

INTERIM POSITION PENDING PASSAGE OF FINAL BILL



Equality Bill

Implications for Golf Clubs across Scotland

Disclaimer: The Scottish Golf Union and the Scottish Ladies' Golfing Association have sought advice from law firm DLA Piper on the implications for golf clubs across Scotland of the Equality Bill which is currently progressing through the UK Parliament. This guidance note sets out a summary of that advice. The Bill has not yet finished its parliamentary consideration and as there may be more changes to the proposals, this note will be amended when the Bill is passed to reflect the final position.

Note also that the advice provided in this guidance is general in nature and is based on an understanding at an early stage of how the proposals will work in practice. Clubs may wish to take additional legal advice tailored to their own particular circumstances.

Q1. What is the purpose and objective of the Equality Bill?

A. The purpose of the Bill is to promote equality and fairness of opportunity, tackle discrimination in all of its forms and to strengthen and modernise the law in this area.

The main proposals in the Bill are to:

- **Extend the circumstances in which a person is protected against discrimination (both direct and indirect), harassment or victimisation because of a protected characteristic.**

Protected characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation.

INTERIM POSITION PENDING PASSAGE OF FINAL BILL

- **Introduce a single equality duty, which will require listed public bodies to consider the diverse needs and requirements of their workforce, and the communities they serve, when developing employment policies and when planning services.**

The practical effect is that listed public authorities will have to consider how their policies, programmes and service delivery will affect people with the protected characteristics. Private bodies which provide such services to local authorities will similarly be expected to comply;

- **Place a new legal duty on listed public bodies to consider socio-economic disadvantage when making strategic decisions about how to exercise their functions**
- **Extend positive action measures to allow an employer or service provider or other organisation to take positive action so as to enable existing or potential employees or customers to overcome or minimise a disadvantage arising from a protected characteristic (e.g. gender, age)**
- **Reduce nine major pieces of primary legislation, and around 100 statutory instruments into one Act, making the law more accessible and easier to understand.**

The Act applies to **Scotland, England and Wales**.

Q2. When will the Bill become law?

A. It was originally envisaged by Government that the Bill would come into effect beginning **autumn 2010 - probably on a phased basis although the details of this have not yet been specified**. However, to meet that deadline, the Bill requires to be passed before Parliament is dissolved prior to the 2010 general election, which could be as early as mid to end April 2010 (assuming a general election date for around 3 June).

Q3. What will the Bill mean in general terms for golf clubs?

A. First of all, it is important to note that:

- a number of changes being introduced by the Bill apply only to specified public sector bodies and not golf clubs;
- several new obligations apply to employers and as such will impact on golf clubs which employ staff on a full or part time basis;
- those new obligations that will impact mixed golf clubs will only do so where clubs have 25 or more members;
- there is a general exception from the obligations of the Bill on age discrimination in relation to anyone under 18 years of age;
- there is an exception from the new obligations for golf clubs whose constitutions restrict memberships to certain specified characteristics (usually men or women only clubs). **See Q&A5 below.**

INTERIM POSITION PENDING PASSAGE OF FINAL BILL

- there are also exceptions from the new obligations in the context of competitions in gender affected activities (which would include golf). **This is discussed at Q&A4 below.**

Q4. What will the new obligations mean in general terms for mixed golf clubs?

A. *Members / Associates*

For golf clubs which allow both male and female members, the Bill will outlaw discrimination on the terms and conditions of membership (e.g. subscription fees, access time etc), status or treatment of different members (e.g. females only becoming associate members) or the manner in which it allows access to facilities (e.g. women not being allowed in a particular bar).

In competitive matches, including medals, the new law will retain the existing provision whereby there is no breach of the law in excluding anyone of one gender from a competition. However, there may be a requirement to provide equal numbers of competitions.

Guests

Mixed golf clubs must also not discriminate against guests **on grounds of any protected characteristic (eg gender, age or race).**

Public

If clubs allow members of the public to use any facilities of the clubs from time to time, including as both golfers or spectators to any competitions, then the Bill protects members of the public from being discriminated against in the way in which they access any services, facilities or premises. Clubs in this position should take separate legal advice to fully understand their obligations here.

Employees

If any clubs employ staff on a full or part-time basis, then as employers, there are many obligations under this Bill and other legislation (equality and employment law) which will regulate the way clubs must treat staff and job applicants. Clubs in this position should take separate legal advice to fully understand their obligations.

Q5. What will the Bill mean for genuinely -single gender clubs?

A. The Bill currently has an exception for "characteristic associations" - in other words organisations whose main purpose is to bring together individuals with a certain shared characteristic (eg a particular disability, religion or gender). Quite obviously this includes men or women only golf clubs. Organisations in this category **do not require to comply with certain aspects of this legislation.**

However, there are two qualifications to this:

- organisations only fall into this category if they have a legal constitution into which it is written that membership to that organisation is only for eg that gender. Clubs should therefore review their constitutions and take appropriate advice and guidance to ensure their position is robust;

INTERIM POSITION PENDING PASSAGE OF FINAL BILL

- this exemption does not allow, for example, a men's only club to apply rules which are discriminatory on grounds of age. The exemption only applies to the characteristic of that association

Q6. Does the Bill permit positive action to maintain and grow membership in underrepresented categories such as women?

A. The Bill does permit (though does *not require*) positive action. However this should not be confused with positive discrimination.

- Positive action relates to encouraging training and opportunities from under-represented sectors and might include, for example, a PR campaign to encourage female members to join the club.
- Positive discrimination is where an individual gains preferential treatment and an advantage due to his or her protected characteristic but not due to merit. So while a PR campaign to encourage female membership is acceptable, accepting women as new members ahead of or to the exclusion of any man would not be nor would appointing a female to a committee position simply to ensure a certain number of women are on that committee.

Q7. In terms of membership fees can clubs offer:

- **discounted membership rates to women on the basis that they are underrepresented in most golf clubs?**

A. No. This would clearly amount to a sex based difference which would not be permitted.

- **discounted membership rates to people between 18 - 30 on the basis that they are underrepresented in most clubs?**

A. There has been a recognition of the difficulties in retaining junior members when they reach the age of 18, or in attracting members early in their adulthood. Offering a discount of membership fees in this age group may be seen as a proportionate way of redressing an age imbalance in a club's membership taking account as it does their ability to pay a full subscription. Obviously, this rate should be offered equally to men and women.

- **a discounted membership to people reaching a specified age e.g. 60 or 65 (seniors?) given that they are unlikely to be underrepresented in most golf clubs?**

A. Unlikely. It may be problematic to show that applying discounts in this situation would amount to a *proportionate means of achieving a legitimate aim*. In most clubs it is unlikely that this age group is likely to be underrepresented. It would therefore be difficult to see a legitimate aim that could be promoted by offering a discount

INTERIM POSITION PENDING PASSAGE OF FINAL BILL

- a discounted membership to members who have held membership of the club for a specified number of years (eg loyalty reward)?

A. Unlikely. First of all there is no proposed exception in the legislation for loyalty rewards such as this for membership of associations (there are limited exceptions in the employment context). It may be problematic to justify that applying a discount such as this would amount to a *proportionate means of achieving a legitimate aim*. In most clubs it is unlikely that those age groups likely to benefit from loyalty rewards are underrepresented (usually these would be 60 years plus based on a loyalty criteria of eg 30 or 40 years membership). It would therefore be difficult to see a legitimate aim that could be promoted by offering the type of typical loyalty rewards that golf clubs offer.

Q8. What is permissible in terms of the treatment of individuals on waiting lists for membership in terms of ring-fencing, minimum and maximum numbers relating to gender and age?

A. This is likely to be considered positive discrimination or some form of quota system and accordingly would not be lawful under the Bill for most clubs other than those exempt from the Bill (e.g. fewer than 25 members).

However a club could operate one waiting list for each category of membership (full, associate, junior etc) where priority is based on date of application only and not on any protected characteristic.

Q9. What impact will the Bill have on the composition of the Committee, Board and Officer positions within the club? Will there be a requirement for a minimum number of either gender and is positive action needed or indeed permissible?

A. The bill does not allow you to discriminate in making appointments to offices which would include Committee, Board or officer positions **only** if these positions are paid (and not simply given expenses). Many clubs are unlikely to pay Committee/Board members and officers any remuneration other than expenses and accordingly, the discrimination provisions in the Bill will **not apply**. However it may still be good practice to encourage varied composition of committees without setting quotas.

However if Clubs do pay these officeholders then it will be illegal to set a minimum number or other quota to committees, for example, for either gender.

Q10. What safeguards can be put in place to minimise a club's exposure to bullying and harassment between members?

A. If male members abuse female members, say, for instance, for playing at a time that used to be (or in their view should still be) retained exclusively by men, there would potentially be grounds for female members to raise legal action against either or both the club and the individual men concerned.

To limit the club's exposure, all staff and members should be notified on a continuing basis of the club's equality objectives, which could be by way of a one off communication (eg a letter to members)

INTERIM POSITION PENDING PASSAGE OF FINAL BILL

and display of notices. The club's complaints procedure and membership rules could also be amended to incorporate diversity based complaints.

NOTE: [Specimen Equality Policy](#) for information and guidance for clubs to adapt and use locally to suit their specific needs.

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