



Equality Act 2010

Guidance issued for Scottish bowling clubs
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What is the Equality Act 2010?

The Equality Act 2010 provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all. The Act brings together for the first time all the legal requirements on equality that the private, public and voluntary sectors need to follow. It affects equality law at work, delivering services and running sports clubs.

The Act replaces all the existing equality law including:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995

NB: This document contains the advice and opinions of Bowls Scotland and has been issued to try and help our member clubs understand the implications of the Equality Act 2010.

This guidance is our interpretation of how this legislation will work in practice. It is individual clubs responsibility to take legal advice should they have any concerns about their own particular circumstances.

The Equality Act protects people from discrimination on the basis of certain characteristics. These are known as protected characteristics and are as follows:

- Age (over 18s only*)
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity (including breastfeeding)
- Race (including ethnic origin, national origin, colour, nationality)
- Religion or Belief
- Sex
- Sexual Orientation

*discrimination on grounds of age is unlawful, but the provisions are not coming into force until 2012.

What does the act mean for your club or association?

The Equality Act affects all your activities including how you behave towards members, associate members and guests.

In equality law an 'association' is defined as a group of 25 or more members which has rules to control how someone becomes a member, involving a genuine selection process. The rules may be written down, like a constitution, or may be unwritten.

Example:

- ***The application process for becoming a member in the bowling club stipulates that anyone wanting to join must be nominated by one or more existing members as part of the application process. Therefore the club has a genuine selection process in place and is classed as an 'association' in equality law.***

If a club does not have any form of membership selection, then in equality law it is not an association even if it is called 'club', 'society' or 'association'. Equality law still applies to these organisations, but in a different way. If you want to know how equality law applies to an organisation like this then please read the guidance 'Business providing goods, facilities or services to the public' issued by the Equality and Human Rights Commission.

Clubs who employ staff on a full or part-time basis have obligations under this Act and other legislation (equality and employment law) which will regulate the way they treat staff and job applicants. Further advice on the implications for employers is available from the Equality and Human Rights Commission. Clubs who are unsure of their position as employers should seek legal advice to fully understand their obligations.

You must not treat members, associate members or guests (including a prospective member or guest) worse than someone else just because of a protected characteristic (this is called direct discrimination).

Example:

- ***The bowling club has members of both sexes. Men are allowed access to the green at all times, however women are only allowed to play before 5pm on a weekday. In this situation the club is discriminating against members on grounds of 'sex' which is one of the protected characteristics.***

Example:

- ***A club refuses to accept a person's application because they weren't born within the United Kingdom. This is likely to be direct discrimination because of 'race' which is one of the protected characteristics.***

You must not do something to a member, associate member or guest (including a prospective member) in a way that has a worse impact on them and other people who share a particular protected characteristic than on people who do not share that characteristic. Unless you can show that what you have done is objectively justified then this will be what is called indirect discrimination.

Example:

- ***The bowling club team has won the local league and to celebrate they have offered all the members of the team a free alcoholic drink. They do not offer a free drink to their non-drinking members of whom most are Muslim. This is likely to be indirect discrimination against the members because of their religion or belief.***

All bowling clubs are advised to review their current practices, rules and policies and consider whether or not they are at risk of discriminating against any members either directly or indirectly. All bowling clubs should have an Equity Policy in place.

Club Membership

Other than if it has been set up specifically for people who share a protected characteristic, an association cannot refuse membership to a prospective member or grant it on less favourable terms because of a protected characteristic.

Example:

- ***A men's only bowling club can refuse women who apply to join but it cannot reject men because of their race or their sexual orientation.***

There are certain aspects of this legislation which male or female only clubs are not required to comply with, 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 that gender.*
- *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.*

Clubs cannot offer membership terms, benefits and services that are directly discriminatory or indirectly discriminatory. It is not acceptable to have one type of membership for women and a different, lesser type of membership for men, or the other way round.

Example:

- ***A club charges its male members a higher annual subscription as they are deemed to use the facilities more often than female members. This is likely to be direct discrimination because of sex. Even if female members would like to keep the Associate Membership they currently have and not access the green in the evening this membership category must also be offered to men.***

Solution:

- ***Introduce membership categories based on when and how often members can use the facilities. All membership categories must be open to both male and female members.***
 - ***Full membership (access to green at all times)***
 - ***Day membership (access to green between 9am-5pm, Monday-Friday)***
 - ***Weekend membership (access to green at weekends only)***

Example:

- ***The bowling club would like to continue offering a senior citizen membership for women over 60 and men over 65. Under the Equality Act this would be unlawful as the same fees would need to be charged for men and women of the same age.***

Solution:

- ***Offer a single Senior Citizen Membership for men and women over the default retirement age of 65. This is possible on the basis that people in this age category are likely to have a lower income as they are likely to have retired.***

Taking positive action

It is possible for clubs to target people with a particular protected characteristic through positive action if for example one of the following conditions applies:

- *People who share a protected characteristic suffer a disadvantage associated to that characteristic;*
- *People who share a protected characteristic have needs that are different from the needs of people who do not have that characteristic;*
- *Participation in an activity by people who share a protected characteristic is disproportionately low.*

The clubs action may involve treating members of a group, who share a particular characteristic, more favourably than other groups. This is entirely legal under the act as long as, one of the conditions set out above is met or the positive action is a balanced or proportionate means to achieving a legitimate aim.

Clubs are encouraged to take positive action to address any inequalities. Any club deciding to take positive action should be able to clearly identify the reasons for taking this action and be able to provide evidence showing the reasoning behind their actions.

When taking positive action clubs should ensure that their planned action and reasoning for doing so is explained to all members. This will help to ensure that they understand the measures the club is taking and will also help to identify possible causes of disadvantage.

Example:

- ***A bowling club has 110 male members but only 10 female members. The club decides that they want to run a membership campaign specifically focussed on recruiting new female members. They explain their plans to the members and start advertising a 'women only' afternoon on the first Saturday of the season. The club recruits 10 new female members as a result. They keep a record of the campaigns success alongside the membership figures for that season showing the inequality the club took 'positive action' to address.***

Special rules for sports clubs

Sports clubs which are associations in equality law can organise separate sporting activities for men and women if they choose to where:

- *Physical strength, stamina or physique are major factors in determining success or failure, and*

- *One sex is generally at a disadvantage in comparison with the other.*

Example:

- *A bowling club has singles, pairs, triples and fours competitions for men only but also offers singles, pairs, triples and fours competitions for women only. Under Equality law there is no problem with this as clubs are able to run separate gender competitions.*
- *If a club offers singles, pairs, triples and fours competitions for men but only offers women a pairs competition, despite there being more female members in the club, then they could be deemed to be discriminating against their female members on a gender basis. Clubs are advised to adopt a common sense approach in this situation.*

Under the current law clubs can also continue to offer age restricted competitions.

Example:

- *A bowling club runs single sex competitions for under 16s, under 25s and over 65s. Under Equality law this is ok as there is no issue with sports clubs running competitions for specific age groups.*

Accessing your facilities

All clubs must ensure that members, associate members and guests with a protected characteristic are not unlawfully discriminated against, harassed or victimised in accessing the premises and reasonable adjustments must be made to ensure access is available for disabled people. A club cannot wait until a disabled person wants to use the service, but must think in advance about what people with a range of impairments might reasonably need.

Example:

- *A disabled member of the club requests that three new signs be put up on the approach to the club to direct visitors to the entrance with disabled access. This would be viewed as a reasonable request and the club should take action.*

As well as being something you are required by equality law to do, making reasonable adjustments will help a wider range of people use your services. Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than it is reasonable for you to do. Your overall aim should be, as far as possible, to remove any disadvantage faced by people with a disability.

Management committee, Board and officer positions

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). In the majority of bowling clubs these positions are unpaid in which case the discrimination provisions in the Act will not apply.

Although it is not unlawful to have a committee made up of only males or females it is advisable to encourage varied composition. Clubs also need to ensure that the process of election to a position within the Management Committee or Board and voting rights do not discriminate on the basis of one of the protected characteristics.

Example:

- *Three positions have become available in the management committee. Of the seven positions currently occupied five are taken by women and two by men. The club decides to even things up on the committee by only letting men stand for election. As women have been prevented from standing for election it is likely that the club would be deemed to have acted unlawfully.*

Solution:

- *Open up the nomination process to all members so both male and female members can stand for election. Advertise the vacant positions to all members along with a job description for the position. Approach members who you feel may be suitable for the roles and encourage them to stand for election.*

Conclusion

The Equality Act 2010 has simplified legislation by bringing together various Acts which were in place. This is a great opportunity for bowling clubs to review their current policies and practices and ensure they are providing equality for not only their current members but also prospective members and guests.

There will be numerous clubs in Scotland who need to review their membership options to ensure they are complying with the law. This change in legislation is also an opportunity to promote their clubs and membership packages within the local community and attract new members.

Any clubs considering funding bids to increase memberships, develop their facilities or engage with the local community will benefit from adapting their policies and procedures to fall in line with this Act. Nearly all funders will seek assurances about the clubs commitment to equality before agreeing to invest in your proposal.

Questions for your club to consider

Are your members being treated fairly in terms of membership packages offered and access rights?

Do any disabled people use your service? Are there some things you could change about the way your service is delivered which would mean your disabled service users (current or potential) would be treated more fairly?

Are there areas within your service where some types of people (those with a protected characteristic) are being treated less fairly?

Are there people with protected characteristics not currently using your service that would be more likely to if you made some changes to your practices?

FAQ's

1. When referring to people with disabilities the guidance states that 'reasonable' adjustments must be made. What is meant by reasonable?

When deciding whether or not an adjustment is reasonable you can consider:

- *How effective the change will be in assisting disabled people in general or a particular customer, client, service user or member;*
- *Whether it can actually be done;*
- *The cost; and*
- *Your clubs resources and size.*

Your overall aim should be, as far as possible, to remove any disadvantage faced by disabled people.

2. What happens when a club has no formal rules or fewer than 25 members?

Clubs which have no formal rules governing membership or whose membership is less than 25 are not associations in equality law. Any club in this position is not covered by equality law at all.

3. Age is one of the protected characteristics but only for over 18s. What does this mean for junior members?

Although age doesn't apply to members who are under 18 all other protected characteristics still apply. If they are discriminated against on the grounds of age then the law doesn't apply, however if they are discriminated against on grounds of sex or race then this would be unlawful.

4. What happens if someone makes a claim against our club?

Clubs could be taken to court by members, prospective members, guests, members of the public using services in the club or employees/ prospective employees.

If you are an association then any claim against you that someone has been discriminated against (including that there has been a failure to make reasonable adjustments), harassed, or victimised on the basis of a protected characteristic will be brought against you in the Sheriff Court in Scotland.

If you lose your case in court then you can be issued with 'a remedy'. The Sheriff Court hearing discrimination claims can grant any remedy that the Court of Session in Scotland can grant for a civil wrong or in a claim for judicial review.

The main remedies available are:

- *Damages (including compensation for injuries to feelings).*
- *An interdict – an order made by the court to stop a person or organisation from acting in an unlawful way.*
- *A declarator – this is a statement by the court which says that someone has been discriminated against.*

The court can also order you to pay the legal costs and expenses of the person bringing the claim. You would have to pay these on top of your own legal costs and expenses.

*Advice for dealing with any complaints made against your club can be found in the '**What equality law means for your club, association or society**' guidance issued by the Equality and Human Rights Commission.*

5. Our club offers a family membership, are we able to continue doing this?

Yes, there is nothing within the Equality Act 2010 which prevents you from offering a package for families or couples. It is advisable that you have rules for these types of membership to ensure the offer isn't taken advantage of. For example you could require that to qualify for a family membership all the applicants must stay under the same roof.

6. Our club has equal membership and therefore those with full membership have equal voting rights. At our AGM we nominate and vote on the skips for the men's team. Should we allow women to vote on who the men's skips should be?

Within the act there is an exception for sport which allows men and women to compete in separate competitions specifically for their sex. In this situation common sense should prevail with men voting for the men's team skips and women voting for women's team skips. As long as men aren't voting for the women's skips when women can't vote for the men's skips (or vice versa) then the club isn't discriminating on grounds of sex.

The club may want to consider holding separate 'bowls meetings' after the AGM to vote on issues which are specific to the men's or women's sections.

Contacts

The Official Home of UK Legislation

www.legislation.gov.uk

Equality Act 2010:

http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

Government Equalities Office

www.equalities.gov.uk

Further information:

http://www.equalities.gov.uk/equality_act_2010.aspx

Quick Start Guide for Private Clubs and Associations:

http://www.equalities.gov.uk/pdf/2010-11-10%20GEO_EqAct_Private%20Clubs%20Guidance.pdf

Quick start guide for businesses who sell goods and services:

http://www.equalities.gov.uk/pdf/401727_GEO-BCC_QuickGuide2_acc.pdf

Equality and Human Rights Commission

www.equalityhumanrights.com

What equality law means for your association, club or society:

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-2010-guidance/>

Business providing goods, facilities or services to the public:

<http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-service-users/business-providing-goods-facilities-or-services-to-the-public/>

Guidance for Employers:

<http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/>