



3. The definition of disability

What is the definition of disability in the new legislation?

A person falls within the protected ground of disability if the person has one or more long-term physical, mental, intellectual or sensory impairments.

How long is long-term?

The requirement for an impairment to be long-term is the same as used in the Jersey Discrimination Law in that the impairment must have lasted, or be expected to last, for not less than six (6) months; or is expected to last until the end of the person's life.

The objective of this time limit is to exclude minor illnesses and injuries because of concerns about trivial complaints.

In calculating the 6 months it will include any periods of remission and any periods where symptoms have been controlled by medical treatment. If there is any doubt about the long-term nature of the impairment medical or other expert evidence can be provided.

What is an impairment?

In order to provide greater clarity for individuals, employers and adjudicators, it was agreed that “impairment” should be defined as follows:

“impairment” means:

- a. the total or partial absence of one or more of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- b. the presence in the body of organisms or entities causing, or likely to cause, chronic disease or illness,
- c. the malfunction, malformation or disfigurement of a part of a person’s body,
- d. a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- e. a condition, illness or disease which affects a person’s thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour.”

Will someone need to prove how disabled they are?

The legislation will not require a person to prove, how and to what extent their

impairment adversely affects their ability to carry out, engage or participate in normal day-to-day activities.

Who decides whether the definition is met?

- It is a question of fact
- If the position is unclear, medical evidence may be sought

The legislation provides that evidence about whether or not the disability is long-term may be sought by the person with the impairment from a registered health professional, special educational needs coordinator or occupational health professional.

Employers may also consult with others such as Occupational Health specialists, e.g. to enable them to comply with their duty to make reasonable adjustments.

Further information

States of Guernsey information
<https://gov.gg/discrimination-guidance>

The consortium
www.consortium.gg

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The draft Prevention of Discrimination Ordinance (Guernsey) 2022 can be found on the States of Guernsey website:
www.gov.gg/article/190813/The-Prevention-of-Discrimination-Guernsey-Ordinance-2022

For more information on Discrimination Legislation and FAQ’s

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