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EU STAFF REGULATIONS BENEFITS EXTENDED TO HOMOSEXUAL COUPLES

By Mikael Aktor, LBL-Int..

At a meeting 13 December 2001 the European Parliament discussed a reform proposal put forward by Neil Kinnock, UK Commissioner of Administrative Reform, according to which existing economic benefits for married EU staff members are extended to homosexuals couples living in "stable partnerships".

Since 1968 EU Staff Regulations have provided for certain family-related benefits for staff members who are married or have dependent children. The benefits include household allowance, health insurance coverage, survivor's pension and annual travel allowance. However, when a Swedish EU official who lived together with another man under the Swedish registered partnership law, asked to be treated like his married heterosexual colleagues a few years ago, this was refused by the Council. He then brought the case before the EU Court, which regarded it as a First Instance case, but eventually the Court confirmed the Council's rejection on 28 January 1999 (see Euro-Letter 67, February 1999 at http://inet.uni2.dk/~steff/eurolet/eur_67.pdf).

The new reform proposal, Neil Kinnock said, wants to acknowledge recent social changes which have taken place in EU member states. Marriage between two heterosexuals is no longer the only framework for family obligations, and some EU countries have passed laws that regulate the economic conditions of homosexual partners with family responsibilities on an equal footing with married heterosexual couples. Other countries have initiated a similar process, although not - or not yet - admitting full equality. Only Netherlands provides for a fully legal marriage of a homosexual couple, where other countries like Denmark, Sweden and Norway only provide for a public registration with some limitations compared to a married couple (for a full update of the present situation, see: <http://inet.uni2.dk/~steff/partner.htm>). The aim of the new reform is to "ensure that staff who do not have access to marriage under the current national legislation are not discriminated against" and to "provide full statutory recognition and commensurate benefits for all EU staff who are in partnerships that are shown to be stable in nature".

Despite these intentions of creating equal rights the proposal is limited by its dependence

on national law in the EU Member States. One condition of recognition as stable partners, is that "the couple must provide a legal document of an EU Member State which acknowledges their status as non-marital partners" (Kinnock). This makes the extended rights dependent on unequal EU Member State partnership laws. Michael Cashman, UK, referring to Britain and his own situation, pointed out this bias: "let me also say on a personal matter that in my own Member State, my partner of 18 years, cannot possibly inherit my pension. That is discrimination. We must end it both within and outside the institutions." And Marianne Eriksson, Sweden, only stressed the inner logic of the proposal when asking, "I don't really understand why EU institutions should treat its employees on a national basis in this case. Should one follow that argument it would imply that people who are employed in EU institutions also had their payment regulated on a national basis, but that is not how it is done."

In his answer to these objections Kinnock admitted the limitations of the proposal: "Parliament, Council, Commission, Court of Justice, Court of Auditors - the whole panoply of European Union institutions - have a statute that does not permit us to exercise the degree of autonomy which is the basis for many of the arguments correctly put forward this morning. ... Our intention is to try to defeat prejudice because it is irrational and frequently brings brutal consequences. What we cannot defeat is not the prejudice but the laws that exist and are exercised in sovereign power by Member States. Not until we can secure changes in those laws - and this is gradually occurring - can we take substantial further steps beyond the significant steps that we are seeking to take in the course of this reform and which honourable Members have been good enough to acknowledge."

With these limitations, the preparation of the reform is now going on in the EU system, and Kinnock hoped to be able to submit the proposals for the Staff Regulations amendments to the Council and the Parliament in the spring of 2002.

For the full EU Parliament Plenary Session report, see:

http://www3.europarl.eu.int/omk/omnsapir/so_calen-dar?APP=PDF&FILE=20011213r.pdf&TYPE=CRE

UNMARRIED COUPLES WILL BE GIVEN RIGHT TO ADOPT CHILDREN

By Michael White and Colin Blackstock, The Guardian

http://www.guardian.co.uk/uk_news/story/0,3604,637904,00.html

The government is poised to embrace a change to Britain's adoption law that would allow unmarried couples - gay as well as heterosexual - to adopt children if it is deemed in the child's interests.

Labour MPs, who have been campaigning in vain for the change against resistance in Downing St, claimed last night that ministers are ready to accept the case for a free vote that would amend the adoption and children bill before it becomes law later this year.

It is thought that an all-party amendment to the adoption and children bill, to be tabled when it returns to the House of Commons, is unlikely to be opposed by the government.

As things now stand unmarried people can adopt, but only as individuals, leaving out couples whose record as foster parents impresses the authorities and who would like to become legal parents.

Ministers are looking at some form of civil registration which would recognise such non-marital unions. But they are also keen to widen the pool of potential adopters, restricted in the past by over-rigid rules, much to Tony Blair's dismay because his own father was adopted.

Ministers privately believe that the adoption ban on unmarried couples is preventing thousands of potential parents adopting children in care. At present, only about 3,000 a year are adopted from around 60,000 children in care.

Under the reforms, long-term provision will have to be put in place for an adopted child by the couple in case one of them decides to leave.

Potential parents will also have to be aged 21 and over, be able to show they have a long-term commitment and are living in a stable relationship. Since earlier efforts to expand the pool of potential adopters were rebuffed by health ministers - unwilling to do more than include the issue in their civil registration review - David Hinchliffe, Labour MP for Wakefield and a former social worker, has won Tory support for an amendment tabled for debate in March.

A motion in the Commons has already attracted 130 names. Iain Duncan Smith's efforts to realign his party towards greater social inclusivity has meant that both Andrew Lansley, a socially conservative shadow minister, and Virginia Bottomley, herself an ex-social worker and former health secretary, are backing Mr Hinchliffe.

One supporter, Jonathan Shaw, Labour MP for Chatham and Aylesford, and another professional social worker, said last night: "If the over-arching principle of child care legislation is the best interest of the child there should be nothing to stop this amendment going through."

However, christian groups and traditionalists are more likely to oppose a change in the law because it would allow gay couples to adopt. A group of Tory backbenchers is preparing a subsidiary amendment seeking to restrict the definition of a couple to mean a man and a woman. Mr Lansley said he was supporting the amendment because although "marriage is the best circumstance to bring up a child, modern society understands that many unmarried couples are able to provide stable and loving homes for children".

"I will be putting a further amendment which will define unmarried couples as a man and a woman living together in a stable relationship," Mr Lansley said.

UK CONSERVATIVES SUPPORT LIMITED LEGAL RIGHTS FOR SAME-SEX COUPLES

By Andy McSmith, Chief Political Correspondent (Daily Telegraph)

<http://www.portal.telegraph.co.uk/news/main.jhtml?xml=/news/2002/01/25/nletw25.xml&sSheet=/news/2002/01/25/ixnewstop.html>

OLIVER LETWIN, the shadow home secretary, has signalled a significant shift in the Conservative Party's attitude to homosexuality by suggesting that couples of the same sex should have certain legal rights currently held by married couples or next of kin.

Mr Letwin suggested that homosexual partners should have the right to share the tenancy of a rented home, and be consulted in medical emergencies.

However, he also emphasised that the Conservatives stand by their view that marriage as an institution should be recognised and defended

by the Government.

He opposed the idea that homosexual couples or unmarried heterosexual couples should be given identical status with married couples.

The Conservatives will oppose moves to allow unmarried couples to adopt children, and will vote against a Bill going through the Lords today which would create a new legal entity called a civic partnership.

Writing in today's Daily Telegraph, Mr Letwin said: "There is no doubt that same-sex couples who may have a long-term, stable relationship encounter a number of real problems in their daily lives.

"These include the inability of one partner to give medical consent for a life-threatening operation on behalf of the other partner; or the inability, in many circumstances, to continue to live in the home they have shared.

"These are prohibitions that few of us today would regard as reasonable, or even humane."

While his remarks about homosexuals may offend some traditional Tories, Mr Letwin also risks annoying some of the social liberals in the Tory Party by insisting that the law continue to recognise formal marriages.

Lord Lester of Herne Hill, a Liberal Democrat QC, will ask the Lords today to back his Bill to create civic partnerships, as means of giving homosexual and unmarried partners the same legal rights as married couples.

Lord Lester said: "Under existing law, cohabiting couples have no automatic next-of-kin rights, property or pension rights.

"They remain subject to inheritance tax on the death of their partner and have no recourse to the law on the breakdown of their partnership. The Bill will provide the framework for a legally recognised relationship of civil partnership."

However, Mr Letwin countered that "watered-down" marriage would undermine an institution that had created a stable environment in which children could grow up.

He said: "There is no need to create a separate category of registered civil partnerships for mixed-sex couples, because anyone seeking those rights can attain them by marrying.

"Providing a watered-down variant of marriage

would serve only to undermine the institution, and increase the risk of the state intruding into people's lives in order to discover whether the extent of their cohabitation justifies the rights that they would claim."

GAY SEX LAW THAT CONVICTED WILDE WILL BE OVERTURNED

By Marie Woolf Chief Political Correspondent
<http://www.independent.co.uk/legal/story.jsp?story=72172>

Laws that outlaw men kissing in public and criminalise homosexual behaviour in private homes will be repealed by the Government in a revamp of legislation against sexual offences.

Ministers are preparing to announce that the Victorian criminal offence of gross indecency, which singles out gay men and which was used to prosecute Oscar Wilde, will be scrapped. They will also repeal the offence of buggery, as well as the crime of "soliciting for an immoral purpose", which only applies to men.

The reforms are designed to end legal discrimination against gay men and put their treatment by the criminal justice system on a par with heterosexuals.

The move follows the lowering of the age of consent to 16 and an unsuccessful attempt by Labour to get rid of Section 28, which prevents local authorities from promoting homosexuality. Ministers believe that the laws - many of which date back to the Offences Against the Person Act of 1861 - are antiquated.

The changes will delight gay rights and equality campaigners. However, they will infuriate groups such as the Christian Institute, which has told the Government that the law should have a "moral basis".

Martin Bowley QC, the president of the Bar Lesbian and Gay Group, said that the existing law on sexual offences was "anomalous and discriminatory, especially against gay men".

The new Sexual Offences Act is also expected to reform laws on crimes such as rape.

ILGA-EUROPE MEDIA RELEASE:
**REPEAL OF LAWS CRIMINALISING
SAME-SEX RELATIONSHIPS IN
ROMANIA STEPS UP PRESSURE FOR
REPEAL OF DISCRIMINATORY LAWS
IN CYPRUS, HUNGARY AND
BULGARIA.**

Brussels - 2nd February 2002

Today's announcement of the repeal of Article 200 of the Romanian penal code is a major and historic step towards the complete elimination of all laws criminalising-sex relationships in Europe. It brings to an end nearly ten years of campaigning, led for much of this period by Romania's national organisation for lesbian, gay, bisexual and transgendered persons, ACCEPT.

It means that all legal provisions which discriminate against lesbian, gay and bisexual relationships have now been eliminated from Romania's criminal law.

Pressure from the European Union was an important contributor to this final development. Indeed, as recently as September 2001 the European Parliament had again called on Romania to repeal Article 200 as a step towards membership of the European Union.

Estonia and Latvia have also recently repealed laws discriminating against same-sex relationships in preparation for membership of the Union. This leaves three candidate countries, Cyprus, Hungary and Bulgaria with discriminatory laws. In September 2001 the European Parliament also called on these countries to repeal these laws.

The repeal of Article 200 is not the only good news from Romania today: a Government Ordinance on preventing and punishing all forms of discrimination including discrimination based on sexual orientation - has also now been fully enacted.

ILGA-Europe board member, Tatjana Greif (Slovenia), commented: "This is a great moment for Romania's lesbian, gay, bisexual and transgendered community. ACCEPT has fought a determined and courageous battle for the repeal of Article 200, in the face of intense homophobia, and their example is a very positive one for LGBT communities everywhere."

Fellow board member, Nigel Warner (UK) added: "There is no doubting the seriousness of the European Union's insistence on lesbian, gay and bisexual rights in the context of

Enlargement. Cyprus, Hungary and Bulgaria must recognise that their membership of the European Union will be refused unless they withdraw their discriminatory laws".

Co-chair Kurt Krickler (Austria) added: "these developments highlight yet again the shameful double standards operated by those EU member states, Austria, Greece, Ireland, Portugal and the UK, which still maintain discriminatory laws. If Romania, a relative newcomer to democracy and human rights, can conform to Europe's human rights standards, what is stopping these countries?"

MORE INFORMATION ON ARTICLE 200

Until 14 November 1996 same-sex relationships in Romania were illegal under Article 200 of the penal code. On that date Article 200 was amended so that the complete ban was lifted, but replaced with provisions that were almost as oppressive and discriminatory. Subsequent efforts by the Romanian government to ameliorate Article 200 were frustrated by the Romanian Parliament. On June 22nd 2001 the Romanian government issued an ordinance abrogating Article 200. While this ordinance had the immediate effect of suspending the use of Article 200 in the courts, its remained subject to the approval of the Romanian Parliament and President. This has finally now taken place, with the adoption of Government Emergency Ordinance no. 89/ 21 June 2001 by the Chamber of Deputies on December 18, 2001, and by the Senate on December 20, 2001, and the approval of the President of Romania on January 14, 2002.

Article 200 included a number of measures, including a discriminatory age of consent, a discriminatory definition of what constitutes a public place, provisions relating to same-sex acts causing "public scandal", and provisions limiting the rights of freedom association and expression of lesbians, gays and bisexuals.

For further information about Article 200, and the situation of LGBT people in Romania, see ILGA-Europe's report, "Sexual orientation discrimination in countries applying for EU membership". This is published at the ILGA - Europe web site, together with a more detailed report, "Equality for Lesbians and Gay Men -- a Relevant issue in the EU Accession Process", and research reports on discrimination in Hungary, Poland, Romania and Slovenia. Web site: www.ilga-europe.org.

UK: UNMARRIED AND GAY PARTNERS OF MPS ARE GIVEN PENSION RIGHTS

By Marie Woolf, Chief Political Correspondent

<http://www.independent.co.uk/story.jsp?story=118293>

Under a legal change to be made by October, unmarried partners will be entitled to widow's or widower's pensions.

The move will be welcomed by gay rights groups, but teachers, soldiers and health service workers who are not being given the same benefits despite years of campaigning, accused the Government of hypocrisy and discrimination.

The National Union of Teachers said ministers were applying double standards. "We have become used to one rule applying to MPs and an entirely different set of rules for the rest of us," said a spokeswoman. The public service union Unison accused the Government of "discrimination against people who are living outside legal marriage". A spokeswoman called on ministers to foot the estimated £80m annual bill for gay and unmarried NHS employees to have the same rights as their colleagues.

The pension changes are said to be designed to send a signal to the financial world about the acceptability of the relationships enjoyed by openly gay MPs, such as Chris Smith, Stephen Twigg and Ben Bradshaw. MPs in long-term relationships with unmarried partners including the Secretary of State for Health, Alan Milburn, and the Secretary of State for Transport, Stephen Byers will also gain. A Cabinet Office spokesman said claimants would have to have a long-term, exclusive, financially interdependent relationship.

The move follows a vote by MPs last year to instruct the trustees of the Parliamentary Pension Scheme to examine extending rights to unmarried couples. Actuaries told the trustees, chaired by the senior Tory MP John Butterfill, the cost of the reform and other details. The trustees will consider their report next month. However, the Treasury is believed to be unwilling to foot the bill, so MPs will be asked to increase their contributions to meet the extra cost.

Mr Butterfill said: "Marriage is a contractual commitment and we are saying we are going to recognise non-contractual commitments. It's a very complex area. If we have a very elderly

member who suddenly has a very young partner, a 20-year-old partner, the cost to the scheme could be huge."

Evan Harris, the Liberal Democrat who has been leading the campaign for equality in the House of Commons, said the rights should be extended to all gay and unmarried people in the public sector. "The change to the MPs' scheme will put further pressure on Members to ensure that less well-off workers such as those in the health service can have access to the same benefits," Mr Harris said. "It will send a strong signal to the private sector that they should also extend these rights." The rules are also likely to be extended to unmarried partners of people working for local authorities.

SWEDEN PROPOSES ADOPTION RIGHTS FOR GAY COUPLES

STOCKHOLM (Reuters) - Sweden's government on Tuesday presented a draft parliamentary bill aimed at giving gay couples the right to adopt children.

"Many children are already growing up in homosexual families and this is about their rights," Swedish Social Democrat member of parliament, Marianne Carlstrom, told a news conference.

After a round of consultations with officials, the government hoped to table the bill in parliament by the end of March, Carlstrom said.

Parliament was expected to vote on the bill by the end of June, and the law introduced in 2003, she added.

Sweden's RFSL gay rights group said Prime Minister Goran Persson's minority Social Democrat government would win enough backing in parliament from other parties.

Carlstrom said she believed only the Moderate Party and the Christian Democrats would oppose the vote but would be unable to block it.

Justice Minister Thomas Bodstrom said some couples giving children up for adoption may, however, not be willing to hand them to homosexual couples. Nordic countries have been at the forefront in giving homosexuals the right to marry or register their relationships.

From January 1, Norway relaxed a ban on adoption by lesbian and gay couples. Women

and men can now adopt their partner's children
from previous relationships.

**ETUDE COMPARATIVE DU SÉNAT
FRANÇAIS DE L'HOMOPARENTALITE**

<http://www.senat.fr/lc/lc100/lc100.html>