



# Equality Network

## Equality at Holyrood

In the second term of the Scottish Parliament:  
**Equal opportunities for lesbian, gay, bisexual and transgender people**

The need to promote equal opportunities for all is a founding principle of the Scottish Parliament. The Parliament and Executive must also comply with the European Convention on Human Rights, article 14 of which prohibits discrimination.

In its first term the Parliament established its **Equal Opportunities Committee**, and committed itself to scrutinising the equality implications of all legislation and policy.

The Executive established an **Equality Unit** to promote mainstreaming of equality throughout its work, and published and started to implement an **Equality Strategy**, covering a range of equality issues including sexual orientation and gender identity.

These initiatives are based on the broad definition of equal opportunities in the **Scotland Act 1998**, and include lesbian, gay, bisexual and transgender (LGBT) equality as part of an inclusive commitment to equality for all.

LGBT people still face daily discrimination in Scotland. We remain **directly discriminated against** in fundamental ways by a number of laws which still reflect the old idea that our sexual orientation and gender identity are flawed and to be discouraged.

**Prejudice, harassment, abuse and isolation** are common experiences for LGBT people in Scotland, as are **institutional failures** in providing equitable public services.

This document sets out how the Scottish Parliament can provide and promote equal opportunities for LGBT people by:

- **eliminating** the direct discrimination that remains in the law;
- **combating** discriminatory attitudes, harassment and abuse;
- **ensuring** that public services deliver an equitable service for all.

# Eliminating discrimination in the law

Although there have been improvements to the law during the first term of the Scottish Parliament, there is more still to be done to eliminate direct discrimination against LGBT people from the law of Scotland:

- Transsexual people's identity is denied by the law
- Same-sex couples and their families cannot access most of the legal protections available to mixed-sex couples
- Sexual offences law still discriminates by sexual orientation

The UK has fallen further and further behind the rest of Europe in these respects, and recent judgments in UK and European Courts have established that our current laws breach the European Convention on Human Rights.

## Fair treatment for transsexual people

The UK is one of only four of the 43 Council of Europe countries which do not legally recognise the gender identity of transsexual people. Transsexual people in Scotland remain, legally, the sex on their birth certificate, that is, the opposite sex to their true identity, the identity in which they live. The results are discrimination, for example in pensions, insurance and employment, lack of privacy about transsexual status, and that a transsexual person is prohibited from marrying someone of the opposite sex.

In July 2002, the European Court of Human Rights ruled that the UK's law in this area breaches the ECHR. Much of this law is devolved, and it must now be changed urgently to maintain ECHR compliance.

**→ As required by the ECHR, the Scottish Parliament should legislate to allow transsexual people to re-register their legal sex in line with their true gender, for all legal purposes, including the right to marry in their true gender. The legislation should provide a strong right to privacy for gender re-registration.**

## Fair treatment for same-sex couples

Same-sex couples in Scotland face two kinds of discrimination in law. Firstly, if a same-sex couple live together as **cohabitants**, they receive only some of the legal protections provided for mixed-sex unmarried cohabitants. Secondly, a mixed-sex couple can choose to marry, and if they do the law provides them additional protections. A same-sex couple cannot marry, nor is there currently any **civil partnership** scheme in Scotland which would enable them to access the same framework of legal protection.

During its first term, the Scottish Parliament legislated to extend a number of the protections the law gives unmarried cohabiting couples, to cover same-sex couples also. However, there are still a number of areas of cohabitation law which cover only mixed-sex, and not same-sex, cohabiting couples.

These include private sector tenancy succession, the right to sue for damages from a person causing the death of one's partner, some domestic abuse protections, and the fostering regulations.

Recent judgements in the English Courts have established that equivalent provisions in English law breach article 14 of the ECHR, because they discriminate on grounds of sexual orientation.

- **As required by the ECHR, the Scottish Parliament should complete the task of extending the legislation on cohabitation so that the protections provided cover same-sex couples on the same basis as mixed-sex unmarried couples.**

The majority of European Union countries now have legislation for **civil partnerships**, allowing same-sex couples to register their committed partnership with the state, and to access legal protections similar to the secular legal protections provided for married couples.

These include financial obligations and rights, including a duty of mutual financial support, a right to inherit from one another, and division of property if the partnership is dissolved.

- **The Scottish Parliament should legislate to introduce civil partnership, allowing couples to register their committed long-term relationship with the state. The legal effects of civil partnership should be the same as the secular legal effects of marriage.**

## Fair treatment for children and parents

At present in Scotland, a couple must be married before they can apply jointly to adopt a child. However, the Courts in Scotland have long confirmed that children can be adopted to live with mixed-sex unmarried couples, and with same-sex couples, but in such cases only one of the couple is legally recognised as parent. This places the child in an insecure position – if something happens to that parent, the child is legally parentless.

Adoption law in England and Wales was changed in 2002 to allow unmarried and same-sex couples to apply **jointly** for consideration as adoptive parents.

- **The Scottish Parliament should legislate to enable unmarried mixed-sex, and same-sex couples to apply jointly for consideration by an adoption panel as adoptive parents. The legislation should also allow the mixed-sex or same-sex partner of a parent to apply to adopt the parent's child (subject to the agreement of the child's other parent if there is one).**

## Fair treatment under the criminal law

The law on sexual offences has been significantly improved over the past four years, with the equalisation of the age of consent at 16 for all, and the repeal of some other parts of the discriminatory laws on sex between men. However, the law in this area continues to discriminate badly on grounds of sexual orientation.

All physical acts of love between a male couple are referred to in law as “gross indecency”, sending a strongly discriminatory message that they are undesirable. Rape of a man is not recognised in Scots law as rape, and is treated less seriously in law than rape of a woman. Statutory penalties for sexual abuse of a boy under 16 are less than those for abuse of a girl.

English sex offences law currently contains similar discriminatory anomalies, but legislation introduced at Westminster in 2002 will remove the discrimination completely for England and Wales.

- **The Scottish Parliament should legislate to remove the remaining discrimination on grounds of sexual orientation from sex offences law.**

# Leadership against prejudice

A significant minority of people in Scotland still believes that prejudice against LGBT people is acceptable, or even justifiable. For this reason, clear top-level public leadership against prejudice is a necessary step towards equality.

- **The Parliament and Executive should make clear, public and top-level commitments of support for equality for all, and of condemnation of all forms of prejudice, including explicit condemnation of prejudice against LGBT people.**

Discriminatory attitudes about LGBT people are still widespread – some deliberate, many based on ignorance. Many LGBT people themselves feel excluded from mainstream society, are forced to hide their sexual orientation or gender identity, and as a result suffer low self-esteem and significantly increased risk of mental illness including self-harm or attempted suicide.

- **A national programme of public awareness-raising is needed, to reinforce the message that discrimination against LGBT people is unacceptable in 21<sup>st</sup> century Scotland, to address ignorance, and to counter the isolation from society felt by LGBT people.**

Research shows that LGBT people are at much higher risk of harassment and attack, with over half reporting harassment, and more than one quarter reporting physical assault, in any one year.

- **Improvements are needed to the legislative and national policy framework for dealing with harassment and offences aggravated by prejudice against LGBT people, in public places, in schools, and in and around homes.**

Young LGBT people are at particular risk of harassment, attack, low self-esteem and mental illness. They are often completely isolated, and unable to access support from school, family or friends.

- **National policy should ensure that schools adopt inclusive and supportive diversity and anti-bullying strategies, and that there are accessible support services outwith school for young LGBT people across Scotland.**

# Equality for all across Scotland

The Scottish Executive's Equality Strategy is based on the **mainstreaming** of equality: that public service providers across Scotland should consider the diverse needs of different sectors of their communities, and take action to ensure that an appropriate and equitable service is provided for all, and that responsibility for making this happen is shared by all staff.

The Scottish Parliament has already used its devolved power to encourage equal opportunities to place duties on local authorities and others to encourage equality, for example in the *Housing (Scotland) Act 2001* and the *Local Government in Scotland Act 2003*. These duties should be extended across the public service sector.

- ➔ **Statutory duties to encourage equal opportunities should be extended to all bodies providing public services in Scotland.**
- ➔ **Audit and inspection of the work of public bodies should assess the extent to which equality for all is being mainstreamed.**
- ➔ **Public funding should be used as a lever for promoting equality and fairness, by requiring recipients of funding to mainstream equality. Recipients should be encouraged to identify and allocate appropriate resources for equality mainstreaming.**

Much of the focus of existing work on how to mainstream equality has been on gender equality, and to a lesser extent, on race and disability. There is an urgent need to develop and share good practice on how to mainstream equality for all, including on grounds of sexual orientation and gender identity.

- ➔ **The Parliament and Executive should support a programme of development of equality practice and of mainstreaming methods which cover equality for all, including the specific needs of LGBT people. Mechanisms are also needed for sharing good equality practice across Scotland.**

Effective mainstreaming of equality requires a sound base of research on people's needs and on barriers to equal provision of services. There has been very little research of this kind on sexual orientation and gender identity issues.

- **More research is needed into the situation of the diverse LGBT communities across Scotland, including those facing multiple discrimination, living in rural areas, or in poverty.**

The provision of equitable services requires partnership between service providers and community organisations. There are at present relatively few LGBT organisations in Scotland, and the large majority of these are completely unfunded. Most are located in the central belt. This severely restricts the capacity of LGBT communities across Scotland to work to address inequality and to engage in partnership work with others.

- **A national strategic review of funding of the LGBT voluntary sector should be undertaken, against the background of the need to build capacity within the sector across Scotland.**

Much equal opportunities legislation is reserved to Westminster. Between 2003 and 2007, the UK Government will be implementing the recent EU equality directives, which require the extension of employment discrimination law to cover sexual orientation, religion and age, and will be developing new institutional arrangements to extend the protection currently provided by the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission.

- **The Scottish Parliament and Executive should ensure that the voice of Scotland's communities is heard in the development of the new reserved equality laws and institutions, so that these will appropriately promote and protect equality for all in Scotland, both in reserved matters, and, by working in partnership with the Scottish Parliament and Executive, across the full range of devolved powers.**

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**Equality Network**

22 Forth Street  
Edinburgh EH1 3LH  
Scotland, UK



Tel: 07020 933 952

Fax: 07020 933 954

Web: [www.equality-network.org](http://www.equality-network.org)

Email: [en@equality-network.org](mailto:en@equality-network.org)

This document is available in large print on our website at:

**[www.equality-network.org](http://www.equality-network.org)**

If you require it in large print on paper, or in another format or another language, please contact the Equality Network office by phone on: 07020 933 952, or by email at:

**[en@equality-network.org](mailto:en@equality-network.org)**