



Equality Act 2010  
Implications for Golf Clubs across Scotland

**Disclaimer:** Scottish Golf has sought advice from law firm DLA Piper on the implication for golf clubs across Scotland of the Equality Act. This guidance note sets out a summary of that advice. This note has been updated on more than one occasion as new questions have arisen. However the guidance and interpretation contained within has not materially changed from previous editions.

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 legislation 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 Act?**

**A.** The purpose of the Act 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 Act 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.
- **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.**

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### Q2. When will the Act be applicable?

- A. The Bill received Royal Assent in April 2010 and formally became The Equality Act 2010. The provisions of the Act relating to gender, religion or belief, pregnancy, motherhood and sexual orientation became effective in October 2010. The provisions relating to age will become effective on 1 October 2012.

### Q3. What will the Act 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 Act 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;
  - the age discrimination ban does not apply 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.**
  - 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 Act 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, religion, disability or race etc.).**

*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 Act 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 Act 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 Act mean for genuinely single-gender clubs?

- A. The Act currently has an exception for "characteristic associations" - in other words organisations whose main purpose is to bring together individuals with a certain shared

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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;
- this exemption does not allow, for example, a men's only club to apply rules which are discriminatory on some other ground e.g. disability or religion. The exemption only applies to the characteristic of that association.

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

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

- Positive action relates to encouraging interest, training and opportunities from under-represented sectors. This might include, for example, a PR campaign to encourage new female members to join the club; ensuring that there are appropriate facilities within any club for women; the offer of a free golf lesson, and even a very limited discount/waiver of a month's membership fees for example. In taking positive action, clubs should first take steps to identify what potential barriers exist to membership within underrepresented groups. However, the **key** is that positive action must be proportionate and targeted and cannot go beyond what is absolutely necessary, otherwise this risks becoming positive discrimination which is unlawful;
- 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 the offer of a free golf lesson, waiver of a month's membership fee or a PR campaign to encourage female membership is acceptable, offering different membership rates for men and women would not be. Nor would accepting women as new members ahead of or to the exclusion of any man or appointing a female to a committee position simply to ensure a certain number of women are on that committee. We appreciate that this may be a fine distinction in practice and so clubs should consider taking steps with caution.

### **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 amount to discrimination on grounds of sex which would not be permitted. The provisions in the Act regarding direct discrimination on grounds of gender do not allow for discrimination to be justified where different treatment would be a proportionate means of achieving a legitimate aim (e.g. to encourage female membership).

- **A club that formerly had a category for men (Full Members – 500 members) and a separate category for ladies (Ladies' Associate – 100 members) wishes to comply with the Act by retaining the Full Member category and replacing the Ladies' Associate category with an Associate category. The club wishes to cap the Associate category at 150 members to minimise any potential financial losses. Both the Full and the Associate categories will be available to men and women as required by the Act. However, the club wishes to minimise any loss of lady members by transferring all Lady Associate members into the new Associate Category, effectively providing the ladies with preferential access to this new category. Is this permissible and what happens if, once all 100 ladies transfer, more than 50 men wish to join the Associate category?**

**A.** Like many of these cases, the Equality Act does not expressly deal with this situation. In our view, there are two possible options:

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1. You operate the new membership on a first come, first served basis for all members, male or female. The first 150 to sign up will get the places. This way, you are allocating the 150 'Associate' places in a way which doesn't discriminate on grounds of sex, as both the male and female members of your club will have an equal opportunity to become 'Associates'. This, technically, could be seen as the fairest option.

However, we acknowledge that this may result in many of your female members losing out. Not only would this be contrary to the spirit of the Act, but it would be undesirable from your point of view.

Therefore, there is the second option.

2. You transfer all 100 of your 'Female Associates' into the 'Associate' category first, and then operate on a first come, first served basis for the remaining 50 places. This ensures that you will not lose any of your female membership, and still presents an opportunity for the males in your club to apply to become 'Associates' (though it is accepted there is a limited number of places). If you find that there is an overwhelming demand for 'Associate' memberships, you could reconsider your cap of 150. And, of course, should any of your 'Female Associates' wish to become full members, you must give them the opportunity to do so.

A separate point worth noting relates to your constitution. Is it required by your club's constitution for all members to vote on changes such as these? If it is, then your male members will have to approve these changes before they come into operation. If this is the case, and the members vote in favour, then you may find yourself in a stronger position, having made these changes with the consent of a democratic majority of your male members (and arguably tacit consent to the fact that a lesser number of places will be available for men for the time being). Clearly if the male members do not accept such a situation then this will be flushed out at any vote. At that stage you could explore other options, eg using first come, first served as the basis for all places in this membership class.

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

**A:** Such discounts remain lawful.

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. Therefore, such discounts remain lawful as the provisions on age discrimination allow for differences in treatment where these can be justified as proportionate to achieve a legitimate aim.

**• 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:** Yes - as is the case in respect of people aged between 18 - 30, clubs can lawfully offer services at different prices depending on a person's age and thus can introduce a discounted senior membership.

**• If a club offers discount for seniors but defines a senior lady as 60+ and a senior man as 65+, is this in contradiction to the Act? Is this muddled by separate plans re harmonisation of retirement age?**

**A:** Under the Act it would be discriminatory to have different fees charged for men and women. Under the age provisions, it remains possible to have different fees for different age groups.. For example, to objectively and with good reason target a particular age group, reduced fees could be offered to men and women over the default retirement age of 65 on the basis that their incomes are likely to be less as they are likely to have retired.

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- **May a club offer a discounted rate for couples joining a club and what measures could a club take to ensure that such discounted rates are not abused by bogus couples?**

**A:** A club is entitled to offer a package price for a couple or family membership. For example, if a full member subscription was £500 per annum, a club could offer a couple membership at £750 per annum (provided, of course, that this offer was also available to same-sex couples). It would be reasonable and permissible to require that to constitute a couple or a family, applicants must be living at the same address and be able to provide reasonable evidence of joint residence required. In some cases, terms & conditions go slightly further to say living together "as a couple" and so sibling couples or friends are not eligible. This would also be permissible.

- **Can clubs offer discounted membership rates to people with a disability on the basis that they are underrepresented in most clubs?**

**A:** Yes. The Act allows for positive action where: persons who share a protected characteristic suffer a disadvantage connected to the characteristic; persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or; participation in an activity by persons who share a protected characteristic is disproportionately low. Disabled persons could be said to fall into all three of these categories.

A club may take positive action in order to: enable or encourage persons who share the protected characteristic to overcome or minimise their disadvantage; meet their needs, or; enable or encourage persons who share the protected characteristic to participate in the activity in question. Offering discounted membership fees could, again, be said to fall into all three of these categories. It should be noted, however, that the action taken (in this case, the discount offered) must be a proportionate means of achieving the aim. The discount should not, therefore, be seen to be unjustifiably high.

- **A discounted membership to members who have held membership of the club for a specified number of years (e.g. loyalty reward)?**

**A:** Clubs remain entitled to offer discounted memberships based on a specified number of years' membership (e.g. a loyalty reward).

- **Is it permissible to link age and loyalty criteria together in providing a concession?**

**A:** Yes. If a decision to link the criteria was to be challenged, it would always be possible to rely on a member's failure to be part of a particular age group or failure to have accrued membership for a specified number of years in justifying refusal of the concession.

By way of example, where a club puts in place a discount for members who are aged 65 and over and who have been members for 25 or more years:

- any members under 65 would be ineligible on the basis of failure to be part of a particular age group
- any members with less than 25 years membership would be ineligible on grounds of failure to be a member for more than a specified number of years

- **Does the Act require a club to offer equal number of competitions to men and women?**

**A:** The Act is not clear or specific on this issue. Clubs are recommended to adopt a common sense approach, based on equality of opportunity and provision, for example, ensure that there are opportunities for female full members to play in a competition on a Saturday morning. Furthermore, such a common sense approach would allow for a proportional number of tee-times to be allocated to competitions for either gender based on the number of members of either gender in membership at the club, e.g. if a club has 400 male full members and 100 female full members, it might be reasonable to allocate 1/5<sup>th</sup> of tee times to ladies competitions.

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**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 Act for most clubs other than those exempt from the Act (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 Act 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 Act 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 Act 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.

**• If an Officer of the club receives an honorarium, does this constitute being paid and this does the Act apply?**

**A:** This is something of a grey area. There is no specific guidance on the issue, however, our analysis is as follows:

First, the committee members are not employees. The payment of a **true** honorarium, ie a non-regular, *ex gratia*, nominal payment of £1000-2000 while in office, should not change that. We are working, then, with the part of the Act which deals with Office-Holders. The relevant section of the Act is s 49 which states:

(2) A personal office is an office or post—

(a) to which a person is appointed to discharge a function personally under the direction of another person, and

(b) in respect of which an appointed person is entitled to remuneration.

If a person is an unelected committee member of a golf club, they fall under (a). But if they are unpaid (besides expenses and loss of income), they do not fall under (b). Therefore, unpaid committee members are not subject to the act, and this is reflected in the latest version of our Advice Note.

Does this change if the committee members are paid honoraria? The situation remains the same in respect of (a). The question therefore becomes; is (b) satisfied? In our view, the key word here is 'entitled'.

An honorarium, as generally understood, is a gratuitous nominal sum (in this case £1000-£2000), paid as a 'thank you', to which the donee is **not** entitled. By definition, there is no entitlement to an honorarium. If the donee were to have an entitlement, the donor would have to have a corresponding obligation. In which case, the payment in question would cease to be an honorarium and would become something else.

In the present circumstances, the committee members are persons appointed to discharge a function personally under the direction of another person, but they are not entitled to remuneration. As such, as long as the payment of honoraria does not occur because of any entitlement, s 49(2)(b) is not satisfied and the Act does not apply.

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We must advise that this is an untested issue. If circumstances exist where either an employment contract could be inferred, or an entitlement to payment exists, then there is every possibility that the Act could be seen to apply. However, as long as the payments in question are **true** honoraria, the Act should not apply.

### 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) 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.

### • What are the likely outcomes if a club is found not to comply with the Act?

**A:** A member of a golf club can sue his/her own golf club, and there is precedent for members taking their own golf clubs to court in Scotland. The Act fully anticipates that any person affected by discrimination can take action. This includes, but is not restricted to, members of clubs. Clubs could also be taken to court by prospective members, guests, members of the public using services and employees/prospective employees.

If discrimination arises in an employment situation then it is the usual employment tribunal case with risk of damages etc; if it relates to discrimination in the provision of goods/services to a member of the public then an individual could raise a sheriff court action for damages. The amount of damages is difficult to predict as it would depend upon the issues but it could be thousands of pounds. The court could also attack any decision made by the club and force it to take remedial action to become compliant (that could force a change in policies or even services). Again this could have a material consequential financial impact.

In addition, the Commission for Equality and Human Rights has power to: intervene in cases taken by others or support them; initiate legal action itself including seeking interim interdict (though the right to take legal action per se is more limited and unlikely to be used against private clubs – though it is possible); and conduct an investigation into an unlawful act. This might be more likely to be undertaken on a sector basis: eg if there was systemic failure across many golf clubs then they could initiate an investigation into the sector, and/or enter into legal agreements with bodies to stop discrimination. They have also indicated they would name and shame sectors/major organisations which consistently failed to embrace the principles of the Act.

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**DLA Piper Scotland LLP**