



# EQUALITY ACT 2010

## GUIDANCE NOTE FOR CLUBS

The provisions within the Equality Act 2010 came into force on 1<sup>st</sup> October 2010 and extend the present anti-discrimination laws. CIU clubs are included in the Act, and described as 'associations'.

The Union is currently looking at the Model Rules and the changes that need to be made by clubs to bring them in line with the Act. Whilst this will take time we advise clubs that they should follow the advice contained within this guidance note immediately to ensure they stay within the law.

### MEMBERSHIP

The Act provides definitions of members and guests as follows:

MEMBERS	A member is someone who has been admitted to the association by its rules on membership. Membership covers full membership, associate membership, temporary membership.
PROSPECTIVE MEMBERS	A prospective member is anyone who is not currently a member of an association but who may be eligible to be a member or who is actively seeking to become one.
ASSOCIATE MEMBERS	An associate member is someone who is not a member but who, according to the association's rules, has some or all of the rights as a member because they are a member of another association.
GUESTS	A guest is someone who is not a member but who is invited by the association or by one of its members to enjoy or participate in some benefit of the association.
PROSPECTIVE GUESTS	A prospective guest is someone who is likely to become a guest, is seeking to become one or would be one if it were not for unlawful discrimination by the association.

The Act also defines the *Protected characteristics* that it applies to as follows (those indicated in bold type are newly introduced):

- **AGE**
- DISABILITY
- GENDER REASSIGNMENT
- PREGNANCY AND MATERNITY (WHICH INCLUDES BREASTFEEDING)
- RACE
- RELIGION OR BELIEF
- **SEX**
- SEXUAL ORIENTATION

The Act states that direct discrimination occurs if a member, associate member or guest (including prospective member or guest) is treated worse than someone else because of one of the above protected characteristics.

*This would relate to types of membership offered – although a club can continue to offer differing levels of membership at different rates but these must be offered to all members, irrespective of any of the above protected characteristics. In effect, if a club provides membership with limited rights which in the past has only been available to lady members, it must now be made available to both male and female members.*

*Different types of membership giving different levels of membership rights can still be made available but cannot be offered to a particular sector of the membership based on any of the protected characteristics – in the case of Union clubs, their 'sex' or gender.*

Indirect discrimination occurs if a club offers something to its members, but because of one of the above protected characteristics a member or section of members are unable to take advantage of the offer.

*You must not treat a member, associate member or guest (including prospective member or guest) worse than someone else because they are associated with a person who has one of the above protected characteristics. For example a member who brings a guest to an event and is disadvantaged based on a protected characteristic of their guest, would be indirectly discriminated against.*

There is a section in the Act which relates to standards of behaviour of members (towards staff and other members, associates and guests). The club rule book indicates the expected behavior of members and the procedure a club must follow to discipline them. The Act states that indirect discrimination may be caused if the standards set are detrimental to anyone with any of the protected characteristics. A club would need to objectively justify its actions towards a member, associate or guest in this scenario.

Membership of an association just for people who share a protected characteristic is permitted under the Act and a club that does not admit women can continue to do so.

A men-only club could, if it chose, refuse to accept associates or guests of the opposite sex.

**Disabled people** can be treated better or more favourably than non-disabled people under the Act without this being considered unlawful discrimination against non-disabled people, i.e. giving a disabled member a discount on their membership subscription. The Act seeks to remove barriers faced by the disabled with regard to accessing services.

With regard to disabled facilities and access within clubs, whilst the Act aims to broaden the services on offer to disabled person, member, associate or guest (including prospective member, associate or guest) must not be discriminated against, harassed or victimized in accessing club premises and clubs must make reasonable adjustments for disabled people.

Clubs already use a Union recommended supplier to provide advice on disabled access and facilities and the process of reviewing the premises to ensure that a club is doing everything it can reasonably do to ensure that the disabled (not only those physically disabled) are not

disadvantaged is adequate. The Act still maintains that a club must consider making adjustment (in other words, changes), if those adjustments are reasonable for the club to make.

The criteria used when considering whether an adjustment is reasonable continues to include cost, and the club's resources and size. Clubs should therefore endeavour to remove any disadvantage faced by disabled people where reasonable.

## **EMPLOYMENT – PROVISIONS FOR EMPLOYERS**

The main changes in the Equality Act relating to employment are as follows.

**PROTECTED CHARACTERISTICS** – the definitions of these have been changed to include the following:

*Gender Re-assignment* – There is now protection for those who are “proposing to under-go” the process for the purpose of re-assignment of sex by changing physiological or other attributes of sex (and so there is no requirement for medical supervision).

*Race/Racial Group* – this is no non-exhaustive and it may be that caste is added as a protected characteristic at a later date.

*Disability* – a wider range of individuals who are likely to be protected now fall within the Act, where they meet a general requirement that their impairment has a substantial and long term effect on their ability to carry out normal day-to-day activities.

### **DIRECT DISCRIMINATION AND DISCRIMINATION BY ASSOCIATION OF PERCEPTION**

The Act amends existing definition of direct discrimination – it will be unlawful to discriminate against someone because of a particular protected characteristic. The legislation will cover those discriminated against because they are associated where the third party is covered by that protected characteristic. The Act also extends cover to discrimination where the employer wrongly perceives the employee to have a protected characteristic.

### **HARASSMENT BY THIRD PARTIES**

Protection from harassment in respect of the protected characteristics (except for pregnancy/maternity and marriage/civil partnerships) will be widened to protect employees are harassed by someone from outside the employer's workforce.

Employers will be allowed (though not obliged) to discriminate in favour of a minority applicant who is as qualified as another applicant for the same role, if that minority group is under represented in the workforce. The Conservative Party stated, pre-election, that it would repeal this provision.

A standard definition of indirect discrimination is adopted to ensure uniformity of protection across the protected characteristics. Indirect discrimination applies to all the protected characteristics except for pregnancy and maternity, and includes (for the first time) disability and gender re-assignment.

### **DISABILITY DISCRIMINATION**

The Act provides for a new type of disability discrimination – “detriment arising from disability”.

## EMPLOYMENT TRIBUNALS

Employment Tribunals will be able to make recommendations against unsuccessful respondents in discrimination cases, including requirements to remedy matters not just for the individual claimant but also for the wider workforce. A failure to comply with the recommendation would not result in enforcement action but could be used in evidence to support later discrimination claims.

## PRE-EMPLOYMENT AND HEALTH QUESTIONS

Health questions during the recruitment process will be banned (but are permitted once the employee has accepted employment).

## STAFF BEHAVIOUR

Clubs should be aware that the behaviour of their staff or anyone employed by them towards members, associates or guests is their responsibility and the management committee must make it clear to all staff that their actions cannot be discriminatory, either directly or indirectly. Should a member, associate or guest or prospective member, associate or guest, complain about a member of staff's actions towards them based on any of the protected characteristics listed, the club will need to objectively justify their actions or be seen to be acting in a discriminatory manner.

The club would be held legally responsible for acts of discrimination, harassment and victimization carried out by their employees.

The Union will look at introducing an *Equality Policy* for clubs to use.

## ADVERTISING

Clubs can use notices, flyers etc. to advertise a specific event targeted at members, associates or guests (or prospective members, associates or guests) with one of the protected characteristics. However, if a club offers free admission only to women for a specific chargeable event this would be unlawful and amount to direct discrimination.

**Further guidance will be issued with regard to membership, games and other aspects of club life when available and if you are unsure of how any of the above applies to your club's particular situation then please do not hesitate to contact your Branch office.**

**The literature provided by the Equality and Human Rights Commission relating to the Act includes action to be taken by an association should they receive a complaint of discrimination. It advises that such complaints should be dealt with, where possible, by discussing with the complainant but also offer alternative dispute resolution (or ADR) which is run by the Advice Services Alliance (ASA). With this in mind, clubs should always attempt to resolve any complaint in the first instance, through conciliation with the complainant.**

**Further information will be supplied when available.**