



Assessing
the
Damage:

Assessing the
Equality Act
Impact Assessment

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A New Way to Argue for Over-Regulation

The first line of defence against new regulation is to point out the cost to the economy. The Equality Act found a way to subvert this defence, by claiming that what its advocates wanted for ideological reasons could be regarded as a financial benefit. Anyone that missed this subterfuge would be left arguing against the new measures and against an apparent cost saving.

In its executive summary, the impact assessment for the 2010 Equality Act sets the first year's cost, to the nearest £100,000, from £240.9 million to £282.6m. Against that, were benefits in the first year between £101.6 million and £133.6 million and thereafter net average benefits between £24.5 million and £86.8 million.¹ This note sets out to demonstrate that the costs far outweigh the benefits, which are largely imaginary.

The claims for the 2010 Equality Act are immense. There are a few initial costs, followed by massive annual gains; social evils may be reduced while contributing to the economy at the same time. With a little scrutiny, however, the balance of benefits over costs vanishes very rapidly.

Assuming what needs to be proved

Annual benefits in excess of £62 million are described as a benefit to society from greater equality. There is no factual basis for this figure, which comes only from a series of contestable assumptions. £62 million represents a notional value that the Assessment's authors place on

equality, before making the further assumption that the Act's measures contribute to it.

The assumptions required are fourfold:

- equality may be given a monetary value because people would willingly exchange some of their prosperity for an improvement in equality;
- measures to improve equality cause no reduction in growth or prosperity;
- regulations against discrimination have a beneficial effect on members of those groups;
- favouring protected groups in fact reduces inequality at all.

Ideological value

The first assumption is the killer. No money is produced or saved. The estimate is just of the feeling of well-being coming from a belief that differences between people have been reduced. The value is ideological, nothing more.

In the Interim Report of the Equalities Review,² there was an acknowledgement that the approach was controversial. The report claimed *'We do not intend to take sides here, but merely to demonstrate that there is a way of calculating whether more equality would, in theory at least, benefit us in material terms.'* When the Equality Act received royal assent, this controversial suggestion had become a presumed certainty, so precise that tens of millions of pounds could be calculated to the nearest pound.

The risk to growth is ignored

The next assumption is that promoting equality does not harm growth. The economic argument calculates well-being with and without equality at the same growth rates, and explicitly assumes that growth rates are the same.³ This assumption requires that no employers be put off recruiting by the weight of regulations. That weighs heaviest with the million single-person businesses whose expansion is limited to one person's output. It requires that the estimated £200 million of extra one-off costs have no detrimental effect on profitability. It further requires that recruitment methods still pick the best person for the job, despite the threat of an employment tribunal. Worse, a reduction in growth brings genuine losses to set against the ideological gains from equality.

Benefits the market already delivers

There is the assumption that regulations deliver a benefit. There is strong market pressure for an employer to serve his or her own interests by choosing the best person without favour. Selecting by prejudice only sends the best staff to a competitor. That should be incentive enough for the employer. It is perverse to claim that only as a result of compulsion can small businesses '*benefit from being able to draw on a more diverse pool of labour, thereby improving skill matching with vacancies*'.⁴ The regulations can only be given credit if they deliver equality beyond what the market would deliver naturally. Unless people are maintained in positions where they can deliberately select less able people to fill jobs, the recruiter on merit will always derive an advantage.

Confusing inequality between groups and between individuals

Favouring groups, some of whose members are disadvantaged, is not the same as reducing overall inequality. Any measure will favour those best placed to take advantage of it. No group is completely homogenous. There will be a spread of prosperity within all protected groups. At the top end will be people already better off than some without protection. Turning again to the Interim Equalities Review, the chosen measure of inequality, namely the standard deviation of the log of household expenditure, scarcely changed between 1990 and 2004. For all the output of the Equality industry in that decade and a half, any decline in inequality was invisible on their own graph.⁵

By increasing the regulations applicable to businesses, equality legislation risks putting the task of running a business beyond the capabilities of ordinary people. For example, defending or preventing a case against dual discrimination would require knowledge of numeracy, logic and litigation way beyond the essential business skills of producing and selling. Starting a business, one of the traditional paths of social mobility, may be put beyond the reach of people from less affluent backgrounds.

If any one of the above assumptions is unfounded, it is enough to invalidate the financial justification for the Equality Act. It is wrong to assume that this Act will have the desired effect on equality, that it will have no adverse affect on growth, and most wrong of all to invent a monetary benefit on ideological grounds.

Reducing only the costs that earlier regulations have introduced

Savings of £9 million per year are attributed to simplification. These savings can only arise because the existing regime was over-complicated and burdensome. Any saving through simplification could be bettered by removal of the offending regulations.

A further £4 million of annual benefits are attributed to changes in the Equal Pay regime. This is a saving compared only to what had prevailed before. In this instance, the benefit derives from having 1 per cent fewer tribunal cases. There is no evidential basis offered for the claim that a simplified law will lead to fewer cases.

New regulations cost more than they save

Most of the protections in the Act were already in existence. A new protection, against 'Dual Discrimination' admits greater costs than benefits, £5 million at once then £3 million *per annum*. It is a reminder that regulation is burdensome and that this Act's apparent savings come only from trimming some existing costs of regulation or from ideological claims about the advantages.

A minority of Employment Tribunal cases cover more than one jurisdiction, meaning they allege discrimination on multiple grounds. A new provision is to allow claims where discrimination may only be proved against the combination. Leaving aside the difficulty of conducting such a case, the Assessment

predicts that the provision will give rise to more tribunals. The costs exceed the benefit. The same applies to the extension of third party harassment provisions,⁶ except that in that case the Assessment's authors are not aware of any cases having been brought under existing legislation.

Underestimates of costs

Familiarization is given a one-off cost of over £200 million. This includes an allowance of 8 hours for each small or medium-sized enterprise, of 249 employees or less, to digest 800 pages of guidance from the Equalities and Human Rights Commission, including the issue of whether it is legal to make a choice between two equally qualified candidates if one is from a protected group.

Estimating by time required

Small employers will not be able to afford a specialist for their personnel needs. Larger ones will need both to understand the provisions themselves and to disseminate to them to anyone involved in line management or recruitment. Eight hours of familiarization time is insufficient.

No allowance is made for single-person, owner-managed firms, estimated at 3.5 million in number. The assumption is that they will not step up to the next level of employing other people. Whether any would choose to expand if it were not for the burden of regulations surrounding employment is another question. They will however wish to ascertain how far their provision of products and services needs to be equally available to protected groups. No allowance at all is made for them, on the grounds that earlier provisions already require

them to do just as much homework in order to comply.

Large firms are given close to 24 hours of work each to prepare. Anyone that has attended an Equal Opportunities Awareness or Diversity Training course will be aware that the costs do not stop with the HR department. It is common for much of the workforce to be required to devote working time to learning about the issue.

Estimating by people involved

An alternative angle may be helpful. According to the Labour Force Survey⁷, approximately 300,000 people worked as 'Personnel, Training and Industrial Relations' managers or officers, one for every 100 of the workforce. It quickly becomes guesswork how long each personnel specialist, general manager or ordinary employee needs to spend learning about new regulations. If only the specialists were concerned, they could spend a week each on the Act's provisions and spend all of the projected money. If the whole workforce were concerned, they instead could spend about an hour each at the minimum wage. The guesswork comes from trying to tell what proportion of those would take the time in familiarization. When the requirements extend as far as what questions may be asked at interview and to prevent even a third party harassing an employee, a single week seems a short time for a specialist to disseminate amended guidance around the whole organization.

Terminology that comes naturally to equality professionals working daily in that sphere can be opaque to people running a business or attempting to provide a public service. There

are moves to make equality as important as the products and services themselves, as shown by the recent requirement to assess any new legislation for its impact on equality. But to people for whom equality is only of secondary or peripheral interest, understanding and discharging all their duties will require more time and effort than the equality professionals allow them.

Disabilities provisions

Costs of adapting common parts of rented accommodation for disabled people's use are described as up to £27 million. This is treated as a range of cost options with a lower limit of nothing at all, while still delivering an annual benefit of at least £10 million.

Provisions for disabled persons have a more practical approach than the ideological approach to equality. However, it does them no favours to apportion an unrealistic price tag. 'Up to' may be Government short-hand for 'less than' when making money available, but that does not justify suggesting that large savings on care both at home and in residential institutions can be made without spending any money on adaptations. The 'best case scenario' describes an impossible situation whereby making no one-off or annual improvements still allows for annual savings of £40 million.

Changes to provisions regarding disability discrimination in employment take an approach that simplifying the law may make tribunal cases quicker to resolve, balanced by a likely increase in the number. This is to be preferred to the approach over equal pay, where the assumption is that changing the law will lead to a reduction in the number of cases, '*in the absence of hard evidence as to the scale*'.⁸

Recalculating the assessment

Claimed savings of £65 million per year are quickly revealed as a loss of at least £10 million, on top of the initial costs.

The Assessment suggests initial expenditure around £210 million, offset by annual savings in the region of £65 million. After three to four years, the measures would be showing a profit.

Cost-neutral disabled provisions

The provision for adapting common parts of rented accommodation for disabled use may stand on its own. The costs and benefits are reported in a very strange manner, but the assessment appears sensible that it may annually both cost £25 million and save £25 million, ending roughly neutral.

That leaves a net annual benefit reported within a much narrower range, but still around £65 million.

Savings only on equality costs

£9 million annually of simplification and £4 million from equal pay changes are savings only possible because of the existing cost of equality legislation. £52 million of annual saving remains, which would take four to five years to break even.

Ideological benefits

This £52 million is less than the £62 million that derives solely from a belief in the monetary value of equality. It is not a financial benefit, only an expression of how much the Act's authors value the ideology and consider the public to see likewise. It should not be claimed as a benefit at all. In financial terms alone, the

Assessment now has a net annual cost of £10m, and will never break even. The regular costs exceed all the regular benefits, except those arising solely from the previous equality burden.

Costs and more costs

Given that the benefits have been shown to be ideological rather than financial, the precise scale of the one-off costs matters less. Even if the changes are introduced with extraordinary efficiency by all concerned and the budgeted £200 million proves ample, the annual consequences of this legislation will serve not to pay back the costs, but to add to them. The ideological benefits of the Equality Act are debatable at best. The financial benefits simply do not exist.

¹ Equality Act Impact Assessment: final version (Royal Assent), Great Britain Government Equalities Office, TSO (The Stationery Office), London 2010, page 5.

² The Equalities Review: Interim Report for Consultation, Trevor Phillips (chair), Cabinet Office, London 2006, p. 68.

³ The Equalities Review: Interim Report for Consultation, p. 108.

⁴ Equality Act Impact Assessment, Annex AD, p. 258.

⁵ The Equalities Review: Interim Report for Consultation, Figure 31, p. 68.

⁶ Equality Act Impact Assessment, p. 130.

⁷ Table EMP16 SOC 2000 codes 1135 and 3562, Office for National Statistics, August 2011. (Crown Copyright).

⁸ Equality Act Impact Assessment, p. 134.