



FACTSHEET

LGBT Equality Legislation February 2008

Introduction*

This factsheet aims to provide a quick overview of Scottish and UK legislation with a positive effect on equality for Scotland's lesbian, gay, bisexual and transgender (LGBT) population.

While LGBT equality in Scotland and the UK has been driven by tireless campaigning by the LGBT community, human rights law and language has also played a major role in its development over the last two decades. For the sake of brevity there will be no discussion of the historical context or political or legal reasoning behind each one of the key legislative changes.

The following relevant pieces of legislation are organised along the three themes of Relationships and Families, Employment and Education, and Recognition. This factsheet briefly explains what the legislation does and goes on to provide real-life context examples to illustrate the effect of the law on LGBT people.

Relationships & Families

✚ Decriminalisation of Homosexuality

The ***Criminal Justice (Scotland) Act 1980*** brought an end to the prosecution of men who have sex with men, although the age of consent, at 21, remained higher than that for heterosexual sex. (Decriminalisation in England 1967, Northern Ireland 1982).

What does this mean? A gay or bisexual man over 21 who had sex with another consenting man over 21 was no longer committing a criminal offence.

✚ Equalisation of the Age of Consent

The ***Sexual Offences (Amendment) Act 2000*** equalised the age of consent for sexual intercourse at 16 for everyone.

What does this mean? The age at which sex between two consenting men is legal is now the same as that for a man and a woman. Before this, a man and woman having sex aged 16 was acceptable but two men having sex aged 16 were committing a criminal offence.

* LGBT Youth Scotland is a national organisation working towards a Scotland in which every lesbian, gay, bisexual and transgender (LGBT) young person is included in society, can grow up happy and healthy, enjoys a safe and supportive upbringing, and is able to reach their full potential.



✚ Legal Recognition of Same-Sex Relationships

The **Civil Partnership Act 2004** creates same-sex civil unions that extend the privileges of marriage to same-sex couples in all but name. The Family Law (Scotland) Act 2006 gives the same rights to same-sex couples who are not in a Civil Partnership as unmarried heterosexual couples.

What does this mean? Tanya and Elizabeth have been together for three years and are very much in love. Before, they could only live together and had no legal rights as each others partners. **Now, they can now 'get hitched' and have their relationship legally recognised on a par with heterosexual marriage.**

✚ Joint Adoption Rights for Same-Sex Couples

The **Adoption & Children (Scotland) Act 2007** includes unmarried and same-sex among those eligible to jointly apply to adopt a child.

What does this mean? Brian and Anwar had wanted to give a child a loving home for several years but had been unsure as only one of them would have been legally recognised as the child's parent. **Now, they can adopt a child together as a couple and both Brian and Anwar will be recognised as full parents of the child.**

Employment & Education

✚ Protection for Transsexuals in Employment

The **Sex Discrimination (Gender Reassignment) Regulations 1999** prohibit discrimination against and harassment of people who intend to undergo, undergo, or have undergone gender reassignment in employment, vocational training and colleges and universities.

What does this mean? Anna underwent gender reassignment surgery two years ago and has just started a college course. A few people in her class found out about her gender reassignment and since then she has faced verbal abuse most days. Before this, she would have kept her fingers crossed that college staff would be supportive in helping her to challenge the bullying: now she knows that **she has the full weight of the law on her side as it is illegal for employers and colleges and universities to treat transsexuals less favourably or allow bullying of transsexual employees or students within their workplace or institution.**

✚ LGB People in the Armed Forces

The **Armed Forces Code of Social Conduct (2000)** no longer discriminates against LGB people in the armed forces.

When Kelly came out as a lesbian in the Air Force soon after enlisting she was really glad that she could be honest with the people she worked with. Before this, Kelly could have been dismissed just for being a lesbian but now, **the Army, Navy and Air Force can no longer sack LGB employees simply because of their sexual orientation.**

✚ Local Government - Repeal of Section 28

The **Ethical Standards in Public Life (Scotland) etc. Act 2000** removed the infamous 'section 28' or 'clause 2A' from the statute book. The hateful clause banned



local authorities, and therefore schools from 'promoting homosexuality' as a 'pretend family relationship' but was legally flawed and ineffective.

What does this mean? Ewan takes S4 PSE lessons and, as he had heard a lot of homophobic language in the school, he suggested to his PT that the class could discuss issues around homophobia and homophobic bullying. Ewan's PT said that she wasn't really sure if they were allowed to talk about 'that sort of thing' but Ewan knew that, since the repeal of Section 28, **teachers no longer have any legal reason not to discuss LGBT issues in school, support LGBT pupils or challenge homophobic, biphobic or transphobic bullying.**

Protection for LGB & H People in Employment

The **Employment Equality Sexual Orientation Regulations 2003** outlaw discrimination and harassment on grounds of sexual orientation in employment, vocational training, and colleges and universities.

What does this mean? Simone wishes she never mentioned that she had a girlfriend to her colleagues at work. She has stopped being invited on work nights out, one of her male colleagues keeps 'jokingly' calling her a nasty name and she has heard through the office grapevine that all of the other woman feel 'weird' about speaking to her in case she starts fancying them. Simone is really angry about this and knows that she can do something about it as the law states that **no employee or student can legally be treated less favourably or bullied because of their sexual orientation, be it lesbian, gay, bisexual or straight.**

Protection for LGB & H People in Goods, Facilities & Services

The **Equality Act (Sexual Orientation) Regulations 2007** prohibit discrimination on grounds of sexual orientation in the provision of 'goods, facilities and services', including in retail, services, public services including health care and education, premises, etc.

What does this mean? Paddy and Michel have been going out for a few months and have booked a romantic weekend away in a hotel in the country. They feel really confident that they won't get an hassle from the hotel owners about booking a double room in the hotel because they know that **places like hotels, youth projects, entertainment venues and schools can no longer refuse to serve people simply because of their sexual orientation (lesbian, gay, bisexual or straight).**

Recognition

Devolution/ Public Duty to Encourage Equal Opportunities

The **Scotland Act 1998** requires all public authorities in Scotland to exercise their public functions in a manner that encourages equal opportunities and this explicitly includes sexual orientation.

Equal Opportunities Requirement Placed on Public Authorities

The **Local Government in Scotland Act 2003** requires Scottish local authorities to exercise all their functions under the Act in a manner that encourages equal opportunities, including sexual orientation.



✚ **Legal Recognition of True Gender for Transsexuals**

The **Gender Recognition Act 2004** can now apply to have their birth certificate changed so that their legal documents reflect their true gender. It also makes it a crime to disclose a person's previous transgender history in certain circumstances.

A human resources officer in a company who finds out that a new employee has undergone gender reassignment in the past may commit a crime if they pass this information on to others in the company.

✚ **First Statutory Definition of Transgender Status in UK Law**

The **Police, Public Order and Criminal Justice (Scotland) Act 2006** is the first piece of legislation to define transgender status in UK law.

✚ **Cross-Strand Equality and Human Rights Commission**

The **Equality Act 2006** merges the three existing equality commissions (Commission for Racial Equality, Equal Opportunities Commission and Disability Rights Commission) into one commission to promote equality across all strands (including sexual orientation) and human rights.

✚ **Goods & Services Protection for (some) Transgender People (Spring 2008)**

The **Sex Discrimination (Amendment of Legislation) Regulations 2008** implement European Council Directive 2004/113/EC to provide protection against discrimination and harassment on grounds of a person's gender reassignment in the provision of goods, facilities and services (covers those undergoing GR, those who have undergone GR and those who have changed gender for the purposes of the GRA 2004).

✚ **Hate Crime Law Extended to LGBT and Disabled People (Spring/Summer 2008)**

The **Offences (Aggravation by Prejudice) (Scotland) Bill** will enable judges to take the hate motive behind a crime into account in sentencing, where the offender's motivation is their prejudice against LGBT or disabled people.

A man is verbally abused and then violently assaulted after leaving a gay club. Police will mark the offender's police file accordingly and the trial judge will treat the crime as homophobic hate crime and add participation in an LGBT awareness-raising programme to the sentence.

✚ **LGBT-Inclusive Statutory Definition of Rape (Autumn 2008)**

The **Rape and Sexual Offences (Scotland) Bill** will make rape a non-gender-specific offence.

Male rape will be prosecuted as rape rather than as a lesser sexual offence.

✚ **Other legislation that recognises LGBT people and their relationships as equal**

Adults with Incapacity (Scotland) Act 2000, Housing (Scotland) Act 2001, Mortgage Rights (Scotland) Act 2001, Civil Legal Aid (Scotland) Amendment Regulations 2003, Mental Health (Care and Responsibilities) (Scotland) Act 2003, Criminal Justice (Scotland) Act 2003