

THE COALITION'S RECORD ON EQUALITY LAW

Bob Hepple

EQUALITY ACTS 2006 AND 2010

- Comprehensive – unitary perspective of equality as fundamental human right.
- Enforced by single Commission (EHRC)
- Harmonises, clarifies, extends law
- From substantive to transformative equality – public sector equality duty (PSED)

Bob Hepple

2

COALITION : TWO IDEOLOGIES

- Market fundamentalism – The *Red Tape Challenge* – business case for equality and fairness turned on its head into 'burdens on business' in context of general attack on workplace rights
- Social liberalism – extending equality and family-friendly policies

Bob Hepple

3

DISMANTLING EQUALITY ACT

- Provisions of EA 2010 repealed by ERRA 2013
 - third-party harassment (EA ss 40(2)-(4))
 - dual discrimination eg older woman(EA s 14)
 - duty on public bodies to reduce socio-economic inequality (EA s 1)
 - Questionnaire procedure for obtaining information (EA s 138)

Bob Hepple

4

DISMANTLING EA (2)

- To be repealed by Deregulation Bill 2013
 - power of tribunal to make wider recommendations than affecting complainant (EA s 124)
- Provision not brought into force
 - power of Minister under EA s78 to require employers (250+)to publish information on gender pay gap

Bob Hepple

5

PENDING

- Review of PSED – postponed to 2016 following Report of Independent Steering Group (6.9.13)
- Review of balance of competences in employment and fundamental rights between UK and EU – consultation
- Business Taskforce (DBIS, Oct 2013) exempt microbusinesses, and end ‘gold-plating’ of EU rules

Bob Hepple

6

DISEMPOWERING EHRC

- Budget cuts -£70m to £17.1m plus programme bids; severe staff cuts; end of grants programme; advisory and support services privatised; threats to independence.
- Repeal of 'communities' duty (EA 2006. ss 10,19) by ERRA s.64
- Repeal of conciliation function (EA 2006 s 27)
- Five- instead of three-yearly reports

Bob Hepple

7

CLOSING ACCESS TO JUSTICE

- Tribunal fees from 29.7.13 – 'Type A' issue £160/ hearing £230;'Type B' issue £250; hearing £950; EAT appeal £400/£1200.
- Fall in ET applications –Sept 2012=3078; Sept 2012 = 681
- End of tripartism and cheap, informal, speedy justice in employment disputes ?

Bob Hepple

8

SOME GOOD NEWS

- Extension of EA to cover 'caste' (ERRA)
- Dismissal for political opinion – no qualifying period (ERRA,s 13)
- Shared parental leave (Children and Families Bill 2013-14)
- Extension of right to request flexible working
- Right of partners to attend antenatal and adoption appointments

Bob Hepple

9

MANDATORY PAY AUDITS

- Only after finding of discrimination (ERRA, s 98) .
- Exceptions where–
 - audit in past 3 years,or
 - pay arrangements transparent, or
 - no reason to believe employer’s breach systematic,or
 - disadvantages of audit outweigh benefits

Bob Hepple 10

IS THERE AN ALTERNATIVE?

- Lobbying can work – eg preventing repeal of EHRC ‘general duty’; addition of ‘caste
- Involvement of worker reps,eg in enforcement and PSED
- Legal challenges under PSED, and for non-compliance with EU/ECHR law
- Resist withdrawal from ECHR and EU

Bob Hepple 11

READING

Bob Hepple, ‘Back to the Future: Employment Law under the Coalition Government’ (2013) 3 *Industrial Law Journal*

Bob Hepple 12
