

Definition of Disability^{1 2}

Disability Discrimination Act³ 1995 defines a disabled person as a person with 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'

This means that -

- A person must have an impairment that is either physical or mental;
- Impairments must have adverse effects that are substantial;
- Substantial adverse effects must be long term;
- Long term substantial effects must be effects on normal day-to-day activities.

For the purposes of the Act:

- substantial means neither minor nor trivial
- long term means that the effect of the impairment has lasted or is likely to last for at least 12 months (there are special rules covering recurring or fluctuating conditions)
- normal day-to-day activities include everyday things like eating, washing, walking and going shopping
- a normal day-to-day activity must affect one of the 'capacities' listed in the Act which include mobility, manual dexterity, speech, hearing, seeing and memory

Impairment

A disability can arise from a wide range of impairments such as:

- sensory impairments, such as those affecting sight or hearing;
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
- progressive, such as motor neurone disease, muscular dystrophy, forms of dementia and lupus (SLE);
- organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
- developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
- learning difficulties;
- mental health conditions and mental illnesses, such as depression, schizophrenia, eating disorders, bipolar affective disorders, obsessive compulsive disorders, as well as personality disorders and some self-harming behaviour;
- produced by injury to the body or brain.

¹ This is the summary of the following document: *Disability Discrimination Act – Guidance on matters to be taken into account in determining questions relating to the definition of disability* by the Equality and Human Rights Commission. (Document available online:

http://www.equalityhumanrights.com/uploaded_files/guidance_on_matters_to_be_taken_into_account_in_determining_questions_relating_to_the_definition_of_disability.pdf)

² This document does not take into consideration The Equality Act 2010, coming into force on 1 October 2010. Although the Act provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all, this does not represent any major changes in the definition of disability described in previous legislation. If at some point the consultation of the Act is deemed as necessary, this is available online: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf (of particular relevance are pages 4-5, 135-136)

³ The Disability Discrimination Act is a piece of legislation that promotes civil rights for disabled people and protects disabled people from discrimination.

The DDA 2005 removes the requirement for mental illness to be “clinically well recognised”. [3] This was something not previously required when establishing whether or not a person had a physical impairment. The requirement that a mental illness be “clinically well recognised” in the DDA (1995) limited recognition of mental illness to those “recognised by a respected body of medical opinion”. The focus is now placed more on the adverse effects experienced by individuals rather than meeting a medical diagnosis for specific conditions.

Substantial

A substantial effect is defined as one which is more than “minor” or “trivial”. 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.

Long Term

Long term effects are those defined as –

- having lasted for a period of at least twelve months; or
- where the total period for which it lasts (from the time of onset) is likely to be at least twelve months; or
- which is likely to last for the rest of the life of the person affected.

Normal day-to-day activities

In terms of the above, at least one of the following areas must be badly affected:

- Mobility
- Manual dexterity
- Physical Co-ordination
- Continence
- Ability to lift, carry or move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Understanding of the risk of physical danger

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 long term effect on how they carry out those activities.

Effects of Treatment

The Act provides that where impairment is being treated or corrected the impairment is to be treated as having the effect it would have without the measures in place.

Additional factors

If a person has previously experienced a disability that had a substantial affect on their ability to carry out normal day-to-day activities, but doesn't any more, it [the disability] will still be regarded as having that effect if it is likely to do so again.

People who have had a disability within the definition are protected from discrimination even if they no longer have a disability.

People with cancer, multiple sclerosis (MS) or HIV infection are all now deemed to be disabled persons for the purpose of the DDA (2005). A person who certified as blind or partially sighted

by a consultant ophthalmologist, or registered as such as a local authority are also deemed to meet the definition of disabled.

Progressive conditions, such as HIV infection or MS that will badly affect a person's ability to conduct normal day-to-day activities in the future will be treated as having a bad effect in the present.

Exclusions

The following are specifically excluded from the DDA:

- Tendency to set fires
- Tendency to steal
- Tendency to physically or sexually abuse others
- Exhibitionism
- Voyeurism
- Addiction to or dependency on alcohol, nicotine or any other substance (other than in consequence of the substance being medically prescribed)
- The condition known as Seasonal Allergic Rhinitis (e.g. Hayfever), except where it aggravates the effect of another condition.
- Lifestyle choices such as tattoos, non-medical piercing or something attached through such a piercing.