

# LGBT+ Equality in the UK – Key Legal Milestones

## 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 the 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 after informing the employer that they were undergoing gender reassignment surgery. 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. Notably this was the first piece of case law in the world that protected trans people in employment or vocational education.

This ruling left open the question of continuing employment where sex may be considered a key part of the job ('proportionate means of achieving a legitimate aim' is the phrase used in the 2010 Equality Act that includes gender reassignment in the characteristics protected in the Act.) The UK Government introduced the **1999** Sex Discrimination (Gender Reassignment) Regulations as a result of this case, extending the 1975 Sex Discrimination Act to cover discrimination on grounds of gender reassignment in employment and vocational training.

## 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 was 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 passed in November **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; the UK extended legal protection in the workplace to cover sexual orientation in **2003**. This directive also provides the basis for the 2010 Equality Act.

### 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, before 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 it received Royal Assent on 1<sup>st</sup> 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 most other countries in Europe on recognising transsexuals.

Whilst this Bill was going through, the European 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. In this

case, the discrimination was 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.

### Civil Partnership Act 2004

The Civil Partnership Act **2004** came into force in December 2005 across the UK. The Scottish Parliament voted in favour of allowing Westminster to legislate for Scotland in this Act. Civil partnerships were introduced for same sex couples only, across the UK. At the time there were legal and social objections to calling a same sex relationship a marriage. The view was that marriage could only be between a man and a woman. Marriage remained available only to opposite sex couples.

The first civil partnerships took place in Northern Ireland on 19 December 2005, followed by Scotland on 20 December 2005 and then England and Wales on 21 December 2005. They were not permitted on religious premises.

Civil partnerships were developed to give same sex couples the same legal status, rights and responsibilities as those given to opposite sex couples through marriage. These were given without the religious associations of marriage. Civil partnerships give same sex couple partners a secure legal status, akin to civil marriage for heterosexual couples, in matters like life insurance, pensions, inheritance and caring for their partner's children. They provide a legal basis for a partner to be respected as the next of kin in hospitals and within families. Their introduction meant same sex couples now had official and public recognition of their relationship.

Since 2011 civil partnerships have been permitted on religious premises in England and Wales. In Scotland a civil partnership ceremony can be conducted anywhere, civil or religious by someone approved to conduct a ceremony. Civil partnership ceremonies are not permitted on religious premises in Northern Ireland.

In February 2018, the UK and Scottish governments began reviewing civil partnerships, with a view to either opening them up to opposite-sex couples or scrapping them entirely. In June **2018**, the Supreme Court ruled that allowing only same-sex couples to enter a civil partnership is discriminatory and incompatible with the European Convention on Human Rights. Following the Supreme Court judgment, the Civil Partnerships, Marriages and Deaths (Registration Etc.) Act **2019** opened the way for the first opposite-sex civil partnerships to take place in England and

Wales from December 31st 2019. The Act was a victory for equal civil partnership campaigners. The Scottish Parliament also passed a bill in June **2020** to allow mixed sex civil partnerships.

### Equality Act 2010

In **2010** the UK Government brought in the Equality Act covering 9 protected characteristics including sexual orientation and gender reassignment. It is the inclusion of sexual orientation equality which is of particular interest to lesbian, gay and bisexual people. It is, of course, quite possible that any lesbian, gay, or bisexual person may also have one or more other protected characteristic.

#### ***Aims of the General Duty***

To comply with the general equality duty in the exercise of their functions public authorities must have due regard to the need to:

- **Eliminate unlawful discrimination, harassment and victimisation** and other conduct prohibited by the Act
- **Advance equality** of opportunity between people who do and do not share a protected characteristic
- **Foster good relations** between people who do and do not share a protected characteristic

### The Marriage (Same Sex Couples) Act 2013

The Marriage (Same Sex Couples) Act **2013** introduced same sex marriage in England and Wales. It came into force on 13th March 2014. The first marriages took place on 29th March 2014. Section 9 granted any couple registered in a civil partnership the ability to convert that partnership into marriage.

The Marriage and Civil Partnership (Scotland) Act **2014** introduced same sex marriage in Scotland. It came into force on 16th December 2014. The first marriages for couples in a civil partnership took place on the same day. For others the first marriage took place on the 31st December 2014.

Same sex marriage was implemented in Northern Ireland in January **2020**.