
Europe and LGBT Rights in the UK

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This guide looks at the relationship between Europe and UK legislation on LGBT rights. Directives are policies agreed by the EU member states, to be enacted by each member. If these directives are not enacted the member state can be challenged in the EU Court of Justice. Law agreed in the UK applies whether the UK is a member of the EU or not but countries outside the EU are not subject to EU directives.

This guide also covers that relationships with Europe go beyond EU membership.

The UK is currently part of the European Union and the Council of Europe. The EU has 28 members and the Council of Europe has 47. The Council includes countries such as Russia and Iceland that are not part of the EU as well as countries such as Denmark and Greece that are part of the EU.

The Council of Europe is an organisation of European countries focused on human rights, democracy and the rule of law in Europe. The Council has agreed the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, Rome) which can be used in cases where it is considered countries are not upholding agreed human rights. Prior to 1998 cases had to be filed and upheld by the European Commission for Human Rights before going to the European Court of Human Rights. Since 1998 cases can directly to the European Court of Human Rights.

The EU Charter for Fundamental Rights which came into force with the Treaty of Lisbon in 2009 does not apply outside the EU. Protocol 30 of this Treaty means that fundamental rights could not be used by the EU Court of Justice or a tribunal against existing UK law.

Decriminalisation of Homosexuality

Homosexuality was decriminalised in England and Wales in the Sexual Offences Act 1967. Legalisation came into effect in Scotland in 1981 after the 1980 Criminal Justice (Scotland) Act. However in Northern Ireland homosexuality only became legal in **1982** after a court case taken by Jeff Dudgeon to the European Court of Human Rights in **1981** (a case that was filed in 1975 with the European Commission of Human Rights) about abuse of the right to private life in the European Convention on Human Rights (article 8). The court stated that nations had the right to determine age of consent which is why the UK law was not required to change, at the time for heterosexual sex the age of consent was 16 whilst it remained at 21 for homosexuals.

Extension of Sex Discrimination to include Gender Reassignment

In **1996** the European Court of Justice ruled in the case of P v S and Cornwall County Council that P had been dismissed unfairly from their employment after informing the employer that they were undergoing gender reassignment surgery. Whilst it was understood that under the Sex Discrimination Act that someone going through the opposite sex reassignment would be treated the same the UK tribunal viewed that the EU Equal Treatment Directive (1976) could be applied so asked the European Court of Justice for a preliminary ruling. It was ruled that it was unfair dismissal based on gender reassignment as someone who was not going through a sex change would not be dismissed. This ruling left open the question of continuing employment where sex may be considered a constitutive part of the job (proportionate means of achieving a legitimate aim is a phrase used in the 2010 Equality Act that includes gender reassignment in the characteristics protected in the Act.) Notably this was the first piece of case law in the world that protected trans people in employment or vocational education. The UK Government introduced the **1999** Sex Discrimination (Gender Reassignment) Regulations as a result of this case.

Equal Age of Consent

In the case of Sutherland v. United Kingdom, the European Commission of Human Rights found, on 1 July **1997**, that Articles 8 and 14 of the European Convention on Human Rights were violated by a discriminatory age of consent. This based on the grounds that there was no objective and reasonable justification for maintaining a higher minimum age for male homosexual acts. On 13 October 1997, the Government

submitted to the European Court of Human Rights that it would propose a Bill to Parliament for a reduction of the age of consent for homosexual acts from 18 to 16.

After several battles between the House of Commons and the House of Lords the bill was finally 'forced through' in late November **2000**.

Homosexuality in the Armed Forces

A case was taken by Stonewall to European Court of Human Rights (**1999**)

Former RAF nurse Jeanette Smith, ex-RAF administrator Graeme Grady, ex-Royal Navy lieutenant-commander Duncan Lustig-Prean and ex-naval rating John Beckett took their case to the European court after it was rejected by the Appeal Court in London. The ex-servicemen and a former RAF nurse told the court that investigations into their homosexuality, and their subsequent sackings, violated their human rights.

The ban was lifted on 12th January **2000**.

Employment Equality

The EU Employment Equality Framework Directive was issued and came into force in **2000**. This included protection from discrimination in employment to the ground of sexual orientation. EU countries were given 3 years to bring this into law which the UK did extending legal protection in the workplace to cover sexual orientation in **2003**. This directive also provides the basis for the 2010 Equality Act.

2000 Gross Indecency Laws

European Court of Human Rights in **2000** overturned a sentence from the UK High Court that stated because more than two people were present when buggery happened there was a crime. The case known as the Bolton 7 in which the Bolton Crown Court, in 1998, convicted seven men of having sex together (in private). European judges ruled that the law against consensual gay group sex breached the respect for private life. The European Court of Human Rights ruled that UK gross indecency laws were in violation of the European Convention on Human Rights.

The UK law banning "gross indecency" changed in **2003**.

2002 Gender recognition

The European Court of Human Rights ruled on 11 July **2002**, in Christine Goodwin and I v The United Kingdom, that the UK Government had discriminated based on violation of the European Convention on Human Rights. Goodwin had complained that the lack of right to change registered gender had led to embarrassment and humiliation as well as an unfair requirement to pay National Insurance to 65 rather than 60 because pre reassignment Goodwin had been registered as a man. I complained that she was unable to gain employment as a nurse due to not wanting to pass over the birth certificate which was registered in the pre-operative sex. Their complaints covered their treatment in relation to employment, social security and pensions and their inability to marry either as a man or a woman. Previous attempts to get court rulings in favour of transsexuals or on the grounds of violating human rights had been unsuccessful.

The UK Government introduced the Gender Recognition Act in the House of Lords in the latter part of **2003** and after being passed in the House of Lords and the House of Commons in 2004 received Royal Assent on 1st July **2004**. This meant that people who had undergone gender reassignment could change their legal registration. Up to this point the UK was criticised for being behind all bar 3 countries in Europe on recognising transsexuals. Those other 3 being Andorra, Albania and Ireland.

Whilst this Bill was going through the Court of Justice made a preliminary ruling (**2004**) requested by the UK Court of Appeal that there was discrimination in the case of K.B v NHS Pensions Agency. Discrimination on the grounds that K.B's transsexual partner was refused a widower's pension because of being legally registered as female despite subsequent transition to be male. It was ruled that not being able to marry because there was no way to register changed gender was against the human right to marry contained within the European Convention of Human Rights.

2010 Equality Act

Equal Treatment Directive 2006 is an Act of the EU which underpins the Equality Act 2010. Whilst the Equality Act is in force the rights supported within the Equal Treatment Directive are maintained.

Same-Sex Relationship Status within Europe

Whilst same sex partnerships were introduced by the UK Government there are some rulings since 2013 across Europe from the ECHR which have some influence on same-sex relationship status across the Council of Europe member countries which potentially have impact for people registered in same-sex relationships in the UK.

The European Court of Human Rights has recognised same-sex unions as pertaining to the Convention on Human Rights articles related to 'family life' (Schalk and Kopf v Austria 2010)

Vallianatos v Greece (2013) the court ruled that it was violation of the convention if same-sex couples are excluded from civil unions if they are available for opposite sex couples.

In Oliari and others v Italy (2015) the ECHR established a positive obligation for members of the Council of Europe to provide legal recognition of same-sex relationships. Currently 20 of the 47 Council of Europe member countries do not legally recognise any form of same-sex union.

Domestic legislation is required in nation states to recognise same sex partnerships and marriage. Within the EU if an EU national and their same-sex partner move from a country where their relationship is legally recognised to another country where same-sex unions are not recognised their relationship should be treated the same as a (duly attested) long-term unmarried couple. Each country has its own laws in terms of immigration from outside the EU. People with non EU passports moving from a place where their same-sex relationship is registered should refer to the laws and regulations of the individual EU country of destination for more information about the recognition of their same-sex relationship.

Employment equality is underpinned by directives and rulings from the EU bodies whilst the Council of Europe through the ECHR has focused on human rights. The UK Acts that are supported and were in some way led by EU directives do not change if / when the UK leaves the EU. However if these laws are amended or repealed after the UK leaves the EU these will not be underpinned by EU directives. This position also applies to European Court of Justice rulings which set case law for any country within the EU. Furthermore the cost of taking employment tribunal cases has substantially increased in the UK and there is objective evidence that cases have fallen in number. As a result progress obtained through taking cases may not be experienced in the same way as before the rise of tribunal costs, the TUC is lobbying for reversal of this cost.

Further Information

<http://en.strasbourg-europe.eu/member-states,44987,en.html>

http://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.htm

http://www.glapn.org/sodomylaws/world/united_kingdom/uknews23.htm

<http://www.ilga->

[europe.org/sites/default/files/5_key_facts_on_the_eu_and_lgbt_equality_-_longer_version.pdf](http://www.ilga-europe.org/sites/default/files/5_key_facts_on_the_eu_and_lgbt_equality_-_longer_version.pdf)