

# LGBT+ EQUALITY

Risks of Brexit

## Introduction

The creation of laws to protect LGBT+ people from discrimination in the workplace was driven by the EU. While the UK has now gone beyond what is required by EU law it is still an important guarantee for LGBT+ rights in the UK.

## EU law and legal rights for LGBT+ workers

EU law has directly created significant rights for LGBT+ workers in the UK.

In 1996, the European Court of Justice (ECJ) handed down a landmark judgement in a case brought by a British trans woman who had been dismissed from her job because she had undergone gender reassignment. The ECJ ruled (against UK government arguments) the dismissal was a form of sex discrimination covered by EU law. Because the UK must comply with judgements from the ECJ, which rules on EU law, gender reassignment was added to the Sex Discrimination Act.

In 2000, the EU adopted Council Directive 2000/78/EC that required all EU countries to ensure equal treatment for lesbian, gay and bisexual workers, a move for which UK trade unions had campaigned. The government introduced the Sexual Orientation Regulations in 2003 – just ahead of the EU's final deadline for implementation.

EU law is also an important backstop to the level and strength of protection that the UK provides.

In 2004, several trade unions took a case challenging the government's implementation of Council Directive 2000/78/EC. This led to clear guidance from the court's ruling that exemptions in the Sexual Orientation Regulations for religious organisations could only apply to a very narrow range of jobs.

In 2011, EU law was fundamental in defending rights in the Equality Act 2010 when the coalition government asked in its 'Red Tape Challenge' if the Act should be scrapped.

In 2017, John Walker successfully relied on general principles of EU law to improve pension benefits for some same-sex partners. His case closed a loophole in UK law which allowed employers to pay same-sex partners smaller pension benefits than those paid to heterosexual couples if the funds were paid in before December 2005 – when civil partnership became lawful in the UK. Such legal challenges would no longer be possible if the UK leaves the EU on the terms that the Government is currently proposing.

### **The ECJ has also brought additional protections for LGBT+ workers.**

On sexual orientation it has ruled that people in registered same-sex partnerships must have equal access to marital benefits. And, in another case, it has ruled that statements from a major shareholder of a football club that he would never hire a gay footballer, and the failure of the club to distance itself from his remarks, was enough to presume that there was a homophobic recruitment policy. It was not necessary to look at the sexual orientation of those who had been hired to prove discrimination.

EU law requires that penalties imposed on discriminators must be effective and that victims of discrimination should be fully compensated for the harm that has been caused. It is this European legislation which means that there is no limit on discrimination awards in the UK.

## **European Court of Human Rights (ECtHR) and LGBT+ rights**

As well as using EU law to advance LGBT+ rights in the UK, campaigners have taken cases to the European Court of Human Rights (ECtHR) which has brought further protections. Their successes persuaded the UK government to: de-criminalise male same-sex sexual activity in Northern Ireland (1982); end the ban on lesbian and gay men serving in the military (2000); equalise the age of consent (2001); and introduce the Gender Recognition Act (2004). The ECtHR is separate from the EU. However, respect for human rights as guaranteed by the European Convention on Human Rights is recognised as a fundamental value and general principle of EU law. It is referred to in the Directive on sexual orientation discrimination. The UK's membership of the EU helps guarantee the continuing influence of these rights on LGBT+ rights in the UK.

## **Risks of Brexit**

Many people think LGBT+ rights are safe in the UK, especially since the Conservative Party has shifted from a position of introducing section 28 banning the 'promotion' of homosexuality to legislating for same-sex marriage and has promised to incorporate all current EU law into UK law.

However, when we leave the EU all those protections are at risk. Future governments would have unconstrained freedom in those areas currently governed by EU law relevant to employment enabling them to scrap the protections at a future date.

Additionally, where there is not a complete repeal of the rights currently guaranteed by EU law, successive governments could bring in changes that undermine or narrow them. For example, there have been attempts by some to restrict rights to equality for LGBT+ people on the grounds of religion or belief.

Similarly, the coalition government's 'Red Tape Challenge' asked if the Equality Act 2010 (which brought together all the previous discrimination laws) should be scrapped.

EU law helped defend most rights in the Act but the government still found bits to repeal that were not supported by EU law, like the questionnaires employees could previously use to ask their employer about potential discrimination.

Conservative MPs and advisers have also said they want to limit the compensation for discrimination claims and the government has recently reduced the maximum amount of compensation for unfair dismissal which is not guaranteed by EU law. Additionally, there have been recent statements from senior ministers calling for the Working Time Regulations to be scrapped, which suggest that rights at work will be at risk once we leave the EU.

As the UK is leaving the EU, future decisions of the ECJ which have been positive for equality could no longer be binding. Also, when the UK is outside the EU, LGBT+ people could find it harder to rely on human rights that are guaranteed by the European Convention on Human Rights. The government has a manifesto commitment to repeal the Human Rights Act and bring forward a British Bill of Rights and Theresa May, Home Secretary at the time, has called for withdrawal from the Convention.

## EU law and rights for all workers

In addition to the legislative protections for LGBT+ people derived from the EU are wider rights and protections for all workers.

These protections are wide reaching with every worker exposed to one or more of them. These rights include:

- protection against discrimination at all stages of employment, from access to employment, through treatment at work including pay, to dismissal, and even including post-employment victimisation
- protection against sex discrimination and unequal pay between men and women
- protection against pregnancy discrimination
- protection against discrimination at work on the basis of racial or ethnic origin
- protection of those in insecure work
- working parents' rights
- rights to working time and holiday pay
- health and safety standards

**When we leave the EU all these protections are also at risk.**

## Conclusion

The TUC is clear: the UK voted to leave the EU. But workers must not pay the price of Brexit. Currently, the best option to protect jobs, rights at work and the Good Friday Agreement looks like staying in the single market and customs union. There may be other approaches that could guarantee workers' rights - and specifically LGBT+ rights - but no-one has shown us one yet.

EU workers' rights - won by trade unionists across Europe - are a key part of the patchwork of our protections from discrimination at work. And while they may be imperfect and incomplete, we don't want to lose them. Instead, we want the UK where workers' rights get better, to keep pace with the changing world of work. That means unions organising in more workplaces. And on Brexit, it means the UK and the EU agree on a level playing field on workers' rights, so that hardworking LGBT+ Brits do not find existing rights are diluted, or fall behind when workers in the EU get new rights in the future.

For more information go to [www.tuc.org.uk](http://www.tuc.org.uk)