



DISABILITY LEGISLATION & MOTORISED BUGGIES

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The Equality Act 2010, most of which came into force on 1 October 2010, replaces in one statute all pre-existing UK legislation dealing with discrimination (including disability discrimination). The Act is introduced to harmonise discrimination law and strengthen the law to support progress on equality.

KEY POINTS TO NOTE

DEFINITION OF DISABILITY

Under the Act, a person is disabled if he has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

This definition of disability remains fairly consistent with previous legislation, but a couple of useful points to note are:

- a disability needs to be long term, meaning that the impairment has lasted or is likely to last for at least 12 months or the rest of the individual's life;
- disability is not just about obvious physical impairment but can include illnesses such as cancer, HIV and multiple sclerosis.

What is and is not classified as a disability may not be obvious. When in any doubt, clubs should seek advice from a solicitor, or see the relevant guidance from the Equality and Human Rights Commission (see below).

Golf clubs are advised to give careful consideration to all requests for the usage of golf buggies.

DISCRIMINATION

There are two types of discrimination that are prohibited under the Act: **direct and indirect discrimination.**

Direct discrimination occurs when a person is treated less favourably than another because of their disability or the disability of someone else. Direct discrimination because of disability can never be justified.

Note that it is not discriminatory to treat a disabled person more favourably than a person who is not disabled. In fact, in some cases, this may be required in order to comply with the duty to make reasonable adjustments (see below).

Indirect discrimination occurs when a provision, criterion or practice is applied in the same way to everybody but it puts individuals with a disability at a particular disadvantage. Indirect discrimination can be justified if the provision, criterion or practice is a proportionate means of achieving a legitimate aim.



Example: a golf club chooses to limit the number of golf buggies allowed on the course at the same time following heavy rainfall because too many vehicles would irreparably damage the fairways. This may prevent some elderly or disabled persons from being able to access the course, yet this could be argued as acceptable discrimination if the club could argue genuinely that this action was necessary to achieve the legitimate aim of preserving the quality of the course. Therefore, depending on the circumstances, limiting the number of golf buggies allowed on the course at the same time could be seen to be a proportionate means of achieving that end.

DUTY TO MAKE REASONABLE ADJUSTMENTS

The law already required golf clubs to make reasonable adjustments for disabled persons. However, the new legislation clarifies the position as follows:

The duty to make reasonable adjustments comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison to non-disabled people:

- the first requirement covers changing the way things are done (such as changing a practice);
- the second covers making changes to the built environment (such as providing access to a building, eg a clubhouse);
- and the third covers providing auxiliary aids and services (such as providing motorised golf buggies).

A new provision expressly provides that a disabled person cannot be required to pay for the cost of complying with the duty to make reasonable adjustments.

A failure to comply with a duty to make reasonable adjustments is unlawful discrimination. The duty is anticipatory and clubs should therefore not wait until a disabled person experiences difficulties using the service provided.

On the golf course, this will require a thorough hole by hole risk assessment where the use of buggies gives rise to health and safety concerns. All such audits must be fully documented. Where areas of danger are identified, clubs must take reasonable steps to eradicate or minimise the danger which could involve the creation of paths or new routes, or strengthening existing bridges.

With the protection of the course in mind, a further documented audit could permit clubs to consider prescribed routes, or to operate a 90 degree policy requiring buggies to travel through the rough until adjacent with the players ball.

There is no mandatory obligation on clubs to provide storage facilities for disabled members buggies.

SUMMARY

The Equality Act 2010 imposes certain obligations upon associations such as golf clubs in relation to disabled persons, specifically who are members, seeking to become members, associates, guests or visitors. Any golf club would be required to make "reasonable adjustments" to avoid disadvantaging its disabled members, guests or visitors. Making reasonable adjustments would include, so far as reasonable, auxiliary aids to prevent disabled persons from being substantially disadvantaged. On this basis, golf clubs are likely to be required to provide golf buggies for such individuals, again so far as is reasonable in the circumstances of the club. Whether this is reasonable would depend upon a number of factors but most relevant would be whether the terrain of the golf course was suitable for



buggies or whether the club could afford to purchase or provide golf buggies. It is an important principle that a golf club is only required to make the necessary adjustments to either policies and practices, physical adjustments to its premises or the provision of auxiliary aids such as golf buggies where it is reasonable in all the circumstances.

Clubs must allow access to the course by disabled golfers and to permit them to use buggies in appropriate circumstances and can therefore not ban buggies without justification, but there is no obligation to make "reasonable adjustments" such as the provision of golf buggies for other guests, members or visitors other than those with disabilities.

Notes to this advice bulletin

- *Further advice on this subject can be obtained from the governments webpage*
◆ *<http://www.legislation.gov.uk/ukpga/2010/15/contents>*
- *A sample wording (and template) is available for clubs who wish to adopt a policy on the use of buggies in club competitions. See 'Generic Transportation Policy – TEMPLATE'*
◆ *<http://www.scottishgolf.org/go/club-services/practical-guides>*
- *The Equality and Human Rights Commission has a Helpline (0845 604 5510) and a website (<http://www.equalityhumanrights.com>).*
- *If clubs have any queries or concerns in relation to the issues set out above, it is recommended that they seek independent legal advice from a qualified solicitor.*