



EQUALITY ACT 2010

Applies to Clubs and Associations in England, Scotland and Wales with 25 or more members

There have been at least 5 attempts to introduce Equality Legislation into England, Scotland and Wales over the last 10 years. The current Act was introduced as a Bill in April 2009; it has passed through both Houses of Parliament and received Royal Assent on 8th April 2010. The most relevant provisions are not yet in force but it is anticipated the main provisions will be operative between October 2010 and April 2011.

The responsibility for this action will fall to Theresa May MP as Home Secretary and Minister of Women and Equality.

The Government Equalities Office drove the legislation. Details and updates are likely to be posted on their website <http://www.equalities.gov.uk/Default.aspx>.

Its aim is to harmonise discrimination law and to strengthen the legal framework supporting equality in England, Scotland and Wales. It repeals, re-enacts and consolidates approximately 116 Acts of Parliament and Regulation. The most significant for the purposes of this paper are The Sex Discrimination Act 1975; The Race Relations Act of 1976; and The Disability Discrimination Act of 1995. The Equality Act is in 15 parts each subdivided into various chapters which are themselves divided into various sections. The Act concludes with 28 Schedules.

It should be noted that no interim or transitional arrangements have been presented. **Compliance will need to be absolute from the day of commencement.**

Those framing the Act appear to have applied special effort to catch golf clubs fairly and squarely within the ambit of the legislation (the number of examples relating to golf clubs contained in the Explanatory Notes to the Act bear this out) and accordingly almost all of the scenarios and services associated with the provision of golf are covered by the Act.

Whilst it may be thought that explanatory notes are merely guidelines with little value it should be noted that The Explanatory Notes will be used by judges as an aid to statutory construction if there is any ambiguity as to the meaning of a particular Section of the Act.

Golf clubs are put on notice that the time for preparation for change is **Now**. They need to be ready to implement once the legislation is brought into force and not when they are pushed by their members or once they are required to defend proceedings in the County Court. Although some prospective claimants will be driven by a desire of compensation, it is expected that this area of law will also be driven by earnest claimants enforcing their principles and seeking to ensure the change foreseen by the statute are delivered.

Their intentions are to be treated with respect and taken very seriously.

The new legislation applies to all golf clubs in England, Scotland and Wales with 25 or more members. The main provisions of the Act directly affecting a private members golf club are contained in **Part 7**. Single sex clubs are not totally exempt from the new legislation. A single sex private members club that has "associate members" of the opposite gender will have to look carefully at its constitution as to the impact the new Act will have on its operations. It must also be remembered that it will remain unlawful for a single sex club to discriminate against an individual possessing one or more of the other seven (see below) protected characteristics for example age or transgender.

The Act makes unlawful, discriminatory behaviour against **members; visitors; guests and associate members** possessing one or more of the protected characteristics and provides the following remedies:

The Act defines the jurisdiction of the courts in relation to the new legislation (s.114) and makes wide general provision in respect of the remedies that can be applied. These are found at s.119 as follows:

Section 119(1)

"This section applies if a county court of the sheriff (Scotland) finds that there has been a contravention of a provision referred to in section 114(1)."

Section 119(2)

"The county court has the power to grant any remedy which could be granted by the High Court-

(a) In proceedings in tort:

(b) On a claim for judicial review."

Section 119(4)

"An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)."

This is a **significant power for the County Court** and there is a **very wide range of orders** that a claimant might seek in addition to a simple claim for damages. The full range of interlocutory relief would be open to the court as would the power to **change decisions and make changes to documents** as such powers would be available to a court judicially reviewing a decision.

The protected characteristics are (and there are eight) (s.4):

- Age;
- Disability;
- Gender Reassignment;
- Marriage and civil partnership;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

The definition of race for the purposes of discrimination law has been made non-exhaustive (i.e. **race now includes colour, nationality and ethnic or national origin**) and the definition of **gender reassignment** has also been widened such that there is no longer any need for an individual to be under medical supervision to be protected against discrimination.

It is worth considering both **direct and indirect discrimination** in some further detail before proceeding. Much will hinge upon the **legitimacy of aims and proportionality of means** when attempting to distinguish between age groups.

Direct Discrimination

Section 13 (1)

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

Section 13(2)

"If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim."

Indirect Discrimination

The core provisions in relation to Indirect Discrimination are found in the Act at Section 19(1):

Section 19 (1)

"A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's"

Section 19(2)

“For the purposes of subsection (1) a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if-

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) It puts or would put B at that disadvantage, and
- (d) A cannot show it to be a proportional means of achieving a legitimate aim.”

Thus to simplify:

“A person (the club) directly discriminates against another (member visitor guest or associate member) if, because of a protected characteristic, the club treats him/her/them less favourably than A treats or would treat others.”

E.g. Women or Associate members (in the case of a club which is stated to be a single sex club but which has associate members of the opposite gender) will not be allowed to vote.

Indirect Discrimination ss. 19 (1) & (2)

Indirect discrimination occurs where the effect of certain requirements, conditions or practices imposed by a club has an **adverse impact disproportionately on one group or other**.

E.g. Members 65 with 15 years membership receive discount members 45 with 15 do not (see below)

The Act also prohibits and makes unlawful Combined Discrimination: dual characteristics (s.14).

A legitimate distinction may not be applied in an underhand way. Any effort to do so would be susceptible to challenge and it is most unlikely that a judge will look favourably on any club that tried to do it.

An objective justification will allow clubs to discriminate both directly and indirectly on the basis of age. They must, however, show that this discrimination is ‘proportionate’ and contributes to a ‘legitimate’ aim.

Proportionate means that:

- what the club is doing is actually achieving its aim in other words where is the objective evidence to support the decision (say) to continue with age related discounts to achieve the stated aim (usually the retention of members)?
- the discriminatory effect should be *significantly* outweighed by the importance and benefits of the legitimate aim. This may be difficult to establish.
- the club should have no reasonable alternative to the action they are taking. If the legitimate aim can be achieved by another or less discriminatory means, they must then opt for that route.

Legitimate means e.g.:

- economic factors such as the needs of and the efficiency of running a business
- the health and welfare including the drive that both older and younger people should leave a healthy and active life style and arguably the benefit to the mental health of older people through association with people of the same age.

A legitimate aim must correspond with a legitimate need of the club. It is not easy to prove objective justification, and the club will have to provide valid evidence if they are challenged.

For example, some clubs have policies that link subscriptions and benefits to a member’s continuity of membership. This may indirectly discriminate against younger people who are less likely to have been members for that length of time. In employment matters additional benefits coupled with a fixed length of service is seen as being a proportionate way of encouraging staff loyalty. It is for the courts to decide whether a loyalty bonus is a proportionate means of rewarding members loyalty but it is considered that if a club wishes to implement such a system it has to apply to all proportionately across the membership spectrum.