

Equality Act Factsheet of Frequently Asked Questions Issued, June 2011

This factsheet is part of a toolkit that also includes:

- A Guidance Note on the Equality Act;
- A guide on 'How to Create an Equality Act compliant Equality Policy';
- An example, Equality Act compliant 'Equality Policy'

Since the introduction of the Equality Act in October 2010, the Sport and Recreation Alliance has received a number of inquiries from our members asking for clarification on current and proposed practices. We have compiled the questions with answers to help our members understand the Act. Please note the answers offered are an interpretation on current legislation based on case law where appropriate, and should not replace bespoke legal advice.

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Q Are single gender competitions no longer acceptable?

A Where the 'physical strength, stamina or physique of average persons of one sex would put them at an advantage compared to the average persons of the other sex as competitors' in a sport, that sport may continue to operate competitively separated by gender. In these sports single gender competitions, leagues and matches are therefore still allowed.

Q Are single gender clubs allowed within the law?

A Single gender clubs, which have at least 25 members and regulate admission through their rules and a process of selection, are not affected by the Act, and may continue to restrict their membership to one gender.

Q Where single gender clubs are allowed within the law, does this also apply to other protected characteristics?

A Yes, clubs, which again have at least 25 members and regulate admission through their rules and a process of selection, are allowed to limit their membership to members who all share a protected characteristic. E.G. clubs restricted to people with disabilities, gay people, or Africans are legal. The exception is colour, meaning that clubs limited to just black people for example are not permitted.

Q Does the Act mean that a club may only have one category of membership?

A No, mixed clubs can offer a variety of different membership options; it is just that the categories must not be determined on the basis of a protected characteristic.

Q Are age related competitions allowed within the law?

A Yes, as at the moment age discrimination does not extend into the provision of goods, facilities and services. It is expected that age discrimination will be extended into this area in 2012 but that exceptions will apply allowing age related competition to continue.

Q Are competitions that are split into different disability classifications still allowed?

A Yes, although the Act does not specifically address this point, different disability classifications will still be permitted as they are likely to constitute 'reasonable adjustments'.

Q Our organisation has a rule that says Board members must retire at 70 years old. Is this legal?

A It depends on whether any of the Board members are entitled to remuneration in relation to their Board position (as opposed to just their genuine expenses or compensation for any loss of income or benefits incurred as a result of discharging the functions of the post). If any will receive remuneration, the office-holder provisions at section 49 of the Equality Act will apply to those paid positions and the age restriction would then be deemed to be unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim. It is unlikely that an age limit, which is directly discriminatory, would be deemed to be proportionate and if there is a concern about individuals remaining in such positions for too long it would be easier to instead seek to justify a rule that limits the amount of time a member can serve, as an alternative to simply having an age limit. If the Board members are not entitled to remuneration and are genuine volunteers, they should fall outside the provisions of the Equality Act. As a result, the age restriction would not then be unlawful (albeit it would also not necessarily represent best equal opportunities practice).

Q We are a golf club and we have a waiting list but we fast-track single figure handicap players to the front of the list. Is this still acceptable under the Equality Act?

A Golf handicap, talent or ability is not a protected characteristic and therefore such a rule should not breach the Equality Act.

Q We are a tennis club and we do not allow women to play on the courts at the weekend. The women pay a reduced membership fee and many of them do not want to play at the weekend. Is this still acceptable under the Equality Act?

A Gender is a protected characteristic and therefore it is not acceptable to restrict women to a different level of membership or service to men. The club should instead develop a full membership and a weekday membership and both need to be available to everyone. If women want to continue playing only during the week then they can choose the weekday membership, however they must also be able to choose the full membership and play at the weekends if they want to.

Q We are a bowls club and our rules state that all members, regardless of gender, are permitted to play at all times. However our facility is closed for forty Saturday mornings of the year for men's competition. Does this fall foul of the Equality Act?

A If there is a rule applying to all members which states they cannot play when there is a competition being played, there will be no direct discrimination implications as the rule applies to all. However, the rule is likely to be indirectly sex discriminatory as it will seemingly have a far greater detrimental impact on women than men. If this is the case, it will be unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim (which must be doubtful given the number of Saturdays involved). In addition, there may also be direct discrimination issue if women members (should they wish to do so) are prevented from holding a similar number of competitions during weekend timeslots.

Q We have a loyalty membership discount for individuals that have been in membership for 15 years or more. Is this allowed under the Equality Act?

A This may be indirectly age discriminatory in that younger members are less likely to have 15 years' service and therefore qualify for the discount. However, as stated above, age discrimination does not yet extend to the provision of goods and services and even when it does at some point in 2012 such a practice is likely to be justified (subject to the level of discount being sensible) on the grounds it is a proportionate means of achieving a legitimate aim.

Q We offer discount to young members between the ages of 18 and 25. Does the Equality Act mean we can no longer do this?

A As stated, this is currently lawful as age discrimination does not yet extend to the provision of goods and services. From some point in 2012, the provision is, however, likely to be directly age discriminatory and consideration will need to be given to whether the practice can be justified or whether it is legitimate under the positive action provisions of the Act i.e. to increase the current under-representation of this particular age group.

Q Can we still have voting members and non-voting members?

A Type of membership is not a protected characteristic, therefore you can offer different levels of service to members dependent on their membership package. However, in mixed clubs all categories of membership need to be available to members of all protected characteristics.

Q Our club has a management committee which is made up predominantly of men although we are a mixed gender club. The women's section has their own committee and manages their own finances. Are we required to merge the two committees?

A It is not unlawful to have a committee that is unbalanced in terms of men and women. The relevant issue is the means by which an individual may be elected to the committee. If women are restricted from being elected to the management committee or restricted from voting then the arrangement will be unlawful. It may not be necessary to disband the women's committee, and one option would be to have a men's committee, women's committee and a club management committee. One overall joint committee would, however, certainly make it easier to ensure fair and equal opportunity and to address under-representation issues.

Q Our membership policy requires a club member to recommend a new member and for a second club

members to 'second' the proposal for membership. Is this lawful under the Act?

A This practice is not unlawful per se. There is, however, a danger that this practice could be indirectly discriminatory where a club has an existing membership drawn from a very narrow group of individuals who largely share the same protected characteristics. This is because it may make it less likely for someone having different protected characteristics to come into contact with existing members and gain membership.

Q We have a competition category for 'husband and wife' that in our rule book is defined as 'open to couples of opposite gender at birth, living at the same address'. Is this discriminating against same sex partnerships and should be change the wording?

A It is unlawful to discriminate on the grounds of sexual orientation. It is recommended that the wording is changes to 'couples' and this is defined as 'a couple either through marriage or civil partnership and living together at the same address'. However the real question here is what is the purpose of the category. If the reason for the category is to encourage more females into the competition then it may be better to simply require mixed gender teams without specifying the need for any relationship between the members of a team.

Q We have a 'father and son' competition category. Is this permissible under the Act?

A The safest route would be to have a 'parent and child' category so as not to directly discriminate against young women who want to compete with their mum or dad or against mums who want to compete with their children.

Q We have male and female members. Female county level players are not allowed to participate in some competitions open to women as a means of allowing more women to play competitively. Male county level players are allowed to play in all competitions open to men. Does this break the Act?

- A Ability is not a protected characteristic and therefore it is possible to discriminate and not allow entry to competition on the basis of ability. However a rule allowing a male county player to compete in male competitions but not allowing a female county player to compete in female competitions is clearly directly sex discriminatory. It is therefore recommended that the club either allow all county players to play in all competitions for their gender, or that they prevent male county players to mirror the rule being applied to female county players.