

Section 28

Section 28 of the *Local Government Act 1988* was a controversial amendment to the UK's Local Government Act 1986, enacted on 24 May 1988 and repealed on 21 June 2000 in Scotland, and on 18 November 2003 in the rest of the UK by section 122 of the *Local Government Act 2003*.

The amendment stated that a local authority "*shall not intentionally promote homosexuality or publish material with the intention of promoting homosexuality*" or "*promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship*".

Some people believed that Section 28 prohibited local councils from distributing any material, whether plays, leaflets, books, etc, that portrayed gay relationships as anything other than abnormal. Teachers and educational staff in some cases were afraid of discussing gay issues with students for fear of losing state funding.

Because it did not create a criminal offence, no prosecution was ever brought under this provision, but its existence caused many groups to close or limit their activities or self-censor. For example, a number of lesbian, gay, transgender, and bisexual student support groups in schools and colleges across Britain were closed due to fears by council legal staff that they could breach the Act.

While going through Parliament, the amendment was constantly relabelled with a variety of clause numbers as other amendments were added to or deleted from the Bill, but by the final version of the Bill, which received Royal Assent, it had become Section 28. Section 28 is sometimes referred to as *Clause 28*. Since the effect of the amendment was to insert a new section '2A' into the previous Local Government Act, it was also sometimes referred to as *Section 2A*.

HISTORY

Background

Section 28 originated in the social transition in British society from homosexuality as '*illegal but discussed*' to '*legal but not always approved*', following debate in the 1950s and the 1967 decriminalisation of homosexual acts for those over the age of 21 in the Sexual Offences Act 1967.

The 1980s were turbulent years politically in the UK, coinciding with the large scale social changes of the Thatcher Government and the rise of AIDS. Intense media interest and public fears over policies of the more left-wing local authorities towards homosexuality and education (the 'Loony left') were also prominent, with widespread concern over the funding of unheard-of minor groups with significant public resources.

The spread of AIDS had also brought about widespread fear, much of which was directed at gays and bisexuals. Some believed that sexual orientation played a factor in the spread of disease and negative, often unfair sentiments toward the homosexual community were a consequence. These sentiments intensified already-existing opposition to school policies, activities, and practices, which supporters claimed were efforts to be inclusive of sexual minorities, and which opponents deemed as the promotion of homosexuality.

In 1983 the Daily Mail reported that a copy of a book entitled *Jenny lives with Eric & Martin*, about a little girl who lives with her father and his gay partner, was provided in a school library run by the Labour-controlled Inner London Education Authority. But it was not until

1986 that major controversy arose and widespread protest demonstrations made a major contribution towards the subsequent passing of Section 28.

A final factor was the tone taken by some activist groups such as the *Gay Liberation Front*, cited by Baroness Knight of Collingtree (then Conservative MP Jill Knight), who introduced Section 28, and who in 1999 spoke about the purpose of that section:

"Why did I bother to go on with it and run such a dangerous gauntlet? I was then Chairman of the *Child and Family Protection Group*. I was contacted by parents who strongly objected to their children at school being encouraged into homosexuality and being taught that a normal family with mummy and daddy was outdated. To add insult to their injury, they were infuriated that it was their money, paid over as council tax, which was being used for this. This all happened after pressure from the *Gay Liberation Front*. At that time I took the trouble to refer to their manifesto, which clearly stated: 'We fight for something more than reform. We must aim for the abolition of the family'.

"That was the motivation for what was going on, and was precisely what Section 28 stopped. ... Parents certainly came to me and told me what was going on. They gave me some of the books with which little children as young as five and six were being taught. There was *The Playbook for Kids about Sex* in which brightly coloured pictures of little stick men showed all about homosexuality and how it was done. That book was for children as young as five. I should be surprised if anybody supports that. Another book called *The Milkman's on his Way* explicitly described homosexual intercourse and, indeed, glorified it, encouraging youngsters to believe that it was better than any other sexual way of life."

Legislation

As a consequence, many Conservative backbench MPs became concerned that left-wing councils were indoctrinating young children with what they considered to be homosexual propaganda. In 1986 Lord Halsbury first tabled a Private Member's Bill in the House of Lords entitled *An act to refrain local authorities from promoting homosexuality*. At the time, the incumbent Conservative government considered Halsbury's bill to be too misleading and risky. The law successfully passed the House of Lords and was adopted by then-Conservative MP Jill Knight. However, overshadowed by the 1987 general election, Halsbury's bill failed.

On 7 December 1987 Conservative MP David Wilshire re-introduced an amendment to the 1988 *Local Government Bill* for a similar clause, entitled Clause 28. The new amendment was also championed by Knight and accepted and defended by Michael Howard, then Minister for Local Government, although it had little to do with the broad remit of the Act, which dealt with the compulsory tendering of school services. After being debated on 8 December 1987 it was presented to the House of Commons on 15 December 1987, shortly before the parliamentary Christmas recess.

Section 28 became law on 24 May 1988. The night before, several protests were staged by lesbian women, including abseiling into Parliament and a famous invasion of the BBC's Six O'Clock News, during which one woman managed to chain herself to Sue Lawley's desk and was sat on by Nicholas Witchell.

Controversy over applicability

After Section 28 was passed, there was some debate as to whether it actually applied in schools or whether it applied only to local authorities. Whilst head teachers and Boards of Governors were specifically exempt, schools and teachers became confused as to what was actually permitted and tended to err on the side of caution.

A National Union of Teachers (NUT) statement remarked that: "*While Section 28 applies to local authorities and not to schools, many teachers believe, albeit wrongly, that it imposes constraints in respect of the advice and counselling they give to pupils. Professional judgement is therefore influenced by the perceived prospect of prosecution.*"

Similarly, the Department for Education and Science made the following statement in 1988 regarding Section 28: "*Section 28 does not affect the activities of school governors, nor of teachers... It will not prevent the objective discussion of homosexuality in the classroom, nor the counselling of pupils concerned about their sexuality.*"

It is said that when Knight heard this, she was somewhat upset, remarking that: "*This has got to be a mistake. The major point of it was to protect children in schools from having homosexuality thrust upon them.*"

In response to these criticisms, supporters claimed that the NUT and Department of Education were mistaken, and the section did affect schools.

Certainly, before its repeal, Section 28 was already largely redundant: sex education in England and Wales has been regulated solely by the Secretary of State for Education since the Learning and Skills Act 2000 and the Education Act 1996. Nevertheless, many liberal and conservative campaigners still saw Section 28 as a symbolic issue and continued to fight their own particular causes over it until its repeal.

Political response

The introduction of Section 28 served to galvanise the disparate British gay rights movement into action. The resulting protest saw the rise of now famous groups like Stonewall, started by, amongst other people, Ian McKellen and OutRage!.

While the gay rights movement was united over Section 28, gay issues began to divide the Conservative party, heightening divisions between party modernists and traditionalists. In 1999 Conservative leader William Hague controversially sacked frontbencher Shaun Woodward for refusing to support the party line that Section 28 should not be repealed, prompting pro-gay rights Tories, such as Steve Norris, to speak out against the decision. 2000 saw prominent gay Conservative Ivan Massow defect to the Labour Party in response to the Conservative Party's continued support of Section 28.

There is only one case of Section 28 being used to bring a case to the courts against a council. In May, 2000 - the first and last case of its kind - the Christian Institute unsuccessfully took Glasgow City Council to court for funding an AIDS support charity which the Institute alleged promoted homosexuality.

Repeal

On 7 February 2000, the first attempted legislation to repeal Section 28 was introduced by the Labour Government as part of the *Local Government Act 2000*, but was defeated by a House of Lords campaign led by Baroness Young.

In the newly devolved Scottish Parliament the repeal process was more successful. Various groups campaigned against the repeal. The Scottish millionaire businessman Brian Souter privately funded a postal ballot as part of his *Keep the Clause* campaign, which returned an apparent 86% support for keeping the clause, from a response from slightly less than one third of the 3.9 million registered Scottish voters. However, Section 28 (although, more accurately, it was Section 2A of the relevant Scottish legislation) was successfully repealed as part of the *Ethical Standards in Public Life etc. (Scotland) Act 2000* on 21 June 2000 with a 99 to 17 majority vote with only two abstentions.

On 24 July 2000 the *Local Government Act 2000* was sent back to the Lords with an amendment re-introducing repeal. Concessions were made in the form of the new *Learning and Skills Act 2000* which emphasised family values and which was hoped would win over opponents. However, the repeal was again defeated in the House of Lords.

Despite successive defeats in the House of Lords of attempts to repeal Section 28 in England and Wales, the Labour government passed legislation to repeal this section as part of the *Local Government Act 2003* by a vote of MPs. This passed the Lords and received Royal Assent on 18 September 2003 and the repeal became effective on 18 November 2003.

The Conservative-run Kent County Council however decided to create their own version of Section 28 to keep the effect of the now repealed law in their schools. This was replaced with provisions stating that heterosexual marriage and family relationships are the only firm foundations for society on 16 December 2004.

Support

Section 28 was supported by religious groups such as The Christian Institute, the African and Caribbean Evangelical Association, the Christian Action Research and Education, the Muslim Council of Britain, and groups within the Roman Catholic Church and the Church of England. The Conservative Party, despite dissent within its ranks on the issue, remained in favour of keeping Section 28 up until its repeal. In the House of Lords, the campaign against the repeal of Section 28 was led by the late Baroness Young, who became associated with opposition to legislation more tolerant towards gays. Newspapers that strongly supported Section 28 included *The Daily Mail* and *The Daily Telegraph*.

In Scotland the most visible supporters of Section 28 were Brian Souter and the *Daily Record* newspaper.

The main argument used in support of Section 28 was the claim that it protected children from 'predatory homosexuals' and advocates seeking to 'indoctrinate' vulnerable young people 'into' homosexuality. Various other arguments were also used in support of Section 28 which are summarised as follows:

- ☆ The claim that promotion of homosexuality in schools undermines marriage.
- ☆ Section 28 prohibited only the promotion of homosexuality and did not prevent legitimate discussion.
- ☆ Section 28 did not prevent the counselling of pupils who are being bullied.
- ☆ Proponents pointed to various polls in an attempt to demonstrate that public opinion favoured keeping Section 28.

Opposition

Gay rights advocates, such as *Stonewall*, *OutRage!*, *The Pink Paper* and the *Gay Times* formed the major opposition to Section 28 and led the campaign for its repeal. Prominent individuals who spoke out for the repeal of Section 28 included Sir Ian McKellen, Michael Cashman, Ivan Massow, Mo Mowlam, Simon Callow, Annette Crosbie, Michael Grade, Jane Horrocks, Michael Mansfield QC, Helen Mirren, Claire Rayner, Ned Sherrin and Alan Moore. Boy George wrote a song opposed to Section 28, entitled "*No Clause 28*". The song "*Shoplifters of the World Unite*" by The Smiths is also rumoured to be about Section 28. The band Chumbawamba recorded a single entitled "*Smash Clause 28! Fight The Alton Bill!*" which was an attack on Clause/Section 28 and a benefit for a gay rights group, it also featured 12 pages of hand printed notes relating to gay rights. It was also opposed by some religious groups and leaders, such as Richard Harries, Bishop of Oxford. Newspapers that came out in opposition included *The Guardian*, *The Independent* and *The Daily Mirror*. Political parties that were opposed to Section 28 included the Labour Party, the Liberal

Democrats and the Green Party. In the House of Lords the campaign for repeal was led by openly-gay peer Waheed Alli.

The main point of argument claimed by opponents of Section 28 was the claim that it discriminated against homosexuals, and that it was an intolerant and unjust law. Various other arguments were also used against Section 28 which are summarised as follows: Evidence was emerging that, by excluding gay support groups and appearing to prevent teachers from protecting victims of homophobic bullying, Section 28 was actually endangering vulnerable children.

- ☆ The claim that Section 28 made the assumption that homosexuals were inherently dangerous to children, implying an association between homosexuality and paedophilia, as obvious from the "predatory homosexuals" argument of the supporters of the law.
- ☆ Not only did Section 28 prevent the active promotion of homosexuality but also it appeared to give a legal reason to oppose it in schools and other forums if necessary.
- ☆ The claim that Section 28 was a law which gave an impression to the public that the government sanctioned homophobia.
- ☆ The idea that homosexuality could be "promoted" implied that homosexuality was a choice which people could be persuaded to make, when in fact sexual orientation is biologically determined. Therefore the basic concept of the legislation was damaging and misleading.
- ☆ It could lead teachers to confusion about what they could do to support pupils who faced homophobic bullying and abuse.
- ☆ It was no longer relevant due to the Learning & Skills Act 2000 and the Education Act 1996.

In retrospect

Some prominent MPs who supported the bill when it was first introduced have since either expressed regret over their support or argued that the legislation is no longer necessary.

In an interview with gay magazine *Attitude* during the 2005 election, Michael Howard, then leader of the Conservative Party, commented: "(Section 28) was brought in to deal with what was seen to be a specific problem at the time. The problem was the kind of literature that was being used in some schools and distributed to very young children that was seen to promote homosexuality. I thought, rightly or wrongly, that there was a problem in those days. That problem simply doesn't exist now. Nobody's fussed about those issues any more. It's not a problem, so the law shouldn't be hanging around on the statute book."

In February, 2006, Conservative Party Chairman Francis Maude told Pinknews.co.uk that the policy, which he had voted for, was wrong and a mistake.

"If Section 28 and the attitudes behind it had remained then society would still believe that gay people are second class citizens and that it is right that they should be treated as second class citizens."

Sir Ian McKellen

Timeline

1983	In 1983 the Daily Mail reported that a copy of a book entitled <i>Jenny lives with Eric & Martin</i> , about a little girl who lives with her father and his gay partner, was provided in a school library run by the Labour-controlled Inner London Education Authority.
1986	But it was not until 1986 that major controversy arose and widespread protest demonstrations made a major contribution towards the subsequent passing of Section 28.
1986	Lord Halsbury first tabled a Private Member's Bill in the House of Lords entitled <i>An act to refrain local authorities from promoting homosexuality</i> .
7 December 1987	Conservative MP David Wilshire re-introduced an amendment to the 1988 <i>Local Government Bill</i> for a similar clause, entitled Clause 28.
23 May 1988	Several protests were staged by lesbian women, including abseiling into Parliament and a famous invasion of the BBC's Six O'Clock News, during which one woman managed to chain herself to Sue Lawley's desk and was sat on by Nicholas Witchell.
24 May 1988	Bill enacted and became law
21 June 2000	Repealed in Scotland
18 November 2003	Repealed in the rest of the UK
2005	Michael Howard: "(Section 28) was brought in to deal with what was seen to be a specific problem at the time. ... That problem simply doesn't exist now. Nobody's fussed about those issues any more. It's not a problem, so the law shouldn't be hanging around on the statute book."
February, 2006	Conservative Party Chairman Francis Maude: "... the policy ... was wrong and a mistake."
7 February 2000	The first attempt to repeal Section 28 was defeated by a House of Lords campaign led by Baroness Young.
24 July 2000	The <i>Local Government Act 2000</i> was sent back to the Lords with an amendment re-introducing repeal. Concessions were made in the form of the new <i>Learning and Skills Act 2000</i> which emphasised family values and which was hoped would win over opponents. However, the repeal was again defeated in the House of Lords.
September 2003	The Labour government passed legislation to repeal this section as part of the <i>Local Government Act 2003</i> by a vote of MPs. This passed the Lords and received Royal Assent on 18th.
18 November 2003	The repeal became effective.

A 2003 Stonewall survey of 300 secondary schools found that 82% of teachers were aware of verbal incidents linked to homophobia, and 26% knew of physical attacks. Only 6% of schools had anti-bullying policies designed to combat homophobia.

The mental health charity Mind said two in three gay people are likely to have mental health problems. Many believe this was due to homophobia fuelled by Section 28.

Shaun Woodward MP, from a speech about repealing Section 28: “The word ‘promotion’ was a very clever one to use. That may not have been the intention, but it was unintentionally very clever. Why? Those of us who thought that section 28 was a bad measure had to say, if we supported its repeal, that we wanted homosexuality to be promoted. If we wanted it to be repealed, it apparently followed that we wanted homosexuality to be promoted. That is why the provision was so clever and why some of the press that I enjoyed three years ago was so unpleasant about me, as, apparently, I wanted to promote homosexuality. I do not want the promotion of homosexuality or heterosexuality. What I want is responsible teaching in our schools to help children to cope with growing up.”

STOP THE HYPE ON 28

Peter Tatchell says the repeal of Section 28 will do little to help lesbian & gay pupils

It is time to stop the hype. Section 28 does not prevent schools from talking about gay issues. The repeal of Section 28 won't therefore halt the censorship of homosexuality in the classroom. Nor will it ensure that lesbian and gay pupils receive better support from their teachers. To claim that Section 28 is the main problem is misleading.

Let's nail a few myths. "Section 28 does not apply to schools", according to the Department of Education. "The content of sex education lessons is the legal responsibility of the head teacher and school governors, in consultation with parents".

Section 28 prohibits the "promotion" of homosexuality by local authorities. But since the content of the school curriculum is not controlled by local authorities, Section 28 has no legal force over what is taught in the classroom.

Many teachers are, nevertheless, under the false impression that Section 28 applies to schools. This misguided view has encouraged self-censorship. Repealing Section 28 would therefore debunk the erroneous idea that it prevents the discussion of gay issues. That is the only positive benefit of getting rid of Section 28.

As OutRage! has long argued, it is pointless campaigning for the repeal of Section 28 without simultaneously campaigning for new legislation placing a legal obligation on schools to do three things:

First, stamp out homophobic bullying in the school playground (many schools currently fail to act against the harassment of gay pupils).

Second, promote student's understanding and acceptance of gay people (most schools do nothing to challenge prejudice).

Third, ensure that sex education and AIDS awareness lessons include information about homosexuality and safer sex for queer kids (virtually no school in Britain provides this information).

Merely encouraging schools to do these three things will not work. Most teachers feel uncomfortable talking about sex. Many worry about the legal implications of giving explicit information to young people under 16. Some fear prosecution for aiding and abetting under-age sex. The only way to solve these problems is by changing the law to make it mandatory for teachers to deal with gay issues in an honest, supportive manner. Without this new legal obligation, most teachers will continue to fail their queer pupils.

Metropolis, 14 May 1998

20 August 2013 links

Piece by Nigel morris

<http://www.independent.co.uk/news/uk/politics/the-return-of-section-28-schools-and-academies-practising-homophobic-policy-that-was-outlawed-under-tony-blair-8775249.html>

Comment by Tony Fenwick of Schools Out! and LGBT History Month

<http://www.independent.co.uk/voices/comment/the-return-of-section-28-this-cant-be-brushed-aside-as-an-oversight-8776017.html>

DfE to scrutinise return of Section 28 policies in schools:

<http://www.localgov.co.uk/index.cfm?method=news.detail&id=110811>

A relatively well balanced piece in the Daily Mail:

<http://www.dailymail.co.uk/news/article-2397691/Schools-trying-bring-Section-28-Investigation-launched-claims-dozens-reviving-controversial-rule-despite-abolished-years-ago.html>

Anti-gay laws have increased homophobic violence in Russia

Aaron Day - 2 September 2013

<http://www.pinknews.co.uk/2013/09/02/russian-lgbt-network-anti-gay-laws-have-increased-homophobic-violence-in-russia/>

Activists in Russia say the controversial anti-gay “propaganda” laws passed in June have led to an increase in homophobic violence, with those responsible for the attacks no longer fearing legal reprisals.

President Vladimir Putin signed the controversial law in June banning the promotion of “non-traditional relationships” toward minors, a move that has been criticised as part of a broader crackdown on Russia’s gay community.

The Russian LGBT Network said the legislation has validated right wing groups who use social media to “ambush” gay people, by luring them into meetings and then assaulting them on camera. Igor Kochetkov, the head of the network, said the harassment of gay people was now being organised through collectives such as ‘Occupy Gerontophilia’ and ‘Occupy Paedophilia’, who claim to be trying to “reform homosexuals”.

Occupy Paedophilia, which focuses on adults, had uploaded hundreds of videos and garnered hundreds of thousands views on social media sites. Occupy Gerontophilia, which focuses on teenagers, had also uploaded dozens of videos to the social network VKontakte before its page, which had 170,000 subscribers, was shut down for invading the privacy of minors.

Mr Kochetkov said: “The latest laws against so-called gay propaganda, first in the regions and then on the federal level, have essentially legalised violence against LGBT people, because these groups of hooligans justify their actions with these laws. With this legislation, the government said that, yes, gays and lesbians are not valued as a social group. It is an action to terrorise the entire LGBT community.”

He also added most homophobic violence was not reported to the police. A recent study by his organisation found that out of the 20 attacks that had been reported recently, only four were investigated and one resulted in a court case.

Last month, Pinknews.co.uk spoke to a PhD student originally from Moscow and now living in the UK on the challenges facing Russia’s LGBT community. Anna Grigoryeva said that the main effect of the legislation so far in Russia had been the sanctioning by the state of “public organised homophobia and transphobia.” She added: “There are lots of far-right groups; lots of Orthodox Christian activists who will show up at LGBT events and harass people and attack people quite violently – and that’s been pretty much sanctioned by the state. The police won’t arrest them for it.”

The Russian anti-gay laws have so far sparked controversy among LGBT activists, with some calling for a boycott of the 2014 Games. Others have also called to boycott Russian vodka as a form of protest.

In July, the Russian LGBT network urged its opposition to a boycott of the 2014 Sochi Winter Olympics – because they say participation is an important way of highlighting injustice. In an online statement, they said: “Do not boycott the Olympics – boycott homophobia! Stand in solidarity with people in Russia.”

The Russian Interior Ministry confirmed last month that the legislation will remain in force during the 2014 Sochi Winter Olympics.

A petition gathering over 150,000 signatures, has also called for the 2014 games to be relocated to Vancouver.

Russia: First person to be convicted under anti-gay 'propaganda' law arrested by his own parents

Aaron Day - 2 September 13

<http://www.pinknews.co.uk/2013/09/02/russia-first-person-to-be-convicted-under-anti-gay-propaganda-law-arrested-by-his-own-parents/>

24-year-old Dmitry Isakov may become the first gay rights activist to be convicted under Russia's controversial "gay propanda" laws, after he was attacked and arrested by his own parents at a solo campaign in July.

On July 30, Mr Isakov staged a one-man protest in the centre of the town of Kazan, Russia, holding up a sign which read: "Being gay and loving gays is normal. Beating gays and killing gays is a crime!"

According to Gay Russia, his mother and father helped authorities escort their son to the car where he was taken to a police station. His father assisted police by bringing him to the ground as his mother stole the poster from his hands.

After his initial arrest, Mr Isakov was set free, although he was suffering from a number of injuries inflicted by police officers.

Nikolai Alekseyev, one of Russia's most prominent gay rights activists, said he had come to Mr Isakov's aid. He said: "I am providing him full legal support like with the case appealing the bans of his public events in Kazan. This case is now at the Supreme Court of Tatarstan. This is real activism, not stupid bumpings of Russian vodka or boycotting Olympics."

The news came yesterday however that a Russian teen has since filed charges against Mr Isakov after discovering a picture of the activist's campaign online. The teen, Erik Fedoseyev, said he had been forced to file the complaint by his father, who reportedly hates gay people because his ex-wife left him for a woman.

While several others have also been charged and convicted across Russia, Mr Isakov's legal team said he could be the first to be convicted and would face an enormous fine under the federal law.

President Vladimir Putin signed the controversial law in June banning the promotion of "non-traditional relationships" toward minors, a move that has been criticised as part of a broader crackdown on Russia's gay community.

A week before Mr Isakov's initial arrest, four Dutch tourists were the first foreigners to be charged under the "gay propaganda" law.

Last month, police in Moscow reportedly raided the home of Nikolai Alekseyev. On his Facebook page, Mr Alekseyev declared that the officers had been in his home for three hours and in the process "destroyed everything". He became the first man to be convicted under St Petersburg's local homophobic censorship legislation in May 2012.

Mr Alekseyev has been a leading opponent in Russia of laws governing gay "propaganda" – and also recently criticised those in the West for appearing to jump on a boycott bandwagon of the Sochi 2014 Winter Olympics.

On 17 August he tweeted: "Western media has no respect for Russia and its people and LGBT population included. What they report about Sochi and gay propaganda is sham."

"All Western media want to hear from me that Russia is shit and I don't want to take part in this hypocrisy. So all interviews are over!"