

APPENDIX 1 – EHRC CODE OF PRACTICE GUIDANCE FOR EMPLOYERS THE MEANING OF DISABILITY

1. This Appendix is included to aid understanding about who is covered by the Act. Government guidance on determining questions relating to the definition of disability is also available from the Office of Disability Issues:

<http://www.officefordisability.gov.uk/docs/wor/new/ea-guide.pdf>

When is a person disabled?

2. 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.
3. However, special rules apply to people with some conditions such as progressive conditions (see paragraph 19 of this Appendix) and some people are automatically deemed disabled for the purposes of the Act (see paragraph 18).

What about people who have recovered from a disability?

4. People who have had a disability within the definition are protected from discrimination even if they have since recovered, although those with past disabilities are not covered in relation to Part 12 (transport) and section 190 (improvements to let dwelling houses).

What does 'impairment' cover?

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

Are all mental impairments covered?

6. 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 if a person has no medical diagnosis?

7. There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.

What is a 'substantial' adverse effect?

8. 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. **s.212**
9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.
10. 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 long-term effect on how they carry out those activities. For example, where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to do something but suffer 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.

What is a 'long-term' effect?

11. 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.
12. 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?

13. 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 might well recur.

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

14. They are activities which are carried out by most men or women 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 participating in 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.
15. Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

What about treatment?

16. 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 (that is, the impairment has been cured).

Does this include people who wear spectacles?

17. 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?

18. 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. However, they do need to meet the long-term requirement.

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

19. Anyone who has HIV, cancer or multiple sclerosis is automatically treated as disabled under the Act. In some circumstances, people who have a sight impairment are automatically treated as disabled under Regulations made under the Act.

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

20. 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 ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment might well have a substantial adverse effect on such ability in the future. This applies provided that the effect meets the long-term requirement of the definition.