

LGBT EQUALITY

Risks of Brexit

Introduction

The creation of laws to protect LGBT people from discrimination in the workplace was driven by the EU. The UK has now gone beyond what is required by EU law by extending the ban on discrimination beyond the workplace and introducing same-sex marriage. However, EU law is still an important guarantee for LGBT rights in the UK and the UK's experience can be a positive influence on other EU countries.

EU law creates legal rights for LGBT workers

In 1996, the European Court of Justice (ECJ) handed down a landmark judgement in a case brought by a British transsexual 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 a new Directive 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 an important backstop to the level and strength of protection that the UK provides. For example, in 2004, several trade unions took a case challenging the government's implementation of the Directive. One thing that came out of this case was clear guidance from the courts which said that the exemptions in the Sexual Orientation Regulations for religious organisations could only apply to a very narrow range of jobs.

The ECJ has continued to take a robust approach to equality. 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. This is why there is no limit on discrimination awards in the UK.

LGBT RIGHTS ARE HUMAN 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). Their successes persuaded the UK government to: de-criminalise male homosexual 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. Therefore, 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. Complete repeal of the rights may be unlikely but changes could be made 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. And successive UK governments have tried to curb workers' rights to reduce 'burdens on business'.

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 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.

If the UK were to leave the EU, future decisions of the ECJ which have been positive for equality would no longer be binding. Also, if the UK were 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 Home Secretary Theresa May has called for withdrawal from the Convention.



For more information go to www.tuc.org.uk/euref

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