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The Equality Act 2010: Evaluating the Evolution and Development of Organisational Strategy and Professional Practice

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Abstract

Purpose
This paper evaluates the evolution, development and endurance of the Equality Act 2010, providing a critical overview of influence and key legal principles, demonstrating how the Act has impacted strategic organisational and human resources policy and practice in the United Kingdom.

Design/methodology/approach
The research is based on a systematic review of relevant professional and academic literature, alongside an evaluation of the Act itself. The subject focus is seen as timely with the return of a Labour government in the UK - the architects of the Equality Act - for the first time in fourteen years. Due to word limitations the treatment is condensed to provide a selective overview that will be of interest to practitioners and academics in strategic organisational management and human resources. The author is a socio-legal studies academic and non-practising barrister, with expertise in the corporate organisational field.

Findings
The Equality Act 2010, though now established, owes its historical inception to civil rights activism and a radical turn in legislative drafting and ambition – points frequently missed when discussing its scope and influence. An highly unusual anomaly is that having been created by an outgoing Labour government its stewardship immediately passed to a Conservative administration. In particular the principles consolidated and introduced by the Act have greatly impacted the workplace, crucially organisational behaviour and human resources practices, leading to greater responsibility and interpretive power being directed from employment lawyers towards organisational policy and professional practice.

Originality/value
The Equality Act 2010 is usually discussed as an artifact rather than a radical creation and developing entity. This short paper approaches the Act as a 'living' object with an eye on future reform.

Keywords
Equality Act 2010. Employment Law, Policy and Practice. Discrimination. Strategic Human Resource Management. Responsibilisation. Legal Endogeneity

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Introduction

The final piece of legislation enacted by the Gordon Brown Labour government in April 2010 was the Equality Act. Brown's government was defeated at the general election just over a month later, but the Equality Act, though seen as radical and controversial at inception, has endured, establishing a key influence in terms of employment law, public policy and crucially human resources strategy in the United Kingdom. Notably, the current conception of equality law can be clearly identified as a 'new' Labour government creation, with its momentum and establishment contained within successive administrations headed up by Tony Blair and Gordon Brown between 1997 and 2010. Thus, the return of a Labour government in a landslide victory under Kier Starmer in July 2024, following a break of fourteen years, provides a natural pivot to reflect on the background, provisions, scope and development of the Equality Act under Conservative stewardship, alongside a critical analysis of its limitations and potential future development. These themes provide the research stimulus, foundation and focus for this article.

Towards the Big Idea: The Elusive Equitable Workplace

The need for a specific 'equality act' in Britain was first mooted by the Runnymede Trust, a UK based civil rights think-tank, in 1997. The Trust established a longitudinal Commission to consider the political and cultural implications of the changing diversity of British people setting up five expert groups which reported over a three year period covering concepts of: democratic institutions, culture, families, employment, and safety and justice. This fed into the Parekh Report in October 2000 which aimed to provide race equality and cultural diversity a higher profile and modernise existing legislation, contending at the time that: "No other European country, nor even the United States, has produced such a report" highlighting employment policy and practice as a key strategic arena for change (Parekh, 2000).

An Equality Bill broadly based on the themes of the Parekh Commission and Report followed in 2005, navigating Parliament and finally becoming law as the Equality Act in February 2006. This statute sought to to consolidate equality law, including the Disability Discrimination Act (1995), with protections spanning *age, disability, sex, proposed, commenced or completed gender reassignment, race, religion or belief* and *sexual orientation*. Four years later these provisions

were superseded and considerably strengthened by a revamped Equality Bill which was received as "legislation of enormous radicalism…Labour's biggest idea for 11 years" (Toynbee, 2010). This big idea was realised as the current Equality Act (2010), which sought to adopt and extend the primary 'equal treatment' targets of the EU Equal Treatment Directive (2006).

Labour's 'radical' Equality Act (2010) came into force in October 2010 under the Conservative and Liberal Democrat Coalition Government, and soon lived up to its revolutionary billing, seeking to safeguard individuals from direct and indirect discrimination, harassment, or victimization in various contexts, crucially the workplace and the use of both private and public services. The protective aspect would be grounded in nine key 'protected characteristics': *age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex,* and *sexual orientation*, offering a significant consolidation and expansion of the previous legislation (Karim, 2021 15). Additionally, in explicit relation to disability, the Act imposed a duty on employers and service providers to make reasonable adjustments to their workplaces and services. This obligation was formulated to ensure that barriers faced by disabled individuals would be mitigated, enabling a positive degree of inclusivity and accessibility. In pragmatic terms such adjustments might include providing accessible facilities, modifying equipment, or altering work patterns and processes to accommodate the needs of disabled employees with an overidding aim to create an equitable environment where opportunity and participation could establish without undue disadvantage (Hussain et al., 2022).

In reimagining the workplace as an equitable environment the impact on employment law and human resources policy would be profound. Significantly, the creation of the nine key protected characteristics extended to all employees and workers, including contractors and the self-employed, former employees and job applicants greatly expanded organisational accountability. Moreover, this vested the primary responsibility for preventing discrimination in the workplace with employers, requiring human resources policy to comply with the Act, and imposing a statutory obligation to:

- *Ensure fair treatment;*
- *Proactively prevent discrimination;*
- *Protect employees from discrimination by others;*
- *Possess awareness of duty of care*.

Essentially, the Act recognised that failing to fulfil these responsibilities can cause significant harm and distress to employees and lead to discrimination complaints and claims being brought before employment tribunals and the courts. In addition to the direct responsibility of employers,

the Act also provided that they could be held accountable for discriminatory actions carried out by their employees, a legal concept known as 'vicarious liability' which removes any protective screen of organisational anonymity hidden within hierarchy or process (Kuna and Nadiv, 2021). This provision means that should an employee discriminate against a colleague, the employer can be held responsible if they have not taken adequate steps to prevent such behaviour. In terms of workplace disputes which escalate into conflict and litigation it is also important to note that individual employees who engage in discriminatory behaviour are personally accountable for their actions with discrimination complaints and employment tribunal claims filed against both the individuals identified as responsible for the discrimination and their employers (George and Jackson, 2021).

Furthermore, the parameters of the rather broad term ‘discrimination’ within the context of the Equality Act are founded on the concept of ‘less favourable treatment’ this amounts to anything that places an employee with a protected characteristic at a disadvantage in comparison to an employee that does not possess that characteristic. The Act falls short of providing a precise legal definition of ‘putting someone at a disadvantage’ but covers acts and omissions that cause or impose financial loss, opportunity or benefit exclusion, conditions that make it harder for an employee to carry out their workplace duties, and the creation of a hostile environment or unreasonable state of affairs that causes emotional distress. Discrimination in this context can still be actionable for the disadvantaged employee, even if the less favourable treatment was not intended by the employer or their staff (Middlemiss, 2021).

Impact, Responsibilisation, Risk and Power

On reflection. the impact of these provisions on a number of key facets of human resources strategy in the UK within a relatively short period has been profound and fundamental, *inter alia,* the Act has significantly altered practice and operations in terms of recruitment, policy and procedure, training, accessibility, legal compliance and complaint investigations. This in turn has led to a considerable increase in the accountability of organisations towards creating and policing an equitable working environment, a process which effectively transfers responsibility from the state to the organisation and as a consequence its employees – the socio-political concept of compelled *responsibilisation*, frequently seen in forms of neoliberal governance over the past forty years and linked to the mitigation of risk (Hamerton and Hobbs, 2022:67).

In the process of responsibilising recruitment under the Act, organizations are required to critically evaluate and potentially revise their recruitment policies and processes. This includes ensuring that job advertisements are free from discriminatory language and that the recruitment

process itself is unbiased and equitable, including the implementation of standardised interview questions and evaluation criteria where necessary. This is to be supported by the creation of a raft of organisational strategies and procedures which promote equal job opportunities for all individuals, with policies explicitly instigated to prevent discrimination in every aspect of the organisation, from hiring, apprasial and promotions to daily interactions and decision-making processes. This imposed internal compliance with the Equality Act, also compels organisations through human resources departments and professionals to provide thorough current training to their staff on the principles and requirements of equal opportunity legislation. Typically this training covers recognising, addressing and preventing discrimination and harassment, whilst enabling accessibility - ensuring accessibility for all individuals being a critical requirement under the Act.

A further serious imposition alongside policy compliance is that of legal compliance, with acts or ommissions in this field leading to severe repercussions, including prosecution, substantial fines and reputational damage. Organisations are compelled towards vigilance in adhering to all aspects of the Act to avoid such penalties, which usually involves not only implementing appropriate policies and procedures but also maintaining thorough documentation and evidence of compliance efforts. If a complaint of illegality is made organisations are obligated to promptly and thoroughly investigate any accusations of discrimination or harassment. This process should be transparent and fair, ensuring that all parties are heard and that appropriate actions are taken based on the findings. The establishment of a clear, confidential, and accessible complaint mechanism is essential in order to protect the organisation's legal and social license to operate, and potentially recover it in crisis (Gottschalk and Hamerton, 2023; 2024).

This high level of socio-legal responsibilisation imposed by the Equality Act on organisations and the human resources professionals within them links to the concept of 'legal endogeneity' developed by the American scholar Lauren Edelman (Edelman, 2016). For Edelman, what she terms legal endogeneity is made possible in the contemporary workplace because law regulating organisations tend to be complex, broad and ambiguous, with interpretation falling to multiple decision makers. These decision makers, often senior managers and human resources professionals, base their conduct on accepted internal compliance policy rather than by reference or recourse to the law itself. This in turn can lead to legal ambiguity with organisations and their senior managerial employees possessing substantial latitude to construct their own version of compliance, and consequently interpret and apply fundamental concepts such as discrimination. Thus, in the pressurised arena of the contempory workplace, Edelman's work recognises a key power shift, with process driven employment policy taking responsibility away

from formal legal process (lawyers and the courts), and placing it on the shoulders of management, and human resources professionals. Thus it can be argued within the UK context, that currently the day to day power behind the interpretation of the Equality Act is vested within strategic human resources - however, with this compliance responsbility comes serious legal risk.

Future Directions: A Comparative Snapshot

Such concepts lead towards consideration of the prospect of future development of the Equality Act under the stewardship of the newly installed Labour government in the UK, and administration which will guide the Act through late teens towards its twenties. Thus, a selective snapshot of recent research with potential impact for strategic human resource policy and practice follows, to include stimulating evaluations of appearance discrimination, equal pay, and female sports participation.

Mason and Minerva's work examines the extension protected charcateristics to include appearance discrimination. Arguing that that the best way to understand the Act is by recognising its role in protecting individuals vulnerable to systematic disadvantage, particularly those at risk of discrimination that infringes on meritocratic principles. They further state that if this principle is fundamental to the Act, there is a strong argument for extending its protection to include at least one additional characteristic, that of a person's physical appearance. Contending that ignoring those facing appearance-based discrimination could be effectively protected under the category of disability (Mason and Minerva, 2022).

Hand and Hooton's legally focussed research highlights the contentious issue of equal pay, evaluting the Equality Act in its existing form to identify issues with sex-based discrimination. Here, the challenge is one of interpretation, and they argue that problematic wording in the current Act and its judicial interpretation could unjustifiably disadvantage sex-based claimants compared to those with other protected characteristics, with specific focus concerning injury to feelings and constructive dismissal creating potential harmful distinctions (Hand and Hooton, 2023).

Devine's interesting work which explores female sports participitation employs feminist philosophy to examine the impact of eligibility policies that adopt 'self-identification of gender' guidelines for including transgender people in sport in the United Kingdom, focusing on participation rather than elite levels. The work develops to explore the key conceptions of fairness and equality enshrined in Equality Act and contributes to the 'equality evidence' available to the UK Sports Councils and governing bodies. Devine contends that these accountable organizations

are tasked with developing fair and inclusive evidence-based eligibility criteria for sports participation settings that should consider both girls and women, and transgender individuals. (Devine, 2022).

Conclusion

In conclusion, the Equality Act 2010 has remained relatively intact in terms of its original conception over the past fourteen years, consolidating its place as the most important legislation on workplace equality and discrimination in the law of the United Kingdom. Created as a radical tool to engineer social change by an outgoing Labour government almost its entire lifespan has been under successive Conservative administrations. This evaluative paper posits that the Act has endured and developed to become accepted as a tenet of employment law and human resources practice whilst generating continual debate and reinterpretation. In exploring the key provisions of the Act, it is clear that in attempting to reform the workplace as an equitable environment the onus to ensure fair treatment, proactively prevent discrimination, protect employees from discrimination by others, and possess explicit awareness of duty of care, is with employers. As a consequence, the deferred accountability for proactive administrative policy and legal compliance has increasingly fallen to specialist management and human resources professionals over the past fourteen years, instigating a sea change in interpretive responsibility. With the Equality Act 2010 back in the hands of its orginal architects, an active need for strategic awareness and expertise is likely to increase rather than diminish.

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