

Appendix C – Definition of Disability

This appendix is included to aid understanding about who is covered by the DDA 1995 and should provide sufficient information on the definition of disability to cover the large majority of cases. The definition of disability in the Act is designed to cover only people who would generally be considered to be disabled. A Government publication ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’, is also available from The Stationery Office (see Appendix D for contact details).

When is a person disabled?

A person has a disability if s/he has a physical or mental impairment, which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

What about people who have recovered from a disability?

People who have had a disability within the definition are protected from discrimination even if they have since recovered.

What does ‘impairment’ cover?

It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

Are all mental impairments covered?

The term ‘mental impairment’ is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities.

What is a ‘substantial’ adverse effect?

A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

What is a 'long-term' effect?

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 is likely to be at least 12 months; or
- which is likely to last for the rest of the life of the person affected.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections, from which a person would be likely to recover within 12 months.

What if the effects come and go over a period of time?

If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is if it is more probable than not that the effect will recur.

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

They are activities which are carried out by most people on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or a sport, to a professional standard or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the DDA 1995. They are:

- mobility;
- manual dexterity;
- physical co-ordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

What about treatment?

Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops (i.e. the impairment has been cured).

Does this include people who wear spectacles?

No. The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

Are people who have disfigurements covered?

People with severe disfigurements are covered by the DDA 1995. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

What about people who know their condition is going to get worse over time?

Progressive conditions are conditions which are likely to change and develop over time. Examples given in the DDA 1995 are cancer, multiple sclerosis, muscular dystrophy and HIV infection. Where a person has a progressive condition s/he will be covered by the DDA 1995 from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability.

It should be noted that as a result of changes to the DDA 1995 due to be implemented, cancer, multiple sclerosis and HIV infection will be deemed to be a disability from the point of diagnosis without the need for the individual to show the condition has substantial adverse effect on normal day-to-day activities. Relevant information on changes to the DDA 1995 can be obtained from the Equality Commission for Northern Ireland.

What about people who are registered disabled?

Those registered as disabled under the Disabled Persons (Employment) Act (Northern Ireland) 1945 both on 12 January 1995 and 2 December 1996 were treated as being disabled under the DDA 1995 for three years from the latter date. At all times from 2 December 1996 onwards they are covered by the DDA 1995 as people who have had a disability. This does not preclude them from being covered as having a current disability any time after the three year period has finished. Whether they are or not will depend on whether they, like anyone else, meet the definition of disability in the DDA 1995.

Are people with genetic conditions covered?

If a genetic condition has no effect on ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition. If the condition is progressive, then the rule about progressive conditions applies.

Are any conditions specifically excluded from the coverage of the DDA 1995?

Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the DDA 1995. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed);
- seasonal allergic rhinitis (e.g. hayfever), except where it aggravates the effect of another condition;
- tendency to set fires;
- tendency to steal;
- tendency to physical or sexual abuse of other persons; exhibitionism; voyeurism.

Also, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

A person with an excluded condition may nevertheless be protected as a disabled person if he or she has an accompanying impairment which meets the requirements of the definition. For example, a person who is addicted to a substance such as alcohol may also have depression, or a physical impairment such as liver damage, arising from the alcohol addiction. While this person would not meet the definition simply on the basis of having an addiction, he or she may still meet the definition as a result of the effects of the depression or the liver damage.