



Equality Network

Campaigning to remove the inequalities facing lesbian, gay, bisexual and transgender people in the laws and institutions of Scotland

Equality at Holyrood

Promoting equal opportunities for lesbian, gay, bisexual and transgender people in the new Scotland

One of the four key principles adopted by the Consultative Steering Group for the Scottish Parliament is the need for the Parliament to **promote equal opportunities for all**. In line with developments elsewhere in the UK and Europe, the Scotland Act defines equal opportunities to include both sex and sexual orientation.

The Consultative Steering Group recommended the establishment of an **Equal Opportunities Committee** within the Scottish Parliament. The remit of this Committee should be to promote equal opportunities for all people, throughout Scottish society.

Lesbian, gay, bisexual and transgender (LGBT) people still face daily discrimination in society. We also remain directly discriminated against by a number of laws which reflect the old idea that our sexual orientation and gender identity are flawed and to be discouraged.

The Scottish Parliament has responsibility for most of these discriminatory laws. In particular, sexual offences law, and section 28 of the Local Government Act 1988, directly discriminate against LGBT people, and the civil law fails to recognise our identities, partnerships and families.

The Scottish Parliament also has the power to encourage equal opportunities generally throughout its work. Much good practice has been developed in parts of Scotland in recent years to tackle discrimination against LGBT people, for example in the provision of local government and police services. The Scottish Parliament will be able to **promote and encourage** such good practice across the country.

Legislation prohibiting discrimination, for example in employment, remains reserved to Westminster. However, the Scottish Parliament will be able to make representations to Westminster calling for the extension of anti-discrimination legislation to protect people against discrimination on grounds of sexual orientation and gender identity.

The Scottish Parliament's purpose

Inequality of opportunity remains widespread in Scotland. Discrimination occurs on many grounds, including gender, race, disability, sexual orientation, age and social origin. It should be a fundamental part of the Scottish Parliament's purpose to tackle inequality and social exclusion.

- ☑ The Scottish Parliament should adopt the equal opportunities measures proposed in the Consultative Steering Group report. An Equal Opportunities Committee and an Equality Unit should be established, and the explanatory memorandum of each Bill should set out its implications for equality of opportunity for all in Scotland.
- ☑ The remit of the Equal Opportunities Committee must be to tackle inequalities throughout Scottish society, not just within the Parliament itself. It must be proactive and consultative, with expert consultative sub-committees considering, for example, gender equality, race equality, disability equality, LGBT equality, age equality and poverty. A very effective model of good practice here is the Equality Committee of Glasgow City Council.

Fair treatment under the criminal law

At the time of writing, there is a higher age of consent for sex between men than for sex between a man and a woman, or between women. The criminal law discriminates in a number of other ways, for example, consensual adult sexual activity which takes place with a third adult present is completely legal for heterosexuals, but illegal for gay men. Furthermore, some police, prosecution authorities and courts still treat minor offences committed by two men or two women, for example, sexual activity in a secluded corner of a park, much more harshly than the same activity between a man and a woman.

- ☑ The Scottish Parliament should institute an immediate review of sex offences law, similar to that being conducted in England and Wales, with a remit to ensure that the law provides effective protection from sexual abuse and assault for all people, while removing the remaining discrimination on grounds of sexual orientation and gender identity.
- ☑ The Scottish Parliament should promote non-discriminatory policing and prosecution policies.

Fair treatment for young people

Many young LGBT people have a miserable time. Homophobic bullying is widespread in our schools. No support structures exist for young LGBT people in most of Scotland. Teachers are inhibited from tackling homophobic bullying and from providing advice and support to young LGBT people, by section 28 of the Local Government Act 1988, and by a lack of clear national policy in these areas. Personal and sex education compounds the problem in many schools by ignoring, marginalising and stigmatising LGBT identities.

- ☑ The Scottish Parliament should repeal 'Section 28' as a matter of urgency.
- ☑ National policy is needed explicitly to recognise and tackle homophobic bullying in schools. School curricula should be inclusive, non-discriminatory, and supportive of the diversity of pupils. Local authorities should recognise and support the particular needs of young LGBT people in their area, and Parliament should promote this recognition and support across Scotland.

Fair treatment by public bodies

Discrimination in society can extend to the operation of public bodies and services. This leads to a lack of trust in public services by members of the LGBT community, with the result, for example, that homophobic assaults go unreported to the police and the perpetrators are left free to attack again. Public bodies must address discrimination in their service provision, and further, they have an important role to play in tackling and redressing the effects of discrimination in society as a whole.

- ☑ The Scottish Parliament should use its equal opportunities promotion powers to encourage all public bodies, including local authorities, police and health services, to adopt effective non-discrimination policies which include sexual orientation and gender identity.
- ☑ Parliament should monitor the operation of these policies, and gather and promulgate best practice.
- ☑ A key element of national policy for all public bodies and services should be the need to understand and counter the effects of discrimination in society.

Fair treatment under the civil law

The civil law at present denies the identity, relationships and families of LGBT people. For example, in law, transsexual people remain the gender specified on their birth certificate, making it impossible to marry a partner of the opposite gender, and leading to other problems in the appropriate provision of services.

The law does not recognise committed same-gender partnerships, and such partnerships are denied the rights and responsibilities available to mixed-gender couples by registering a marriage. For example, a same-gender partner is not recognised as able to act for an incapacitated partner, and is discriminated against in inheritance law.

The law does not recognise that same-gender couples may co-parent. This means for example that if a mother shares the upbringing of her child with her female partner, that family relationship is not legally recognised, and were the mother to die, the co-parent would have no recognised responsibility for the child. Courts continue to discriminate against LGBT parents and their children in deciding matters such as access arrangements.

- ☑ The Scottish Parliament should legislate to allow transgender and transsexual people to register their gender identity for legal purposes.
- ☑ Parliament should introduce legislation to make the rights and responsibilities of civil marriage available to couples regardless of gender.
- ☑ Parliament should negotiate with Westminster for all such couples to have equal rights and responsibilities in reserved areas such as tax, benefits and immigration.
- ☑ Parliament should amend the legislation on joint fostering and adoption to remove the discrimination against same-gender couples.

Summary

To provide, protect and promote equal opportunities for lesbian, gay, bisexual and transgender people in Scotland, the Scottish Parliament should ensure the following:

- ◆ Parliament should adopt the recommendations of the Consultative Steering Group concerning equal opportunities. The remit of the Parliamentary Equal Opportunities Committee should be to promote and protect equal opportunities for all people, throughout Scottish society. To be effective, the Committee should have specialist consultative sub-committees, including one considering LGBT equality.
- ◆ An immediate review of sexual offences law should ensure that the law effectively protects all people from abuse and assault, while removing the remaining discrimination on grounds of sexual orientation and gender identity.
- ◆ Section 28 of the Local Government Act 1988 should be repealed immediately. Parliament should put in place national policy for schools to tackle homophobic bullying, to provide appropriate support for young LGBT people, and to end marginalisation and stigmatisation in the syllabus.
- ◆ Parliament should promote the adoption by all public bodies of effective equal opportunities policies and practices which include sexual orientation and gender identity. Parliament should monitor the operation of these policies and practices, and promote best practice across Scotland. National policy for public bodies should include the need to understand and counter the effects of discrimination in society.
- ◆ The gender identity of transgender and transsexual people should be recognised in law.
- ◆ Parliament should introduce legislation to make the rights and responsibilities of civil marriage available to couples regardless of gender.

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