

# WHAT IS A DISABILITY?

**Extracts from Guidance on matters to be taken into account in determining questions relating to the definition of disability**

Source:

[Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability](#)





# WHAT IS A DISABILITY?

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

# This means that, in general:

-  the person must have an impairment that is either physical or mental
-  the impairment must have adverse effects which are substantial
-  the substantial adverse effects must be long-term
-  the long-term substantial adverse effects must be effects on normal day-to-day activities

All of the factors above must be considered when determining whether a person is disabled.

# Impairments include



sensory impairments, such as those affecting sight or hearing



developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia



learning disabilities



mental health conditions with symptoms such as anxiety, low mood, panic



attacks, phobias, or unshared perceptions; eating disorders; bipolar affective

disorders; obsessive compulsive disorders; personality disorders; post traumatic

stress disorder, and some self-harming behaviour



mental illnesses, such as depression and schizophrenia



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**Adults with ADHD experience problems with working memory, planning and anticipation; they may also experience issues in verbal fluency, effort allocation, application of organisational strategies and self-regulation of emotion**

Source: Adamou, M., Arif, M., Asherson, P. et al. Occupational issues of adults with ADHD. BMC Psychiatry 13, 59 (2013).

# Multiple impairments

A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities.

Many large epidemiologic and clinical studies show that ADHD often co-occurs with other psychiatric disorders, especially **depression, bipolar disorder, autism spectrum disorders, anxiety disorders, oppositional defiant disorder, conduct disorder, eating disorders, and substance use disorders**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

A series of meta-analyses found that people with ADHD had small to moderate difficulties with **abstract problem solving and working memory**, focused attention, sustained attention and verbal memory

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.



# Foetal alcohol spectrum disorders (FASD) are among those conditions that are commonly found to co-exist with ADHD

Source: Young S et al, Guidelines for identification and treatment of individuals with attention deficit/hyperactivity disorder and associated fetal alcohol spectrum disorders based upon expert consensus.

# Cumulative effects of an impairment

An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

**People with ADHD are at increased risk for obesity, asthma, allergies, diabetes mellitus, hypertension, sleep problems, psoriasis, epilepsy, sexually transmitted infections, abnormalities of the eye, immune disorders, and metabolic disorders.**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

**What does substantial mean?**

# What does substantial mean?

A substantial effect is one that is more than a minor or trivial effect. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.

# The time taken to carry out an activity

The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

**Minor or Trivial Effects?**

# Around 25% of prisoners meet diagnostic criteria for ADHD

Source:

Young, S.J., Adamou, M., Bolea, B. et al. The identification and management of ADHD offenders within the criminal justice system: a consensus statement from the UK Adult ADHD Network and criminal justice agencies



**People with ADHD are at increased risk for low quality of life, substance use disorders, accidental injuries, educational underachievement, unemployment, gambling, teenage pregnancy, difficulties socializing, delinquency, suicide, and premature death.**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

Meta-analyses indicate that inattention is more strongly associated with **academic impairment, low self-esteem, negative occupational outcomes, and lower overall adaptive functioning.**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

A Swedish national register study of over 2.5 million people found ADHD patients had a **threefold greater risk of obesity** relative to their non-ADHD siblings and cousins.

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

The Adult Psychiatric Morbidity household survey conducted in England found that **27% of females who experienced extensive physical and sexual violence had ADHD traits**

Source: Young S et al., Females with ADHD: An expert consensus statement taking a lifespan approach providing guidance for the identification and treatment of attention-deficit/ hyperactivity disorder in girls and women.

**What does long-term mean?**

# What does long-term mean?

- The effect of an impairment is long-term if—
- It has lasted for at least 12 months, (b)it is likely to last for at least 12 months, or
- It is likely to last for the rest of the life of the person affected.
- If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur

# Long-term effects

The Act states that, for the purpose of deciding whether a person is disabled, a long-term effect of an impairment is one:

- which has lasted at least 12 months, or

- where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months, or which is likely to last for the rest of the life of the person affected (Sch1, Para 2)

After adjusting for other psychiatric disorders, urbanization level of residence, and monthly income, those with ADHD had 3.4 times the risk of developing dementia.

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.



# Assessing whether a past disability was long-term

The Act provides that a person who has had a disability within the definition is protected from some forms of discrimination even if he or she has since recovered or the effects have become less than substantial. In deciding whether a past condition was a disability, its effects count as long-term if they lasted 12 months or more after the first occurrence, or if a recurrence happened or continued until more than 12 months after the first occurrence (S6(4) and Sch1, Para 2). For the forms of discrimination covered by this provision see paragraph A16.

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# Normal day-to-day activities

The Act does not define what is to be regarded as a 'normal day- to-day activity'. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. .

Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern

# The way in which an activity is carried out

Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.

# Example:

A man with depression experiences a range of symptoms that include a loss of energy and motivation that makes even the simplest of tasks or decisions seem quite difficult. He finds it difficult to get up in the morning, get washed and dressed, and prepare breakfast. He is forgetful and cannot plan ahead. As a result he has often run out of food before he thinks of going shopping again. Household tasks are frequently left undone, or take much longer to complete than normal. Together, the effects amount to the impairment having a substantial adverse effect on carrying out normal day-to-day activities.



Adults with ADHD are more likely to experience inner restlessness, inability to relax, or over talkativeness. Hyperactivity may also be expressed as excessive fidgeting, the inability to sit still for long in situations when sitting is expected (at the table, in the movie, in church or at symposia), or being on the go all the time. Impulsivity may be expressed as impatience, acting without thinking, spending impulsively, starting new jobs and relationships on impulse, and sensation seeking behaviours. Inattention often presents as distractibility, disorganization, being late, being bored, need for variation, difficulty making decisions, lack of overview, and sensitivity to stress.

Source: Adamou, M., Asherson, P., Arif, M. et al. Recommendations for occupational therapy interventions for adults with ADHD: a consensus statement from the UK adult ADHD network.

# Safety

Normal day-to-day activities also include activities that are required to maintain personal well-being or to ensure personal safety, or the safety of other people.



A meta-analysis of 32 studies covering more than four million people found that those with ADHD had a 40–50 % greater risk of accidental physical injuries

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

**You must tell DVLA if your attention deficit hyperactivity disorder (ADHD) or your ADHD medication affects your ability to drive safely.**

**You can be fined up to £1,000 if you do not tell DVLA about a medical condition that affects your driving. You may be prosecuted if you're involved in an accident as a result.**

**Source: <https://www.gov.uk/adhd-and-driving>**

A U.S. study of over 8000 high school and collegiate athletes (predominantly male football players) found that **those with ADHD were three times as likely to have had three or more reported concussions**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

A meta-analysis of nine studies  
encompassing almost a million and a half  
people found that **ADHD is associated with a  
threefold greater risk of poisoning in  
children**

Source: Faraone SV et al. The World Federation of ADHD International  
Consensus Statement: 208 Evidence-based conclusions about the disorder.

Hyperactive-impulsive symptoms are associated with **peer rejection, aggression, risky driving behaviors, and accidental injuries.**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.



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A meta-analysis of 16 studies encompassing over 175,000 people estimated that controlling for mileage driven, those with **ADHD** were **23 % more likely to be involved in vehicular crashes**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

# Communication

Some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day communication activities. For example, they may adversely affect whether a person is able to speak clearly at a normal pace and rhythm and to understand someone else speaking normally in the person's native language. Some impairments can have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day-to-day activities.

# Basic functions

Account should be taken of whether the effects of an impairment have an impact on whether the person is inclined to carry out or neglect basic functions such as eating, drinking, sleeping, keeping warm or personal hygiene



Disordered eating behaviour has been associated with ADHD across both sexes.

Source: Young S et al., Females with ADHD: An expert consensus statement taking a lifespan approach providing guidance for the identification and treatment of attention-deficit/ hyperactivity disorder in girls and women.

A meta-analysis of 18 studies with more than 2500 children and adolescents found a moderate association between sleep disordered breathing and ADHD

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

# Effects of behaviour

Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities.

In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.

# Acceptable behaviour modifications?



Pretending to enjoy small talk



Avoiding saying what you think



Subjecting yourself to noises that cause you pain



Going to the toilet 3 times during a meeting because you can't sit still



Pretending to understand instructions



Pretending to be neurotypical

# Avoidance

Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do, or can only do with difficulty.

# Avoidance strategies

In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.

**Reasonable avoidance strategies?**



Some girls and women with ADHD become competent at camouflaging their struggles with compensatory strategies, which may lead to an underestimation of their underlying problems. ....Coping strategies may be less overt, such as avoiding specific events, settings or people, not facing up to problems, spending too much time online or not seeking out help when needed. Teenage and adult females with ADHD may turn to alcohol, cannabis and other substances to manage emotional turmoil, social isolation and rejection. Some may seek to obtain a social network by forming damaging relationships (for example, joining a gang, engaging in promiscuous and unsafe sexual practices, or criminal activities)

Source: Young S et al., Females with ADHD: An expert consensus statement taking a lifespan approach providing guidance for the identification and treatment of attention-deficit/ hyperactivity disorder in girls and women.



**A meta-analysis found that persons with ADHD attempted suicide at twice the rate of typically developing people, had over three times the rate of suicidal ideation and over six times the rate of completed suicide.**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

A meta-analysis found that **ADHD was associated with a more than twofold greater odds of alcohol-use disorders and nicotine-related disorders**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.

A meta-analysis of 29 studies found tht 23.1% of patients with SUD substance use disorder had adult ADHD. Age, gender, ethnicity and primary substance of abuse do not seem to systematically impact the prevalence rate of ADHD in SUD patients

Source:

Crunelle CL et al, van den Brink W, Moggi F, Konstenius M, Franck J, Levin FR, van de Glind G, Demetrovics Z, Coetzee C, Luderer M, Schellekens A; ICASA consensus group; Matthys F. International Consensus Statement on Screening, Diagnosis and Treatment of Substance Use Disorder Patients with Comorbid Attention Deficit/Hyperactivity Disorder.

# Effects of environment

Environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.

# Environmental effects

Environmental conditions may have an impact on how an impairment affects a person's ability to carry out normal day-to-day activities. Consideration should be given to the level and nature of any environmental effect. For example, whether background noise or lighting is of a type or level that would enable most people to hear or see adequately

**Atypical sensory processing is an  
important and often overlooked  
dimension in the diagnosis and  
classification of ADHD**

Source: Lane SJ, Reynolds S. Sensory Over-Responsivity as an Added Dimension in ADHD.



## Potential workplace adjustments for adults with ADHD:

Private office/quieter room/positioning in office, flexi-time arrangement, headphones, regular supervision, buddy system. Allowing productive movements at work, encouraging activity, structured breaks in long meetings. Provide beepers/alarms, structured notes, agendas, regular supervision with frequent feedback, mentoring, delegating tedious tasks, incentive/reward systems, regularly introducing change, breaking down targets and goals, supplement verbal information with written material.

### Source:

Adamou, M., Asherson, P., Arif, M. et al. Recommendations for occupational therapy interventions for adults with ADHD: a consensus statement from the UK adult ADHD network.

# Indirect effects

An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse effect on how the person carries out those activities



# Pain or Fatigue

Where an impairment causes pain or fatigue, the person may have the ability to carry out a normal day-to-day activity, but may be restricted in the way that it is carried out because of experiencing pain in doing so. Or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time

Consensus meeting attendees highlighted the co-occurrence of somatic symptoms such as pain and fatigue with ADHD in females, based on clinical observation. Elevated ADHD symptoms have been reported in clinical cohorts with **fibromyalgia, and chronic fatigue syndrome.**

Source: Young S et al., Females with ADHD: An expert consensus statement taking a lifespan approach providing guidance for the identification and treatment of attention-deficit/ hyperactivity disorder in girls and women.

# Medical advice

Where a person has been advised by a medical practitioner or other health professional, as part of a treatment plan, to change, limit or refrain from a normal day-to-day activity on account of an impairment or only do it in a certain way or under certain conditions.

# Effect of treatment or correction measures

Where a person is receiving treatment or correction measures for an impairment, the effect of the impairment on day-to-day activities is to be taken as that which the person would experience without the treatment or measures

# Effects of treatment

The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question

# Effect of medical treatment

- (1)An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
- (a)measures are being taken to treat or correct it, and (b)but for that, it would be likely to have that effect.
- (2)“Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

**Males with ADHD had a 38 % lower risk of crashes in months when receiving ADHD medication compared with months when not receiving medication, and females a 42 % lower risk in months when receiving ADHD medication. About a fifth of crashes would have been avoided if they had been on medication throughout the period of the study**

Source: Faraone SV et al. The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder.



A Swedish database study reported that  
**among those treated for ADHD, criminal  
conviction rates were reduced by 32% in  
men and 41% in women over a 3 year period**

Source:

Young, S., Gudjonsson, G., Chitsabesan, P. et al. Identification and treatment of offenders with  
attention-deficit/hyperactivity disorder in the prison population: a practical approach based upon  
expert consensus.



# Recurring or fluctuating effects

The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term'

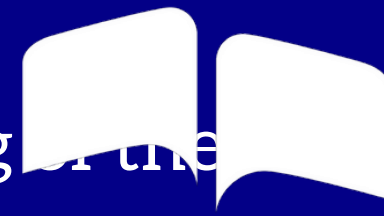
# Likelihood of recurrence

Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence.

**An illustrative and non-exhaustive list of factors which,  
if they are experienced by a person, it would be  
reasonable to regard as having a substantial adverse  
effect on normal day-to-day activities.**

Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case. That is, whether the substantial adverse effect of the impairment on normal day-to-day activities is long term.

In the following examples, the effect described should be thought of as if it were the only effect of the impairment:



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- **difficulty in getting dressed, for example, because of physical restrictions, a lack of understanding of the concept, or low motivation**
- **difficulty preparing a meal, for example, because of restricted ability to do things like open cans or packages, or because of an inability to understand and follow a simple recipe**
- **difficulty eating; for example, because of an inability to co-ordinate the use of a knife and fork, a need for assistance, or the effect of an eating disorder**
- **difficulty going out of doors unaccompanied, for example, because the person has a phobia, a physical restriction, or a learning disability**
- **persistent general low motivation or loss of interest in everyday activities**
- **inability to converse, or give instructions orally, in the person's native spoken language**
- **difficulty understanding or following simple verbal instructions**
- **difficulty hearing and understanding another person speaking clearly over the voice telephone (where the telephone is not affected by bad reception)**
- **persistent and significant difficulty in reading or understanding written material** where this is in the person's native written language, for example because of a mental impairment, or learning disability, or a visual impairment (except where that is corrected by glasses or contact lenses)
- **persistent distractibility or difficulty concentrating**
- **compulsive activities or behaviour, or difficulty in adapting after a reasonable period to minor changes in a routine**

**Is ADHD a disability?**

# An ADHD diagnosis requires:

- 1) the presence of developmentally inappropriate levels of hyperactive-impulsive and/or inattentive symptoms for at least 6 months;
- 2) symptoms occurring in different settings (e.g., home and school);
- 3) symptoms that cause impairments in living;
- 4) some of the symptoms and impairments first occurred in early to mid-childhood; and 4) no other disorder better explains the symptoms

# ADHD

A diagnosis of ADHD should only be made by a specialist psychiatrist, paediatrician or other appropriately qualified healthcare professional with training and expertise in the diagnosis of ADHD, on the basis of a full clinical and psychosocial assessment of the person; **this should include discussion about behaviour and symptoms in the different domains and settings of the person's everyday life**

Source: Attention deficit hyperactivity disorder: diagnosis and management  
NICE guideline [NG87] Published: 14 March 2018



# ADHD

**In order for a diagnosis to be made, manifestations of inattention and/or hyperactivity-impulsivity must be evident across multiple situations or settings (e.g., home, school, work, with friends or relatives), but are likely to vary according to the structure and demands of the setting.**

Source: ICD-11 for mortality and morbidity statistics, 06 Mental, behavioural or neurodevelopmental disorders



# ADHD

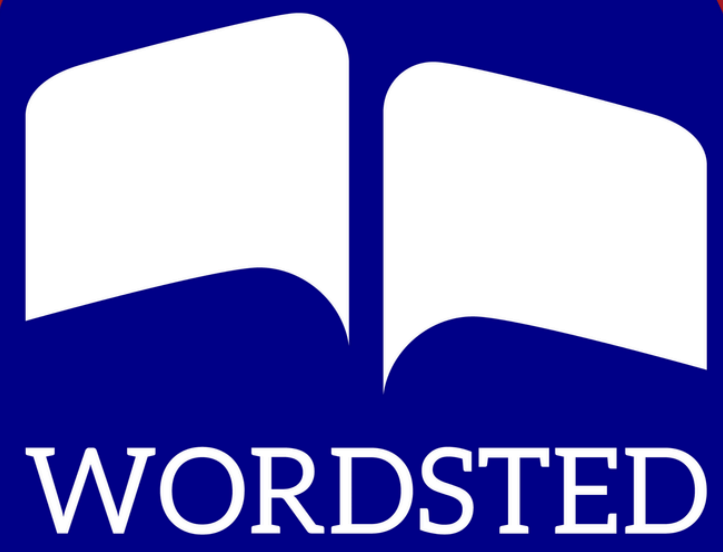
An ADHD diagnosis in adults is warranted, in part, if:

- the individual meets five out of nine listed symptoms of inattentiveness and/or five out of nine listed symptoms of hyperactivity/impulsivity
- **symptoms were present before age 12**
- **symptoms are persistent and significantly interfere with major life activities and/or result in significant suffering**

**Not convinced that ADHD  
is a disability?**

**Need more evidence?**

**<https://www.adhdevidence.org>**



[www.wordsted.co.uk](http://www.wordsted.co.uk)

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