

Guidance Note – Equality Act Issued, June 2011

This guidance note is designed to assist the Sport and Recreation Alliance's members in dealing with the Equality Act 2010. The majority of provisions in the Equality Act came into force in October 2010. This note provides useful advice on what you need to do and where you should look for further help with equality issues in your sport.

This guidance note is part of a toolkit that also includes:

- A Factsheet of Frequently Asked Questions;
- A guide on 'How to Create an Equality Act compliant Equality Policy';
- An example, Equality Act compliant 'Equality Policy'

Please note the guidance offered is an interpretation on current legislation based on case law where appropriate, and should not replace bespoke legal advice.

Special thanks to Farrer & Co for their assistance in creating this guidance note.

FARRER&Co



What has changed?

The aim of the Act was to harmonise the numerous pieces of discrimination legislation that existed in the UK and to bring in a number of new concepts to reinforce UK Equality Law. The following features of the Act are identified as changes contained in the Equality Act:

1. Protected Characteristics

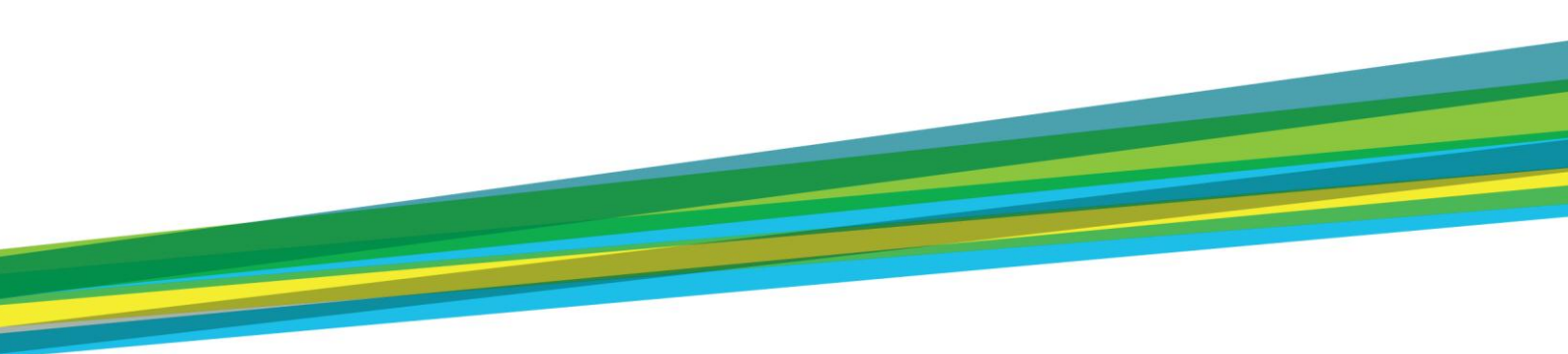
The Act has not introduced any new protected characteristics and contains all the currently protected characteristics, although some of them have been tweaked slightly.

- Age
- Disability
- Gender reassignment
(no longer requires the individual to be under medical supervision to be protected)
- Marriage or civil partnership
- Pregnancy or maternity
- Race
(has been widened to include colour, nationality and ethnic or national origin)
- Sex or sexual orientation
- Religion or belief

2. Discrimination based on association or perception

The Act changed the definition of direct discrimination to protect those that are discriminated against because of a protected characteristic rather than on grounds of a protected characteristic. Two results of this change are that:

- an individual is protected against direct discrimination and/or harassment because of their association with another individual with a particular protected characteristic (an example would be, if an individual was directly discriminated against because their child was disabled);
- an individual cannot be directly discriminated against and/or harassed because they are perceived to have a protected characteristic, even if it then proves that they did not in fact have



that characteristic (an example would be where an individual was discriminated against because it was believed they were gay only for it then to transpire that they were not gay or were not willing to confirm either way).

3. Indirect discrimination

The definition of indirect discrimination as it applies to all of the different protected characteristics has been harmonised within the Act and now includes a harmonised global 'objective justification' test. The global justification test is whether the behaviour in question is 'a proportionate means of reaching a legitimate aim'. The Act also introduces for the first time the concept of indirect discrimination based on disability and gender reassignment.

4. Definition of harassment

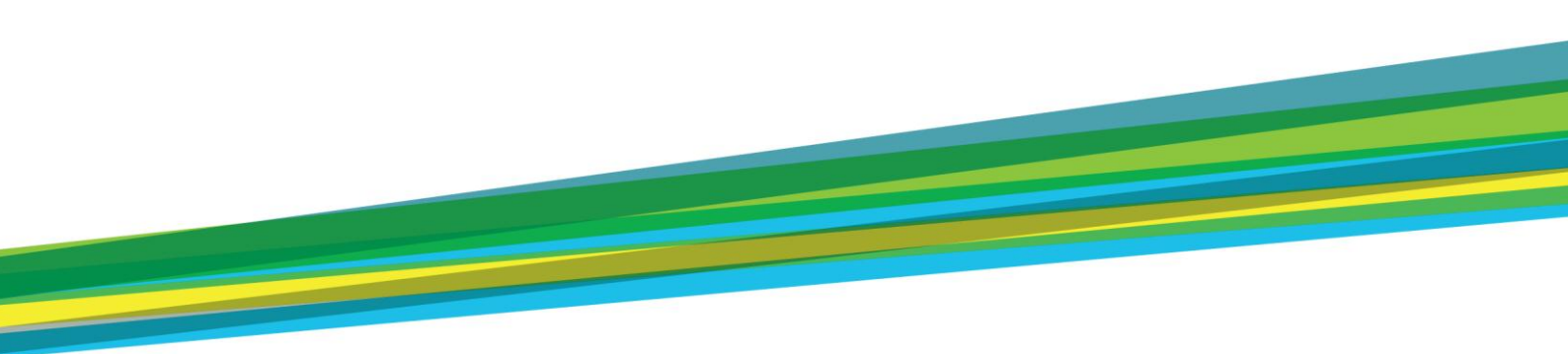
A harmonised definition of harassment has also been introduced, which will apply to all protected characteristics except for pregnancy/maternity and marriage/civil partnership.

5. Disability Discrimination

The list of capabilities (e.g. mobility, manual dexterity, concentration etc.), some of which previously had to be affected if the individual was to be deemed to have a disability, has been scrapped. This could in theory make it easier for individuals to show they have a disability. A new aspect to equality legislation has been introduced in regard to discrimination arising from a disability, which occurs if an individual is treated unfavourably because of something arising as a consequence of his or her disability and if the employer cannot show that the treatment is objectively justifiable. As stated above, the Act also introduces the concept of indirect disability discrimination for the first time. This will provide a potential claim to disabled persons where they are subjected to a provision, criterion or practice which, although seemingly neutral, is harder for disabled persons to meet, provided that the provision, criterion or practice cannot be justified.

6. Provisions relating to employment

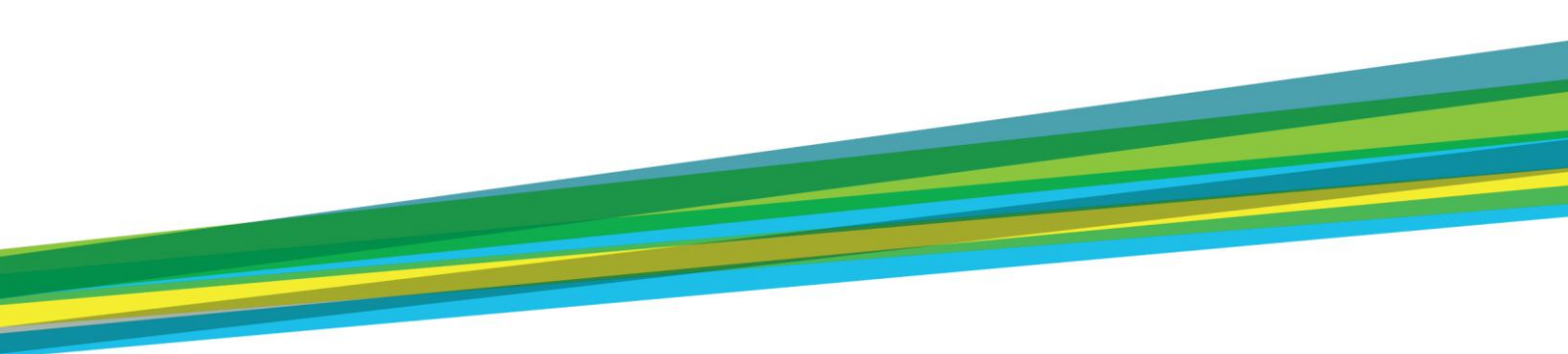
- The Act makes pre-employment health questionnaires unlawful save in very exceptional circumstances.

- 
- The Act makes pay secrecy clauses in contracts unenforceable.
 - Employers will not be viewed as discriminating unlawfully in relation to a particular requirement for a role if they can show that the requirement in question is an occupational requirement which constitutes a proportionate means of reaching a legitimate aim. This exception will, however, be construed very narrowly.
 - Positive action means an employer can, should they wish, choose a candidate for a job because of a protected characteristic providing that the candidate is as qualified as other candidates for the role and provided persons of that protected characteristic are under represented in the employer's organisation. Therefore the Act offers legitimacy to positive discrimination – however it does not apply where the candidate is less qualified than another individual.
 - The Act gives Tribunals powers to make more wide-ranging recommendations than they were able to under the previous legislation. If a discrimination claim is successful a Tribunal may now make a recommendation to counter the effect of matters dealt with in the claim on any person, not just on the claimant (who in most cases has often left the respondent's employment by the time a claim is resolved). For example, the Tribunal could order the relevant employer to invoke equal opportunities training.

7. Private members clubs

The Act does apply to private members' clubs but there are some exemptions if the club meets the definition of an 'Association'. 'Associations' are able to only allow members from a specific protected characteristic. However where an 'Association' does allow members from different protected characteristics then it must treat all of its members equally.

8. 'Associations'



The Act introduces a definition for an 'Association' which will be afforded a number of potential exemptions. An 'Association' is an association of persons that meets the following criteria:

- At least 25 members;
- Admission to membership regulated by association rules and involves a selection process.

9. Qualification Bodies

Under the Act, it will continue to be unlawful for a qualification body to discriminate on the grounds of a protected characteristic in the arrangements it makes for:

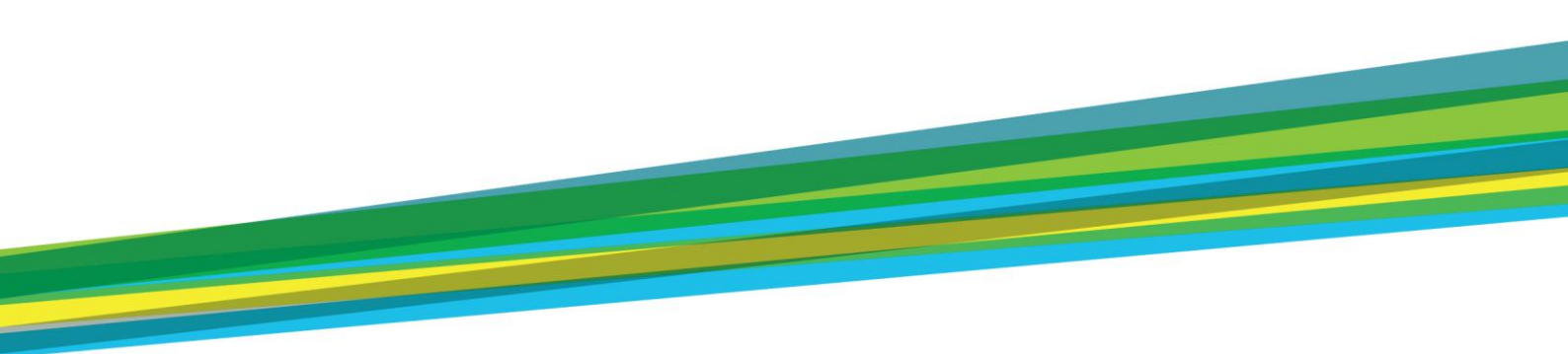
- deciding upon whom to confer a relevant qualification (e.g. a coaching licence);
- as to the terms on which it is prepared to confer a relevant qualification;
- by not conferring a relevant qualification;
- by withdrawing a qualification; or
- by varying the terms on which the qualification is held.

10. Age discrimination

Until further legislation is approved on age discrimination in relation to the provision of goods, facilities and services (expected to be in 2012) it is still lawful to discriminate against customers on grounds of age. From some point in 2012, still to be determined, age discrimination will be extended into the provision of goods and services. However, it is still then intended that sport will be exempt from these provisions to allow age-banded or age-specific sporting events, leagues or training facilities, where the restriction is proportionate to ensure fair competition, safety or another legitimate aim. This would allow for veterans competitions for example. A consultation was released by the government which closed in May 2011. The Sport and Recreation Alliance have submitted a response to support the proposal that sport is exempt from age provisions and therefore able to continue with age-specific events.

11. Sex/gender reassignment

The previous exemption from the Sex Discrimination Act is carried over to the Equality Act. The exemption states that competitions, leagues



etc. can be gender specific where the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex. It also allows for transsexual competitors to be prohibited from competing where the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex and where such a prohibition is necessary for fair competition or the safety of competitors. However it is important to note that because the definition of gender reassignment has changed to include individuals that are 'proposing to undergo a gender reassignment process' it is no longer necessary for a person to be under medical supervision to have the protected characteristic. This is likely to be a moot point as in the majority of cases if no medical steps have been taken then the person will have a physical advantage or disadvantage. However it will have an impact on sports that cannot show they are gender-affected (i.e. where physical strength, stamina etc of average persons of one sex would not put them at an advantage) and these sports will need to allow transsexual people to compete in their chosen gender when they have not had any medical treatment and are not under medical supervision.

12. Public Sector Duties

Public sector duties will not directly affect sports bodies or clubs but may be passed down to funded bodies in funding agreements. This situation is currently under consultation and will come not come into force until October 2011 at the earliest.

How has the Equality Act affected sport and recreation organisations?

National governing bodies and their clubs are affected by the Equality Act in different ways, depending on their function and size.

1. As providers of goods, services or facilities

This includes memberships, events, competitions and facility hire. All sports clubs and national governing bodies are covered by this aspect in full unless they meet the definition of "Association" as set out in the Act.

Note: An "Association" is defined in the Act as an association of persons:

- *which has at least 25 members; and*
- *admission to membership is regulated by the association rules and involves a selection process (paying of a membership fee is not regarded as a selection process)*

It is important to recognise that even if the requirements for being an Association are met, the exemptions are limited to being able to allow members from only one protected characteristic. Where an association allows members across protected characteristics then the service provision requirements still apply and they are not able to treat those members differently based on their protected characteristic.

As a service provider it is unlawful to treat, men and women, or people differently by offering alternative membership packages for them based on a protected characteristic they have. Although there may be scope (e.g. through taster days and possibly reduced membership fees) to treat persons of a particular characteristic more favourably where they can be shown to be under represented and where the positive action provisions in the Act apply.

2. As qualification bodies

Where governing bodies issue qualifications or licences for their activities, e.g. a level 2 coaching qualification or officiating qualification

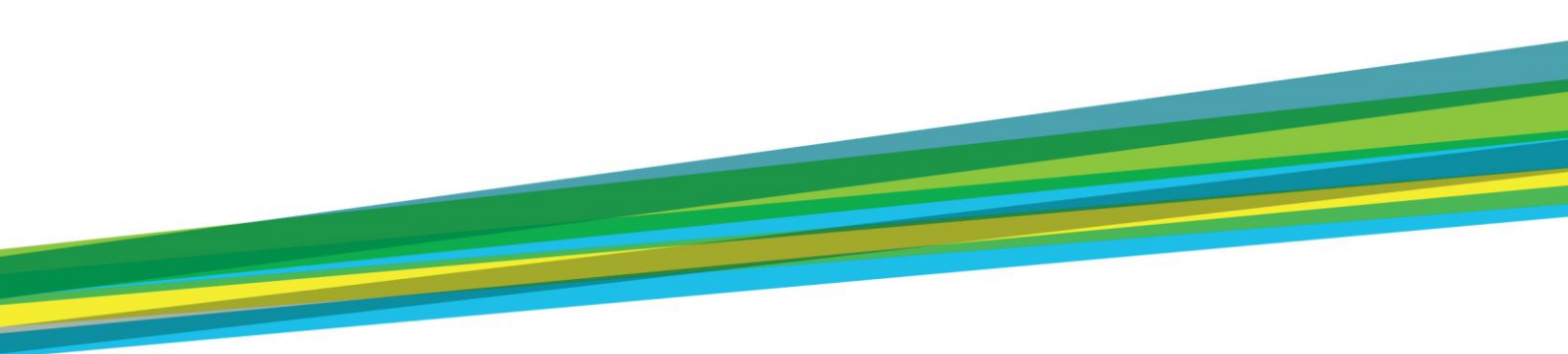
What should sport and recreation organisations be doing to ensure they are complying with the Equality Act?

1. Reviewing your 'Equality Policy' to ensure it is Equality Act compliant
2. Reviewing other policies such as recruitment or confidentiality policies to ensure they are also Equality Act compliant
3. Determining if you qualify as an Association under the Act and whether you need to make any changes to your membership rules as a result
4. Consider all the services you offer members and ensure they are compliant with the Equality Act
5. Considering your procedures for employees or volunteers to report complaints of harassment
6. Providing discrimination and harassment training to staff

What you 'can do' and 'must not do' under the Equality Act?

What you <u>can do</u> under the Equality Act	What you <u>must not do</u> under the Equality Act
Offer different classifications of membership to all members. E.G an associate membership or an off peak membership. The membership should not be offered on the basis of a protected characteristic.	Restrict membership based on a protected characteristic. E.G only allowing women to have an off peak membership.
Operate as a single gender club	Operate as a mixed gender club with

<p>(provided you are an “Association”).</p>	<p>different rules for men and women.</p>
<p>Offer a different service to a group based on a protected characteristic provided that they are under represented and it can be demonstrated to fall within the positive action provisions of the Act.</p> <p>E.G if a fitness club has low membership numbers for women and they are under represented generally, then one way of increasing this might be to run women only sessions once a week. They can potentially do this without offering male only sessions if they are able to prove a connection between women only sessions and the number of women members increasing and if they can show such a step would be proportionate. If the club decided to run women only sessions every night of the week then this clearly would not be proportionate because male members would be restricted too much on when they could use the club.</p>	<p>Offer a different service to a group based on a protected characteristic without a legitimate reason but because members have voted they want it to stay that way.</p> <p>E.G asking women if they want to keep the status quo of only being able to join as associate members. A democratic vote cannot sidestep what the law requires.</p>
<p>Treat disabled people more favourably where to do so constitutes a “reasonable adjustment” which would prevent the them from being placed at a significant disadvantage as compared to non-disabled persons.</p> <p>E.G. A golf club has a rule that no buggies are allowed during competitions, however they acknowledge that this restricts the benefits of membership to disabled</p>	<p>Treat people identically because this may result in them being treated unfairly.</p> <p>E.G If you try to stop a blind member bringing a guide with them to the club because no-one is allowed to bring a guest this would break the Equality Act because you have indirectly discriminated against visually impaired people with this rule and also potentially failed in your duty to make reasonable adjustments.</p>



<p>people who may not be able to walk the full course. In order to allow disabled members to take part in competition, they are allowed to use buggies if they meet certain criteria. The club is required to put in place any reasonable adjustments to ensure disabled members are not placed at a significant disadvantage to non-disabled members. Non-disabled members do not therefore have any means to challenge any such ruling or any legal right to be treated in the same way as the disabled members.</p>	
--	--

Links

[Farrer & Co Briefing on the Equality Act](#)

[Equality Standard for Sport](#)

[Government Equalities Office Guidance](#)

[Equality and Human Rights Commission Equality Act Guidance](#)