone – when the telephone is not affected by bad reception
- difficulty understanding or following simple verbal instructions.

The guidance doesn't set legal obligations but a court or tribunal must take it into account when deciding if a person is disabled.

Similar but separate guidance applies to Northern Ireland. For more information, go to nidirect.gov.uk/information-and-services/people-disabilities/rights-and-obligations

Example from the guidance

A woman has tinnitus, which makes it difficult for her to hear or understand normal conversations. She can't hear and respond to what a supermarket checkout assistant is saying if the people behind her

in the queue are holding a conversation at the same time. This has a substantial adverse effect on her ability to carry out the normal day-to-day activity of taking part in a conversation.

What is unlikely to count as a substantial adverse effect?

The guidance gives an example related to hearing loss:

- Not being able to hear someone talking to you in a very noisy place, such as a factory floor, a pop concert or sporting event, or beside a busy main road. Most people would have difficulty in these situations.

How else does the Equality Act protect me?

If you have a particular condition

There are some impairments that may not have a substantial adverse effect but still count as a disability under the Equality Act – for example, if you have a severe facial disfigurement. This doesn't include tattoos or decorative piercings.

You're treated as disabled if you have been diagnosed (with or without symptoms) with cancer, HIV infection or multiple sclerosis (MS); and if you are certified as blind or visually impaired.

If you've had a disability in the past

If you have previously had a disability but have recovered from the condition, you are still protected under the Equality Act. For example, if you had severe depression lasting for at least 12 months, which substantially affected your everyday activities, and you haven't had a depressive illness for over a year, you would be covered as having a past disability.

If you are associated with a disabled person or mistakenly thought to be disabled

The Equality Act protects you from being treated worse than someone else or harassed because you are linked or associated with someone who is disabled. For example, if you are refused service because you have a disabled child with you, or you are taunted by colleagues at work because you care for a relative who is disabled.

The Equality Act also protects you if you're not disabled but are treated worse or harassed because people mistakenly think you are disabled.

 We explain this further in our factsheets *Your rights as an employee* and *Your rights when using services*.

If you have helped a disabled person to complain

You may be covered by the Equality Act, whether or not you're disabled, if you are treated badly – for instance, by an employer, service provider or education provider – because you have helped a disabled person take action under the Equality Act. For example, if you have supported a colleague who is deaf in their complaint against their employer, or you gave evidence to support someone in legal proceedings under the Equality Act.

This is called victimisation. We give you more information about victimisation in our factsheets about your rights as an employee and when using services – see below for details.

Where can I get further information about my rights?

Action on Hearing Loss

The other factsheets in our **Your rights** range are:

- *The Equality Act 2010 – an overview*
- *The public sector Equality Duty*
- *Your rights as an employee*
- *Your rights when using services*
- *The Human Rights Act.*

You can order these from our Information Line ([see last page](#) for contact details) or download them from our website at actiononhearingloss.org.uk/factsheets

Other organisations

You can get helpful information from the following organisations in relation to your rights. As noted, some also provide free legal advice and support.

Citizens Advice

The Citizens Advice service helps people resolve their legal, money and other problems by providing free information and advice. To find your nearest Citizens Advice Bureau, and for useful online information, visit the Citizens Advice website:

England and Wales: citizensadvice.org.uk

Scotland: citizensadvice.org.uk/scotland

Northern Ireland: citizensadvice.org.uk/nireland

Disability Law Service (DLS)

A charity providing free legal advice and support to people who are disabled (including people who are deaf) in England and Wales (and details on where to go for advice in Scotland and Northern Ireland). It has a range of factsheets available online and by post.

The Foundry
17 Oval Way
London SE11 5RR

Telephone: **020 7791 9800**

Email: advice@dls.org.uk

Website: dls.org.uk

You can request advice by email or post if you can't use the phone. If you say you have a hearing loss, DLS will try to respond more quickly.

Equality Advisory Support Service (EASS)

The EASS helpline gives information, advice and support on discrimination and human rights issues to people in England, Scotland and Wales.

FREEPOST EASS HELPLINE FPN6521

Freephone: **0808 800 0082**

Textphone: **0808 800 0084**

Online contact form: www.equalityadvisoryservice.com/app/ask

Website: equalityadvisoryservice.com

Equality and Human Rights Commission (EHRC)

The EHRC promotes and protects human rights, promotes equality and challenges discrimination. It has a lot of useful information about human rights on its website, including guides explaining how human rights operate in practice:

England: equalityhumanrights.com/your-rights/human-rights

Scotland: equalityhumanrights.com/en/commission-scotland

Wales: equalityhumanrights.com/en/commission-wales

For wide-ranging advice and guidance, on disability, discrimination and more, for individuals, organisations and public sector bodies, go to: equalityhumanrights.com/en/advice-and-guidance

Equally Ours

A partnership between eight national charities to raise public awareness of human rights in everyday life. The website includes lots of real-life case studies:

equally-ours.org.uk

Equality Commission for Northern Ireland

An independent public body that promotes equality and challenges discrimination, through advice, support and enforcement.

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: **028 90 500 600**

Textphone: **028 90 500 589**

Fax: **028 90 248 687**

Email: information@equalityni.org

Website: equalityni.org/Individuals

Gov.uk

A government website providing information about a wide range of topics, including the Equality Act 2010, disability rights and welfare benefits. It also gives links to online government services and organisations that can give you advice and support:

Website: gov.uk/browse/disabilities

Website: gov.uk/check-legal-aid

Website (Equality Act 2010 guidance):

gov.uk/guidance/equality-act-2010-guidance

Law Centres Network

Law Centres provide free advice and representation. You can find details of your local Law Centre from the Law Centres Network:

Online contact form:

lawcentres.org.uk/contact-us

Website: lawcentres.org.uk/i-am-looking-for-advice

LawWorks

A charity working in England and Wales to connect volunteer lawyers with people in need of legal advice, who are not eligible for legal aid and cannot afford to pay, and with the not-for-profit organisations that support them.

Website (find a clinic near you):

lawworks.org.uk/legal-advice-individuals/find-legal-advice-clinic-near-you

Liberty

A campaigning organisation that protects civil liberties and promotes human rights. It has a telephone advice line for free legal advice in England and Wales, or you can use the online query form.

Telephone: **020 7403 3888**

Online contact form: liberty-human-rights.org.uk/contact-us

Website: liberty-human-rights.org.uk

NI Direct

Comprehensive information about government services in Northern Ireland, including on a wide range of services for people with disabilities.

Website (Contacts A-Z): nidirect.gov.uk/contacts

Website: nidirect.gov.uk

Website (people with disabilities): nidirect.gov.uk/information-and-services/people-disabilities

Office for Disability Issues

Works across government to ensure equality becomes a reality for people who are disabled. Its website has information about the UN Disability Convention.

Website: gov.uk/government/organisations/office-for-disability-issues

Royal Association for Deaf people (RAD)

Provides a wide range of services that Deaf people want and need. All services are delivered in British Sign Language. Also works with mainstream services to help them to ensure their services are accessible to Deaf people.

Telephone: **0845 688 2525**

Email: info@royaldeaf.org.uk

Website: royaldeaf.org.uk

Scottish Government

St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Telephone: **0300 244 4000**

Text relay service: **18001+ 0300 244 4000**

Email: ceu@gov.scot

Website: scotland.gov.uk

Website for BSL users:

contactSCOTLAND-bsl.org

Website (equality and rights policies): beta.gov.scot/policies/?topics=Equality%20and%20rights

Welsh Government

Cathays Park
Cardiff
CF10 3NQ

Telephone (English): **0300 060 4400**

Telephone (Welsh): **0300 060 4400**

Email (English): customerhelp@wales.gsi.gov.uk

Email (Welsh): cymorth@cymru.gsi.gov.uk

Website: wales.gov.uk

Information you can trust

The Information Standard certifies us as producers of high-quality, evidence-based information. Thank you to **Jenny White, our legal expert**, for helping us review and update this factsheet, published August 2017, using the latest government legislation.

Did you find this factsheet helpful?

We'd love to know what you think of this factsheet – please email us at reviewpanel@hearingloss.org.uk

If you'd like to join our Readers' Panel, to help us create new publications and improve existing ones, please let us know.

Further information from Action on Hearing Loss

Our expert information covers everything you need to know about:

- hearing loss and deafness
- tinnitus
- ear problems and treatments
- hearing aids and cochlear implants
- useful products and technology
- communication tactics and support
- benefits and grants
- your rights.

Visit our website actiononhearingloss.org.uk or call our Information Line ([see last page](#)) for information, support and publications. You can also find out about services in your area, our hearing research, and how you can get involved.

Please help us support others

We provide our leaflets, factsheets and Information Line service free of charge to anyone affected by deafness, tinnitus or hearing loss in the UK. We rely on the generosity of our supporters to help us do this. We would be very grateful if you would consider making a donation – of as little or as much as you can afford.

Please send a cheque, payable to Action on Hearing Loss, to:

Freepost RTLX-CZKX-BTTZ

Action on Hearing Loss

1-3 Highbury Station Road

London N1 1SE

(No stamp needed)

Donate online at actiononhearingloss.org.uk/icanhelp

Or make a donation over the phone by credit or debit card:

 **0203 227 6182**

 **0203 227 6185**

Thank you.

Our purpose is to help people confronting deafness, tinnitus and hearing loss to live the life they choose. We enable them to take control of their lives and remove the barriers in their way.

To find out more about what we do and how you can support us, go to actiononhearingloss.org.uk

Action on Hearing Loss Information Line

Telephone **0808 808 0123**
Textphone **0808 808 9000**
SMS **0780 000 0360**
(standard text message rates apply)
Email **information@hearingloss.org.uk**

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