



THE NEW EQUALITY ACT, ITS
IMPACT FOR DISABLED ACCESS
FOR GOLFERS
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THE NEW EQUALITY ACT

- **The Act harmonises and replaces previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and ensures consistency in what you need to do to make your workplace a fair environment and to comply with the law**
- **However it does contain some changes that are relevant to the matter of providing access to a golf course by disabled golfers and the question of making reasonable adjustments**

THE GUIDANCE

- **UNDER THE DISABILITY DISCRIMINATION ACT IT WAS A STRAIGHTFORWARD MATTER TO WORK THROUGH THE AVAILABLE GUIDES – THESE ARE NO LONGER IN USE**
- **UNDER THE EQUALITY ACT ALL ASPECTS OF DISCRIMINATION ARE CONSIDERED IN THE AVAILABLE GUIDANCE, INCLUDING THE NEW CODE OF PRACTICE ISSUED IN JANUARY 2011. IN ORDER TO FIND THE GUIDANCE RELEVANT TO ACCESS BY DISABLED PERSONS TO A SERVICE PROVIDERS PREMISES, THE ‘REASONABLE ACTIONS’ AND EXCEPTIONAL SITUATIONS IS NO LONGER A STRAIGHTFORWARD MATTER!**
- **WE HAVE MUCH TO LEARN HERE AND IT WILL BE SOME TIME BEFORE WE CAN SORT OUT THE DIFFERENCES IN THE NEW DETAILED GUIDANCE THAT CAN BE USED WHEN ASSESSING IF THERE ARE NOW ANY ADDITIONAL DUTIES.**

What's new & what's changed: at a glance

Key

Characteristic covered in existing legislation – no changes	
Characteristic covered in existing legislation – but some changes	Changes
Characteristic not covered in existing legislation – now covered	New
Characteristic not covered in existing legislation – still not covered	

Protected characteristics (PC) – see page 5

	Age	Disability	Gender Reassignment	Race	Religion or Belief	Sex	Sexual Orientation	Marriage & Civil Partnership	Pregnancy & Maternity
DIRECT DISCRIMINATION Someone is treated less favourably than another person because of a protected characteristic (PC)									
DISCRIMINATION BY ASSOCIATION Direct discrimination against someone because they associate with another person who possesses a PC	New	New	New			New			
DISCRIMINATION BY PERCEPTION Direct discrimination against someone because the others think they possess a particular PC		New	New			New			
INDIRECT DISCRIMINATION Can occur when you have a rule or policy that applies to everyone but disadvantages a particular PC		New	New						
HARASSMENT Employees can now complain of behaviour they find offensive even if it is not directed at them	Changes	Changes	Changes	Changes	Changes		Changes		
HARASSMENT BY A THIRD PARTY Employers are potentially liable for harassment of their staff by people they don't employ	New	New	New	New	New		New		
VICTIMISATION Someone is treated badly because they have made/ supported a complaint or grievance under the Act	Changes	Changes	Changes	Changes	Changes	Changes	Changes	Changes	Changes

Types of discrimination – see page 3

EQUALITY ACT 2010 CODE OF PRACTICE

**SERVICES, PUBLIC FUNCTIONS
AND ASSOCIATIONS**

STATUTORY CODE OF PRACTICE

This code applies to the provisions in the Equality Act 2010 that were commenced
on 1 October 2010.

THE POSITION OF PRIVATE MEMBERS **CLUBS**

The Act defines an association as an organisation that:

- has 25 or more members, and**
- has rules (not necessarily formal or written) regulating who can be a member and there is a genuine selection process for members.**
- Examples of associations include private clubs such as golf and other sports clubs, ex-forces clubs, alumni clubs, social clubs, working men's clubs, gaming clubs and drinking clubs. Some charities also meet the definition of an association, for example, the Scout Association and Girl guiding UK. Such charities are also subject to additional provisions relating to the provision of charitable benefits.**

OTHER SERVICE PROVIDERS

- **A private golf club with rules regulating membership will be an association when it is dealing with its members and their guests, but a service provider if it opens its golf course, café and shop to members of the public on certain days of the week or when spectators attend to watch club competitions. If someone does not have to be a club member to take part in a competition, then the golf club is also providing competitors with a service**
- **A golf club can be both an association and a service provider, this is likely to be the situation with most golf clubs**
- **There is a lot of new guidance available on www.equalityhumanrights.com All of it is written in plain language and can be downloaded. The guides contain examples of the different types of organisations including leisure clubs, including golf**

DISABILITY

(new definition and changes)

- **The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport.**

PROTECTED CHARACTERISTICS

- The Equality Act covers the same groups that were protected by existing equality legislation – age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called *‘protected characteristics’*

DIRECT DISCRIMINATION

- **Direct discrimination occurs where, because of disability, a person receives worse treatment than someone who does not have a disability. This provision is intended to stop people being denied a service, or receiving a worse service, because of prejudice.**
- **What has changed?**
- **Previously, direct disability discrimination was only unlawful when it happened in relation to work. The previous law did protect disabled customers from prejudicial discrimination in practice, but in a different way. The Equality Act 2010 means the ban on direct discrimination will now apply in other areas, such as access to goods and services.**

MAKING REASONABLE ADJUSTMENTS

- **Service providers are required to make changes, where needed, to improve service for disabled customers or potential customers. There is a legal requirement to make reasonable changes to the way things are done (such as changing a policy), to the built environment (such as making changes to the structure of a building to improve access)**
- **Reasonable changes are required wherever disabled customers or potential customers would otherwise be at a substantial disadvantage compared with non-disabled people. A substantial disadvantage is more than a minor or trivial disadvantage. Service providers cannot charge disabled customers for reasonable adjustments.**

WHAT IS MEANT BY REASONABLE?

- **You only have to do what is reasonable.**
- **When deciding whether 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 organisation's resources and size.**
- **Your overall aim should be, as far as possible, to remove any disadvantage faced by disabled people.**
- **You can consider whether an adjustment is practicable. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn't mean it can't also be reasonable. You need to balance this against other factors.**

CONSIDERATIONS OF COST

- **If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.**
- **Your size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your organisation's resources must be looked at across your whole organisation, not just for the branch or section that provides the particular service.**

EXAMPLES OF REASONABLE ADJUSTMENTS

- **IMPROVING ACCESS TO THE CLUBHOUSE AND FACILITIES**
- **IMPROVING ACCESS TO AND AROUND THE GOLF COURSE**
- **IMPROVING PATHS AND PATH SURFACES**
- **PROVIDING PARKING AND TURNING PLACES SUITABLE FOR BUGGIES**
- **REPLACING STEPS WITH GENTLE SLOPES TO TEES AND GREENS**
- **IMPROVING SIGHT LINES AND GENERAL VISIBILITY FOR A SEATED PERSON**
- **PROVIDING SAFETY INFORMATION AND GUIDANCE – WHEN CONDITIONS BECOME UNSAFE – SPECIFIC HAZARD AREAS TO AVOID**

EXEMPTIONS – Section 5 of the Code

- **If challenged in the courts, it is for the service provider to justify the provision, criterion or practice. So it is up to the service provider to produce evidence to support their assertion that it is justified. Generalisations will not be sufficient to provide justification. It is not necessary for that justification to have been fully set out at the time the provision, criterion or practice was applied. If challenged, the service provider can set out the justification to the court**
- **Although reasonable business needs and economic efficiency may be legitimate aims, a service provider solely aiming to reduce costs cannot expect to satisfy the test. For example, the service provider cannot simply argue that to discriminate is cheaper than not to discriminate.**

EXEMPTIONS contd.

Examples of legitimate aims include:

- ensuring that services and benefits are targeted at those who most need them;
- the fair exercise of powers;
- ensuring the health and safety of those using the service provider's service or others, provided risks are clearly specified;
- preventing fraud or other forms of abuse or inappropriate use of services provided by the service provider; and
- ensuring the wellbeing or dignity of those using the service.

EXEMPTIONS contd.

What is proportionate?

- **Even if the aim is a legitimate one, the means of achieving it must be proportionate. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. A court may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the service provider's reasons for applying it, taking into account all the relevant facts.**
- **So it may be possible to directly discriminate against a disabled golfer on the grounds that to give him/her access would put them at risk and also the golf club at risk of an offence under Section 3 of the Health and Safety at Work Act 1974**

COMPLAINTS

- **If a customer, client, service user, member, associate member or guest believes that you (or, if you have anyone else working for you, your employee or agent) have unlawfully discriminated against them, harassed or victimised them against equality law in relation to the goods, facilities or services, or public functions you provide, they may:**
 - **Complain directly to you.**
 - **Use someone else to help sort the situation out (alternative dispute resolution).**
 - **Make a claim in court.**

A CURRENT LEGAL CASE

- **A DISABLED NON AMBULANT GOLFER (CANNOT WALK OR STAND TO PLAY A SHOT) HAS APPLIED FOR MEMBERSHIP OF A GOLF CLUB TO INCLUDE ACCESS TO ALL TEES AND GREENS**
- **THE CLUB HAS OFFERED MEMBERSHIP BUT NOT ACCESS TO GREENS AND TEES**
- **THE CLUB HAS A NUMBER OF DISABLED (AMBULANT) GOLFERS WHO USE THEIR OWN, OR HIRE THE CLUB'S BUGGIES AND ACCEPT LIMITATIONS OF ACCESS ON THE GROUNDS OF SAFETY**
- **THE GOLFER IS SUEING UNDER DISABILITY LEGISLATION WITH LEGAL AID – THE CASE IS ONGOING.**

CURRENT AND FUTURE POLICIES

- **BE POSITIVE ABOUT PROVIDING ACCESS – REVIEW ALL EXISTING POLICIES AND AGREEMENTS TO ENSURE THEY ARE COMPLIANT**
- **AVOID DESCRIBING ACCESS FOR DISABLED GOLFERS AS A PRIVILEGE**
- **PREPARE AN ACCESS AUDIT/RISK ASSESSMENT AND A TIMETABLE FOR CARRYING OUT REASONABLE ADJUSTMENTS**
- **DESCRIBE CLEARLY THE PROCEDURES IN PLACE FOR WHEN IT MIGHT BE UNSAFE AND THE ACTIONS/INFORMATION FLOW THAT IS IN PLACE FOR THE PROTECTION OF THE DISABLED GOLFER**
- **COMMUNICATE EFFECTIVELY WITH ALL INVOLVED, PARTICULARLY THE CLUB PROFESSIONAL, MEMBERS AND GUESTS**

CURRENT AND FUTURE POLICIES

MATTERS TO BE ADDRESSED;

- **IS THE GOLF COURSE SAFE FOR THE USE OF RIDE ON BUGGIES? A HOLE BY HOLE ACCESS AUDIT MAY BE NECESSARY. KEY CONSIDERATIONS MIGHT BE SLOPE ANGLES, BRIDGES, CONDITION OF PATHS AND GRASS AREAS, STEPS TO TEES, DISABLED PARKING BAYS, PROVISION FOR STORING MEMBERS AND HIRE BUGGIES OTHER HAZARDS**
- **CAN IT BE MADE SAFE BY CARRYING OUT REASONABLE ADJUSTMENTS? CAN THE ADJUSTMENTS BE CARRIED OUT IN HOUSE?**
- **IS THE COST REASONABLE?**
- **WOULD ANY PROPOSED ADJUSTMENTS CONFLICT WITH OTHER UNDERTAKINGS E.G. S.S.I SITES OR OTHER ENVIRONMENTALLY SENSITIVE AREAS**

R&A



A Modification of the Rules of Golf for Golfers with Disabilities

2008 – 2011


ROLEX

**COMPARISON OF SURFACE DAMAGE TO
FAIRWAY TURF
FROM USE OF A GOLF CAR, WALKING WITH A
TROLLEY (ELECTRIC) AND CARRYING CLUBS
UNDER ACCEPTABLE AND POOR (WET)
GROUND CONDITIONS**

For

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GENERAL ADVICE AND INFORMATION

- **Equality and Human Rights Commission:**
- **The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.**
- **Website: www.equalityhumanrights.com**
- **Helpline – England**
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