The Meaning of Disability

1. When is a person disabled?

A person has a disability if they have a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

2. What conditions / impairments are covered by the Act?

With the exception of Cancer, HIV and Multiple Sclerosis, there is no definitive list of conditions / impairments which are covered by the Act. Each case must be considered individually based on the definition given above, taking into consideration the effects of the impairment on the individual. The definition might include, for example, people with the following:

- sensory impairment (vision and hearing)
- heart conditions
- musculoskeletal conditions such as back problems
- recurring or fluctuating conditions, such as arthritis or asthma
- mental health problems, such as depression
- epilepsy
- dyslexia
- diabetes
- severe disfigurements
- learning disabilities

It should also be noted that individuals who are registered as blind or partially sighted by a local authority, or who are certified as being blind or partially sighted by a consultant ophthalmologist are automatically treated under the Act as being disabled.

If an individual has been disabled in the past due to a condition from which they have since recovered or from which they are in remission, then they are still protected from discrimination, victimisation or harassment by the Act.

3. 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.

4. What does ‘impairment’ cover?

It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.
5. Are all mental impairments included?

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.

6. 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.

7. What is a ‘long-term' effect?

A long-term effect of 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.

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

If 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.

9. 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 impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the Act. They are:

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

10. What about treatment?

Someone with 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).

Workers requiring treatment for an impairment must be allowed time off work to attend. This must be recorded as disability related absence and not counted as sickness absence.

11. 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.

12. Are people who have disfigurements included?

People with severe disfigurements are covered by the Act. 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.

13. Are there any other people who are automatically treated as disabled under the Act?

Anyone who is HIV positive, has Cancer or Multiple Sclerosis is automatically treated as disabled under the Act. In addition, people who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist are automatically treated under the Act as being disabled. People who are not registered or certified as blind or partially sighted will be covered by the Act if they can establish that they meet the Act’s definition of disability. Please refer to the Management of HIV/AIDS in Employment Procedure.

14. 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. Where a person has a progressive condition they will be covered by the Act from the moment the condition leads to an impairment which has some effect on the 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 said ability.
15. 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.

16. Are any conditions specifically excluded from the coverage of the Act?

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

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

Sourced from “The Duty to Promote Disability Equality: Statutory Code of Practice” England and Wales