



RESEARCH PAPER 00/47  
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# *The Local Government Bill* [HL]: the ‘Section 28’ debate

**Bill 87 of 1999-2000**

Section 28 of the Local Government Act 1988 was introduced to prevent local authorities from promoting homosexuality. A clause in the *Local Government Bill 1999-2000* was intended to repeal this provision outright, but was defeated in the House of Lords and replaced by an amendment moved by Baroness Young. However, the Government has said that it intends to reintroduce a clause repealing Section 28 and instead provide for the promotion of marriage to be made compulsory in schools.

The following Research Papers discuss other aspects of the *Local Government Bill*: RP 00/44 (local government leadership); RP 00/45 (electoral aspects); RP 00/46 (welfare services and social services functions).

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## Summary of main points

Section 28 of the *Local Government Act 1988* inserted a new section 2A into the *Local Government Act 1986*. The provision is intended to prevent local authorities from promoting the acceptability of lesbian and gay relationships, and is part of civil, not criminal, law. A council as a whole would be the subject of any legal action rather than its individual employees, but as yet no local authority has been taken to court for a breach of the section.

After setting out the terms of Section 28 and its history, this Paper gives an outline of the effects it has had. Technically it does not bind teachers in England and Wales as far as sex education is concerned, as this is now a matter for school governors rather than local education authorities. However, many teachers have felt that Section 28 has made it more difficult for them to meet the needs of lesbian, gay and bisexual pupils. The supporters of the provision consider it a necessary protection from proselytising, whereas human rights groups and homosexual organisations feel Section 28 to be unjustifiably discriminatory, and many health, welfare and education organisations see Section 28 as a hindrance to providing children with information and support. Neither side considers the wording to be entirely satisfactory.

The Government's commitments to repeal of Section 28 are described in the next section of the Paper, which goes on to discuss the debates on the *Local Government Bill 1999-2000*. This Bill included a clause intended to repeal Section 28 (clause 68). However, on 7 February 2000 the House of Lords voted by 210 votes to 165 to replace this with a clause leaving Section 28 in place but stating that it should not prevent the headteacher or governing body of a maintained school, or a teacher employed by a maintained school, from taking steps to prevent any form of bullying (clause 91).

Following discussion with church leaders and organisations involved with sex education, the Government has stated that it will still seek to repeal Section 28 and instead provide for new statutory guidance on sex education in schools. It does not wish the repeal of Section 28 to be seen as a licence for schools to promote homosexuality. An amendment to the *Learning and Skills Bill 1999-2000* was intended to impose a new duty on schools to follow statutory guidance on sex and relationships education; but this was defeated in its turn in the House of Lords on 23 March 2000. These matters are discussed in the next section of the Paper.

Some of the sociological, human rights and religious arguments relating to homosexuality are then set out, before a final section which is devoted to Scotland. A great deal of publicity has surrounded the Scottish Executive's plans to repeal Section 28.

Annexes then set out the amendments to the *Learning and Skills Bill*; organisations that have made representations on Section 28; and examples of legislation designed to prohibit the promotion of homosexuality in other countries.

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## I What is Section 28?

Section 28 of the *Local Government Act* inserted a new section 2A into the *Local Government Act 1986*, which provides that:

- 2A - (1) A local authority shall not -
- (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality;
  - (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship;
- (2) Nothing in subsection (1) above shall be taken to prohibit the doing of anything for the purpose of treating or preventing the spread of disease.
- (3) In any proceedings in connection with the application of this section a court shall draw such inferences as to the intention of the local authority as may reasonably be drawn from the evidence before it.
- (4) In subsection (1)(b) above “maintained school” means -
- (a) in England and Wales, a county school, voluntary school, nursery school or special school, within the meaning of the [Education Act 1996]; and
  - (b) in Scotland, a public school, nursery school or special school, within the meaning of the Education (Scotland) Act 1980.

The section has its roots in a Bill presented in 1986-87 by the Earl of Halsbury. The Bill was intended to prevent a local authority from giving financial or other assistance to any person for the purpose of publishing or promoting homosexuality as an acceptable family relationship, or for the purpose of teaching such acceptability in any maintained school.<sup>1</sup> It was introduced at a time when it was alleged that some Labour local authorities were spending money on actively promoting homosexuality over heterosexuality.

Dr Rhodes Boyson for the Government expressed sympathy for the aims of the Bill, but considered that it was unnecessary because there were already provisions to deal with what was being complained of, notably the *Education (No 2) Act 1986* and the code of practice for local authority publicity to be drawn up under the *Local Government Act 1986*.<sup>2</sup>

The Bill was lost when Margaret Thatcher called a General Election in June 1987. The code of recommended practice on local authority publicity came into force on 15 August

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<sup>1</sup> The *Local Government Act 1986 (Amendment) Bill 1987-88*

<sup>2</sup> HC Deb 8 May 1987 vol 115 c1006

1988 and includes a provision that local authority publicity should not attack, nor appear to undermine, generally accepted moral standards.<sup>3</sup>

A clause prohibiting the promotion of homosexuality by local authorities was then introduced by David Wilshire in the Committee Stage of the *Local Government Bill 1987-88* on 2 December 1987.<sup>4</sup> He supported his introduction of the clause with a dossier of examples of the sort of activity it aimed to curtail, ranging from local authority advertisements for lesbian and gay officers, to extracts from the books *Positive Images* and *Jenny lives with Eric and Martin*.<sup>5</sup> This now notorious picture book (depicting a day in the life of a young girl in Denmark who lived with her gay father and his partner) was intended as a resources guide for teaching about homosexuality. According to a guide to Section 28 published by Liberty, only one copy of the book was in circulation. It was held in an Inner London Education Authority teacher's centre and the Chief Education Officer of ILEA had ruled that it should not be made available in school libraries.<sup>6</sup>

This time, the Government supported the proposal. Michael Howard said:

The Government have always supported [these] objectives. The promotion of homosexuality, particularly in schools, by local authorities is an unacceptable development. In view of the worry that has been expressed about that development in the House, in another place, and in many representations made to us by the general public, the Government wish to support the progress of the proposal. Legislation should make clear that the promotion of homosexuality, particularly in schools, by local authorities is not permissible.<sup>7</sup>

Dr Jack Cunningham also expressed his support for the new clause, stating that the Labour party did not believe that councils or schools should promote homosexuality. He did however, dispute Mr Wilshire's statements on the amount of money then being spent by local authorities on promoting homosexuality, and on the practical effects of the literature and reading lists referred to in the debate.<sup>8</sup>

The clause as first included in the Bill was greeted with protests from many organisations and individuals involved in local government, education, the arts and charities. Examples of local authority activities and practices which it was feared would be affected by the provision included:

- all teaching about homosexual issues in schools;

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<sup>3</sup> DoE circular 20/88. For a discussion of the implications of this circular, see M Colvin and J Hawksley, *Section 28: A Practical Guide to the Law and its Implications*, Liberty, 1989

<sup>4</sup> SC A, 8 December 1987 c1199 ff

<sup>5</sup> Susanne Bosche, 1983

<sup>6</sup> M Colvin and J Hawksley, *Section 28: A Practical Guide to the Law and its Implications*, Liberty, 1989

<sup>7</sup> Deb in Standing Committee A, c. 1208

<sup>8</sup> *ibid* cc1211-2

- grants to counselling, advice and health-care projects;
- provision of joint tenancies for homosexual couples;
- stocking and displays in public libraries of books and periodicals written by or for homosexuals;
- displays in local authority galleries of works of art with homosexual themes;
- grants for cultural activities which could be regarded as promoting homosexuality;
- licensing of gay clubs and bars;
- hiring out of premises to homosexual organisations and self-help groups.

The leaders of twenty local authorities across the country pointed out that local authorities have a duty to have regard to the needs of all the residents in their areas including gay and lesbian rate-payers.<sup>9</sup>

A briefing prepared on the Bill by the National Council for Civil Liberties drew attention to perceived problems with the drafting of the clause, particularly the words 'promote' and 'acceptability'. It pointed out that the word 'homosexuality' connoted an abstract concept which could not be a 'relationship' of a pretended or any other kind.<sup>10</sup>

Various attempts to amend the clause were made on Report Stage on 15 December 1987 on the grounds that it would censor artistic creativity and infringe civil liberties. Mr Howard advised the House to reject the amendments:

I was expressly invited by the hon. Member for Islington, South and Finsbury and one or two other Opposition Members to cite examples and I shall start with that. I had not intended to use examples, because the examples were referred to in Committee and are there for all to read. However, doubts have been expressed about whether there is any mischief that must be dealt with in legislation. I shall confine myself to two examples of material that has emanated from the London borough of Haringey.

Amongst other things, the London borough of Haringey has published a leaflet containing an approved reading list. One book on the list calls for a ban on the wearing of wedding rings by teachers and on teachers talking to their pupils about their husbands and wives. Another book entitled "Young, gay and proud" is recommended as suitable reading for children aged 13 and older. The leaflet describes it as "very helpful to everyone." It describes homosexual acts in considerable detail. It was available in Committee, and I said that I could not believe that any Member of the Committee would regard that material as suitable reading for children aged 13.

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<sup>9</sup> 'Dangers of Clause 28' (letter to the Editor from Steve Bassam et al) – *Independent* 16 February 1988

<sup>10</sup> National Council for Civil Liberties, *Clause 28: Local Government Bill - Briefing for Committee Stage in the House of Lords*, January 1988



I confine myself this evening to those two examples, and I remind the House against that background of the two key elements in clause 27.<sup>11</sup> First, the clause is entirely concerned with the activities of local authorities. Secondly, it is concerned with the promotion by a local authority, or by persons assisted by it, of homosexuality, and the promotion of the teaching in schools that homosexuality is acceptable as a pretended family relationship. Nothing in clause 27 will put a homosexual at a disadvantage compared with any other person.

The provisions in subsection 2A(1) (b) are concerned with the promotion by local authorities of teaching of the acceptability of homosexuality as a pretended family relationship, and the need for that subsection has been questioned. However, we think that it is necessary. We do not think that it is damaging. It is the influence of local authorities on what goes on in schools that has given rise to much, if not most, of the public concern about the promotion of homosexuality by local authorities, and we wish to make it clear that the promotion of teaching in schools of the acceptability of homosexuality as a pretended family relationship is not to be permitted.<sup>12</sup>

The amendments were defeated at this stage, but at the end of January 1988 the Government tabled their own amendments to the clause. They acknowledged that a number of people were genuinely concerned about how it could be used to impose censorship on the arts, and that the application of the provision should be more precisely defined so as to put the issue beyond doubt.<sup>13</sup> The amendments were accepted when the Bill was debated in the House of Lords on 1 February 1988, but criticism continued unabated and on Report further amendments were moved by the Earl of Caithness to achieve greater clarification and to delete a sub-section dealing with financial assistance.<sup>14</sup> This had been of particular concern to charities and others who provide counselling and other help for homosexual people.

The Earl of Caithness summed up the implications of the clause as it stood on Third Reading:

The Government have brought forward amendments which made it clear that it is the intention of the local authority that is crucial to the judgment of whether it has promoted homosexuality, or promoted a certain form of teaching in schools.

Claims have been made that the clause will lead to discrimination; bring about censorship of the arts or material in libraries; stop teachers dealing with homosexuality in an objective way; and stop local authorities providing legitimate counselling and care services. Those claims cannot be substantiated, as the noble Lord, Lord McIntosh of Haringey, so rightly reminded us. Unless it can

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<sup>11</sup> The clause went through various numberings during its passage through Parliament.

<sup>12</sup> HC Deb 8 May 1987 vol 124 c 1017

<sup>13</sup> see 'Government clarifies position on promotion of homosexuality' - *Department of the Environment news release* 29 January 1988

<sup>14</sup> HL Deb. 493, cc622-624

be demonstrated that a local authority set out deliberately to promote homosexuality in carrying out its functions there will be no problems of the kind that have been widely alleged. We believe that the terms of the clause are clearly set out, so that there is no question of legitimate services being adversely affected.<sup>15</sup>

The Lords Amendments were debated on 9 March 1988 when Dr Cunningham said that, though welcome, they did not go far enough to satisfy remaining fundamental objections:

Before I refer to the amendments in detail, I reiterate our view of the major issues that are involved in this clause. The clause affects all local government, all education services, the arts and library services of our country. It has caused a storm of protest, and understandably so. Here we are dealing with fundamental issues of principle. It is not just a provision to ensure neutrality on homosexuality. Much more than that is at stake. Indeed, everyone's right to information and the arts, the rights of minorities, the way in which a free society is tolerant of diversity, the way in which a free society organises itself, the way in which minorities are protected in a free and plural democratic society are at the heart of our objections to the provisions of clause 28.

We are confronted here with issues of peoples' civil rights and individual freedoms. We are confronted here with the possibility of an extension of censorship, either deliberately or by default. That is why the Arts Council of Great Britain has been so active in opposing the provisions.

The proposals set a dangerous precedent, because they seek to control what is taught in the classroom, not directly through an education Act, but indirectly by restrictions on the provision of books or other materials that are not themselves prohibited by law. The proposals will encourage discrimination. It is impossible to accept any other construction when the civil rights of homosexuals are already under increased threat and hostility because of the appalling consequences of AIDS. We and many other organisations, including the National Council for Civil Liberties, believe that there is an even greater need to educate and inform and to protect people's equal rights. Whatever is the intention of the supporters of the clause, its impact can only be regressive. Local authorities will have to play safe. They may have to refuse to take any risk in an area that may appear to assist homosexual people, or possibly show them in a favourable light.

The proposals provide an excuse to discriminate against gay and lesbian people. Just as the Sex Discrimination Act 1996 and the Race Relations Act 1976 make it less acceptable to discriminate against women and ethnic minorities, this clause will have the reverse effect and will make it more respectable to discriminate against gay and lesbian people.<sup>16</sup>

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<sup>15</sup> *ibid* c 83

<sup>16</sup> HC Deb c 370-1

The Bill received Royal Assent on 24 March 1988, and Section 28 came into force on 24 May 1988. On 20 May the Department for the Environment and Welsh Office published a joint circular on the 1988 Act which included the following guidance on section 28:

19. Section 2A(1)(a) prohibits a local authority from intentionally promoting homosexuality, or from publishing material with the intention of promoting homosexuality. The provision will be relevant in cases where a local authority, in exercising one of its statutory functions, proposes to do something for the deliberate purpose of promoting homosexuality. Local authorities will not be prevented by this section from offering the full range of their services to homosexuals, on the same basis as to all their inhabitants. So long as they are not setting out to promote homosexuality, they may, for example, include in their public libraries books and periodicals about homosexuality or written by homosexuals, and fund theatre and other arts events which may include homosexual themes.

20. Section 2A(1)(b) highlights one particular aspect of promoting homosexuality that has given rise to concern. It specifically prohibits a local authority, in exercising its statutory functions, from promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship. The effect of this will be that a local education authority will be prohibited from promoting homosexuality in the expression of its policy on sex education. Responsibility for sex education continues to rest with school governing bodies, by virtue of Section 18 of the Education (No. 2) Act 1986. 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. Such activities will continue to be governed by Section 46 of the Education (No. 2) Act 1986. Guidance on this, and on the Government's policy on sex education at school, is provided in DES Circular 11/87. Section 46 provides that where sex education is given it should be given 'in such a manner as to encourage ... pupils to have due regard to moral considerations and the value of family life'. Paragraph 22 of the Circular makes clear the Government's view that there is no place in any school in any circumstances for teaching which advocates homosexual behaviour, which presents it as the norm, or which encourages homosexual experimentation by pupils.

21. Section 2A(2) makes it clear that nothing in Section 2A(1) prevents anything being done for the purpose of treating or preventing the spread of disease. Thus, activities in the counselling, health care and health education fields undertaken for the purpose of treating or preventing the spread of disease, including AIDS, will not be prohibited. This includes activities concerned exclusively with the needs of homosexuals.<sup>17</sup>

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<sup>17</sup> DoE circular 12/88, Welsh Office circular 16/88, 20 May 1988

## II Effects of Section 28

Section 28 is part of the civil law not the criminal law, and therefore regulates what a local authority may do but does not create any criminal offences. Any ratepayer could, in theory, apply for judicial review of a local authority action or decision they think might be in breach of Section 28. If successful, the court could for example make an injunction restraining the authority from continuing with its action. No damages or fines could be awarded.

It applies only to local authorities: it cannot be invoked against individuals, companies or even other publicly funded bodies such as the Arts Council, the BBC or the Health Development Agency (formerly the Health Education Authority).

It is arguable that Section 28 has done what its supporters wished, by limiting the discussion of homosexuality in schools, but that this is more to do with misconceptions about its scope and meaning rather than its effectiveness as legislation. Many on both sides of the debate agree that schools should not promote homosexuality, but that the provision is nonetheless badly drafted: even supporters of Section 28 have suggested that its language seems almost deliberately provocative.<sup>18</sup>

Opponents of the legislation, such as the Local Government Association, have argued that a major impact of the Act has been the uncertainty it has created for local authority staff.<sup>19</sup> The Government have condemned it as ‘probably one of the worst drafted clauses on our statute book’.<sup>20</sup> A group of 34 researchers in Scottish universities with an interest in group behaviour and discrimination wrote to the Scotsman saying that Section 28 cannot affect the promotion of homosexuality but does serve to promote homophobia.<sup>21</sup>

### A. Legal proceedings

Research by the Cardiff Law School undertaken in 1990 (which adopted a hostile position on Section 28) found that no council had been taken to court in relation to Section 28.<sup>22</sup> This remains the case to date. The Cardiff report concluded that local authorities were taking a more cautious approach towards funding grant applications from lesbian and gay groups, and commented on the increased potential for self-censorship within local authorities:

Section 28 has had a limited effect in strict legal terms. However, an inherent danger of the legislation is its scope for non-legal impact. Local authority employees may, through fear of legal proceedings, desist from involvement in

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<sup>18</sup> ‘Marriage sectioned off’ - *Telegraph* leading article, 7 February 2000

<sup>19</sup> see Local Government Association circular 418/99, 1 July 1999, <http://www.lga.gov.uk/lga/checklist/26%5F99.htm> ‘LGA calls for repeal of “obsolete” and “harmful” section 28’ LGA press release 029/00, 1 February 2000, <http://www.lga.gov.uk/lga/releases/029.htm>

<sup>20</sup> Lord Whitty – HL Deb 7 February 2000 c477

<sup>21</sup> Letter to the editor, *Scotsman* 17 February 2000

<sup>22</sup> *Promoting homosexuality: Section 28 of the Local Government Act 1988*, Philip Thomas and Ruth Costigan (Cardiff Law School) 1990.

issues affecting gay men and women. [...] As well as self-censorship and undue caution, there is the further danger that a hidden agenda may operate through Section 28, whereby employees could use the Section to justify their existing prejudices and prevent council funding where there is in fact no legal reason why it should not be awarded.<sup>23</sup>

The fact that no local authority has been taken to court for a breach of Section 28 has meant that there has been little opportunity for the courts to interpret the words 'promoting homosexuality' or 'pretended family relationship'. In June 1988, shortly after the section came into force, the Association of London Authorities (ALA) and the National Council for Civil Liberties jointly commissioned a legal opinion from Lord Gifford QC seeking some guidance on the likely interpretation of section 2A in the courts. On 'promoting homosexuality' Lord Gifford concluded:

'promote homosexuality' involves active advocacy directed by local authorities towards individuals in order to persuade them to become homosexual, or to experiment with homosexual relationships.<sup>24</sup>

Further analysis of the possible interpretations of the word 'promote' is given in an article in the *Journal of the Law Society of Scotland*.<sup>25</sup>

The only legal challenges relating to Section 28 have been to local authorities who have tried to avoid being seen as promoting homosexuality. For example, Liberty applied for judicial review of a library's decision to stop stocking a gay newspaper following which the decision was reversed (see page 19 below). It has not been possible to trace any case in which the courts have considered an authority's actions justified by Section 28.

## **B. Schools**

The Prime Minister has made several comments along the following lines:

The previous Government decided in 1994 guidance that section 28 did not apply to schools. The idea that has been put about in parts of the press that repeal is about gay sex lessons in schools and all the rest of it is nonsense.<sup>26</sup>

A 1987 circular from the Department of Education and Science had advised that:

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<sup>23</sup> *ibid* pp31-32

<sup>24</sup> M Colvin and J Hawksley, *Section 28: A Practical Guide to the Law and its Implications*, Liberty, 1989 p12

<sup>25</sup> Kenneth McK. Norrie, 'Symbolic and meaningless legislation' - *Journal of the Law Society of Scotland* September 1988

<sup>26</sup> Prime Minister's Questions, HC Deb 9 February 2000 vol 344 c240

There is no place in any school for teaching which advocates homosexual behaviour, which presents it as the norm, or which encourages homosexual experimentation.<sup>27</sup>

However, the guidance that replaced this (DfE circular 5/94) does not make any specific reference to homosexuality, and states that Section 28 does not apply to the governing bodies and staff of schools. This guidance, and the whole question of sex education in schools, is discussed in part IV below (p25). The 1988 DoE/Welsh Office circular on the *1988 Act* (see pp12-13 above) had also pointed out that Section 28 does not affect the activities of school governors, nor of teachers.

A recent Local Government Association briefing sets out their understanding of the legal position:

Section 28 imposes a legal duty on local authorities not to do something (“promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship”) for which they do not have the power anyway. This has been the case since the Education Reform Act 1988 placed the management of schools in the hands of governing bodies and headteachers and imposed a national curriculum for teaching.<sup>28</sup>

Although Section 28 does not have a direct legal effect on schools’ policies, it does seem to have affected some teachers’ understanding of what is permitted. A 1994 report found that:

... within schools there has undoubtedly been an enormous amount of self censorship. Some teachers believe that Section 28 does apply directly to their work and are, therefore, afraid of tackling issues of sexuality. Others have used it as a way of avoiding issues which they find uncomfortable and difficult to deal with. Yet others have, no doubt, welcomed it because it legitimated their own homophobia.<sup>29</sup>

In 1997 the Health Education Research Unit at the University of London conducted a study of 307 randomly-chosen schools in England and Wales. It was found that the majority of teachers who responded were uncertain about what responsibilities Section 28 placed on head teachers and governors. Over a quarter either wrongly believed that Section 28 makes discussion of homosexuality illegal in schools (8%), or were not sure (20%). 44% also said that the continuing existence of Section 28 made it more difficult to meet the needs

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<sup>27</sup> DES circular 11/87

<sup>28</sup> ‘Local Government Bill: clause 68 – the repeal of Section 28’ - *Local Government Association briefing for Lords Committee, Fourth day: Monday 7 February 2000*

<sup>29</sup> D Epstein (ed), *Challenging Lesbian and Gay Inequalities in Education*, 1994

of lesbian, gay and bisexual pupils. 82% of respondents stated that they would benefit from clarification of the implications of Section 28.<sup>30</sup>

It was reported in early 1999 that Lambeth Education Department had issued each school head in the borough with a questionnaire that included a question on the steps being taken to prohibit the promotion of homosexuality. It appears, however, that Ofsted said that the education department were not entitled to ask this question.<sup>31</sup> The questionnaire was subsequently amended.

Independent schools are not affected in any way by Section 28.

### **C. Homophobic bullying and attacks**

The Scottish Executive Central Research Unit recently commissioned a study which concluded that gay men living in Edinburgh experience high levels of discrimination, harassment and violence as a result of their sexuality.<sup>32</sup> Discrimination and bullying in educational settings and in the workplace was found to be far from unusual for gay men. One of the findings from a study funded by Glasgow City Council was that most respondents first experienced 'overt forms of social exclusion based on homophobia' at school.<sup>33</sup>

The University of London's 1997 study found that 82% of the schools surveyed were aware of verbal homophobic bullying and 26% were aware of physical attacks on individuals that were motivated by homophobia. Only six per cent of the schools had a bullying or discipline policy that referred to homophobic bullying. Section 28 was identified as creating an atmosphere of confusion and fear that led teachers to err on the side of caution and ignore homophobic harassment and bullying.<sup>34</sup> However, other factors such as inexperienced staff, lack of policy or parental disapproval were those actually cited as hindering the targeting of homophobic bullying.<sup>35</sup>

Shaun Woodward, who was sacked from the Conservative front bench following his refusal to follow the party line on Section 28, said his main concern was that retaining the

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<sup>30</sup> N Douglas et al, *Playing it safe: responses of secondary school teachers to lesbian, gay and bisexual pupils, bullying, HIV and AIDS education and Section 28*, Health Education Research Unit, Institute of Education, University of London (November 1997)

<sup>31</sup> 'Pressure mounts over Section 28 in Lambeth' – *Gay Times* March 1999

<sup>32</sup> C Morrison and A McKay, *The Experience of Violence and Harassment of Gay Men in the City of Edinburgh*, <http://www.scotland.gov.uk/cru/resfinds/crf41-00.asp> Scottish Executive Central Research Unit, 2000

<sup>33</sup> S John & A Patrick, *Poverty and Social Exclusion of Lesbians and Gay Men in Glasgow* (West of Scotland Lesbian and Gay Forum) March 1999

<sup>34</sup> one example given was of a drama teacher who stopped doing role play about bullying related to sexuality because he believed that Section 28 made this unlawful.

<sup>35</sup> N Douglas et al, *Playing it safe* (November 1997); and see 'Section 28 helps bullies, study shows' – *Guardian* 7 February 2000

provision could prevent teachers dealing with homophobic bullying.<sup>36</sup> This view was echoed in letter to the *Times* from five main contenders for the position of Mayor of London.<sup>37</sup>

However, Section 28 is only one of many pieces of legislation which treat homosexual relations or activities differently from heterosexual ones. For example, the age of consent for homosexual acts is higher than for heterosexual ones (18 rather than 16); and the privacy restrictions on consensual homosexual sex do not apply to heterosexual sex. Any or all of these differences might be said either to stem from or to condone a negative attitude towards homosexual people - Lord Lester of Herne Hill suggested that:

The present statutory prohibitions are based upon a religious or moral certainty that homosexuality is a major social evil to be combated by means of a ban imposed by primary legislation.<sup>38</sup>

It is therefore open to question whether repeal of Section 28 would on its own reduce the incidence of homophobic bullying or discrimination, or alter the way teachers deal with this problem.

Chris Woodhead, the Chief Inspector of Schools, said in an interview with the *Sunday Telegraph*:

My own experience is that there is no evidence that Section 28 has had a negative influence on teachers' ability to deal with homophobic bullying. No headteacher has raised with me, in all the many school visits I have made, Section 28 as a cause for concern.<sup>39</sup>

#### **D. Counselling, advice and health-care services**

Even before Section 28 came into force it was reported that a county council had banned a publication because it could have been in breach of Section 28. The free publication, entitled *Sparetime Sharetime*, listed agencies where young people could volunteer for unpaid work, including some lesbian and gay organisations.<sup>40</sup>

In 1998 Birmingham City Council withdrew plans to publish an information booklet for young people dealing with alcohol, bereavement, eating disorders, racism, smoking and

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<sup>36</sup> Shaun Woodward, 'Why the Tories have got it wrong on homosexuality' – *Independent on Sunday* 5 December 1999

<sup>37</sup> Frank Dobson, Glenda Jackson, Susan Kramer, Ken Livingstone and Steve Norris, letter to the editor – *Times* 27 January 2000

<sup>38</sup> HL Deb 7 February 2000 c466

<sup>39</sup> 'Blair is wrong over Section 28 says Woodhead', - *Sunday Telegraph* 30 January 2000

<sup>40</sup> 'Section 28 fear leads to ban on work list' – *Independent* 12 May 1988



coping with stress because it also contained sections on issues related to sexuality and dealing with prejudice.<sup>41</sup>

Shropshire County council stopped funding the Telford Lesbian and Gay Youth Group which provided support and counselling services to young people, citing concerns over Section 28. However, funding was restored after gay rights campaigners objected.<sup>42</sup>

In a recent case, Corby Borough Council initially rejected an application from Corby Lesbian Line for a small grant to fund security measures in the aftermath of last April's nail bombs in London. Northamptonshire Constabulary had suggested they improve their security. The local authority's solicitor felt that the organisation's constitution, aims and objectives amounted to the promotion of homosexuality and that support from the authority would amount to a breach of Section 28. The grant request was however later accepted.<sup>43</sup>

## **E. Arts and literature**

In January 1989 the National Council for Voluntary Organisations (which had campaigned against the enactment of Section 28) issued guidance on Section 28 to arts organisations and other voluntary bodies, entitled *Publish and still not be damned*. This explains why such organisations might be affected by this legislation, and gives some tactical advice on how to avoid its breach.

Reports in the press suggested that Edinburgh district council refused a grant for a half-day music and poetry festival held in May 1989 by the Scottish Homosexual Action Group, despite having funded the event the previous year. The council apparently cited section 28 as the reason for refusing the application.<sup>44</sup>

The Arts Council has watched for any evidence that companies were being adversely affected by Section 28. Some concern was voiced at Glyndebourne Touring Opera's decision to cancel performances of Benjamin Britten's opera 'Death in Venice' at the Kent and Sussex Schools Festival, but Kent education authority did not specify that Section 28 was behind this decision.<sup>45</sup> It was reported that a school in Weston Super Mare refused to take Avon Touring Company's production of a play about a homosexual 'coming out' because of fears of contravening Section 28.<sup>46</sup>

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<sup>41</sup> 'When gay became a four-letter word' – *BBC News Online* 20 January 2000

<sup>42</sup> *ibid*

<sup>43</sup> 'Local Government Bill: clause 68 – the repeal of Section 28' - *Local Government Association briefing for Lords Committee, Fourth day: Monday 7 February 2000*

<sup>44</sup> 'Unused but dangerous' – *Guardian* 11 October 1989

<sup>45</sup> see 'Arts Council monitors effects of Clause 28' – *Independent* 21 December 1989

<sup>46</sup> *ibid*

Calderdale Library Services refused to stock copies of the *Pink Paper* (a gay newspaper), fearing that they would otherwise be in breach of Section 28. Following an application for judicial review by the civil rights organisation Liberty, the library reversed its position.<sup>47</sup>

### III The Government's commitments to reform

The Labour Party, in its 1992 election manifesto, explicitly pledged to repeal section 28. This statement did not reappear in its manifesto for the 1997 election, which instead stated that 'attitudes to race, sex and sexuality have changed fundamentally. Our task is to combine change and social stability'. A commitment to repeal of Section 28 was made in the Liberal Democrat Party's 1997 election manifesto, and is agreed party policy.

When in opposition, Jack Straw (then Shadow Home Secretary) told a public meeting organised by Stonewall that 'the Labour Party opposed Section 28 when it was before Parliament in 1988, and it is our long-standing policy that we would repeal it'.<sup>48</sup> He emphasised the need to comply with the European Convention on Human Rights (see page 33 below).

In July 1998 the new Government stated that the Department for Education and Employment and the Department of Health were 'considering sex and relationships education in the context of the Government's health strategy'.<sup>49</sup> It had been suggested by some that a local government Bill in the last session (1998-99) might have provided the opportunity for a repeal of section 28. No such provision appeared in the Bill which became the *Local Government Act 1999*. However, addressing the tenth anniversary dinner of Stonewall in June 1999, Jack Cunningham is reported to have said:

I cannot anticipate the contents of the next Queen's Speech. However, I can say quite clearly that the government believes section 28 serves no useful purpose and we remain committed to the repeal as soon as parliamentary opportunity arises. Section 28 was wrong in 1987. It is wrong in 1999 ... [It has] constrained local authorities from legitimately including sensible material about sexuality in sex education lessons.<sup>50</sup>

An Early Day Motion tabled on 1 November 1999 applauded the Scottish Executive's proposals to repeal Section 28 (see part VI below, page 39), and called on the

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<sup>47</sup> 'When gay became a four-letter word' – *BBC News Online* 20 January 2000

<sup>48</sup> *Gay Times*, April 1997, p. 45

<sup>49</sup> HC Deb vol. 317 c.88w, 27 July 1998

<sup>50</sup> LGCNet [the website of the Local Government Chronicle] 10 June 1999

Government to bring forward similar measures in England and Wales.<sup>51</sup> The Motion attracted 57 signatures. A related EDM had a further 9 signatures.<sup>52</sup>

A ‘Bill to reform local government to make it more innovative and accountable’ was announced in the Queen’s Speech on 17 November 1999. The *Local Government Bill* [HL][Bill 9 of 1999-2000] was introduced in the House of Lords on 26 November 1999 and contained the following clause:

*Repeal of prohibition on promotion of homosexuality*

**68.** Section 2A of the Local Government Act 1986 (prohibition on promoting homosexuality by teaching or by publishing material) ceases to have effect.

Schedule 5 of the Bill also listed both Section 2A of the 1986 Act and Section 28 of the 1988 Act as measures to be repealed by the Bill.

This Bill was debated on second reading in the House of Lords on 6 December 1999.<sup>53</sup> Clause 68 and the related amendments were discussed in Committee on 7 February 2000,<sup>54</sup> the same day that David Blunkett revealed the core principles of new guidance on sex and relationships education.<sup>55</sup> (see page 20 below).

The first amendment to be debated was one by the Bishop of Blackburn, the chairman of the Church of England Board of Education (cc398-437). The amendment apparently had the support of the Archbishops of Canterbury and York,<sup>56</sup> and of the Catholic Education Service.<sup>57</sup> It sought to replace Section 28 with legislation requiring local education authorities to ensure that schools promote marriage as the fundamental building block of society and of family life. It also contained clauses seeking to prevent bullying and the encouragement of any sexual activity. The Bishop tabled a similar amendment to the *Learning and Skills Bill 1999-2000* which he considered a more appropriate vehicle. This and other amendments to the *Learning and Skills Bill* are discussed below (see page 26).

Lord Whitty, replying for the Government, agreed that the issue of repeal of Section 28 ought, logically, to be separate from the safeguards that are in place to ensure that children receive appropriate sex and relationships education in schools. The latter should, he suggested, be contained in guidance, although this could perhaps be reinforced in some

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<sup>51</sup> EDM 966 of 1998-99

<sup>52</sup> EDM 966A1 of 1998-99

<sup>53</sup> HL Deb 6 December 1999, vol 607 cc1020-1035, 1042-1125

<sup>54</sup> HL Deb 7 February 2000 vol 609 cc396-486

<sup>55</sup> see ‘Principles on sex relationship education set out’ - *Department for Education and Employment press notice 046/00*, 7 February 2000

<sup>56</sup> ‘Church of England accused of “sell-out” to gay lobby’ – *Sunday Telegraph* 6 February 2000

<sup>57</sup> HL Deb 7 February 2000 vol 609 cc397

appropriate way (c400). Lord Davies of Coity did not see why the introduction of such guidance should require the abolition of Section 28 (c414).

Criticism of the Bishop of Blackburn's amendment on two points came from Baroness Young: it would not in itself prevent local education authorities from promoting homosexual relationships; and it did not cover youth organisations or other local authority activities (c407). The Bishop of Blackburn withdrew his amendment rather than dividing the House.

An amendment by Lord Randall of St Budeaux would have provided for the section repealing of Section 28 not to come into force until government guidelines on sex education in maintained schools had been approved by Parliament (c437). Lord Mishcon, who served on the Wolfenden Committee which recommended legalisation of some homosexual acts, agreed, saying that 'the people' did not want a straightforward repeal of Section 28 without something very substantial being put in its place (c444).<sup>58</sup> In contrast, Baroness Ludford considered existing guidance to be sufficient safeguard against unsuitable teaching (cc445-7).

Discussion of Baroness Young's amendment occupied the rest of the debate on Section 28. Her amendment, which sought to retain Section 28 but to add that it should not stop schools from preventing bullying, was co-sponsored by Lady Saltoun of Abernethy (Independent), Lord Ahmed (Labour) and Lord Waddington (Conservative). Baroness Young felt that there was no moral equivalence between homosexual and heterosexual relationships (c406), and that removing Section 28 would send out quite the wrong signal (c451).

Lord Lester of Herne Hill raised the issue of the *Human Rights Act 1998*. He suggested that, should a challenge to Section 28 arise after October 2000, the courts would decide that the provision was unlawfully discriminatory under the terms of the *European Convention on Human Rights*.<sup>59</sup>

Many peers felt that there was not yet enough certainty about the best way to proceed. Lord Habgood, for example, said he would vote tactically for Baroness Young's amendment so that the issue would be kept in front of the House and the Government (cc467-8).

When the House divided on Baroness Young's amendment, it was accepted by 210 votes to 165. Fifteen Labour peers voted with the Baroness despite a three-line whip to vote against the amendment.

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<sup>58</sup> A recent Gallup opinion poll suggested that 51% of people wanted Section 28 to remain on the statute book: 'Small majority favours retaining Section 28' – *Telegraph* 11 February 2000

<sup>59</sup> HL Deb 7 February 2000 cc463-7

The relevant clause therefore no longer repeals Section 28 but instead reads:

*Prohibition on promotion of homosexuality: bullying*

**91.** In section 2A of the Local Government Act 1986 (prohibition on promoting homosexuality by teaching or by publishing material), at the end of subsection (2) there is inserted “; or

(b) prevent the headteacher or governing body of a maintained school, or a teacher employed by a maintained school, from taking steps to prevent any form of bullying.”

The Department of Environment, Transport and the Regions issued a statement following the Government’s defeat:

We are very disappointed that the Lords have voted against the repeal of Section 28 tonight, despite a very full and stimulating debate during which a lot of very important issues were raised.

The Government remains committed to the repeal of Section 28, which has caused confusion in schools and local councils, and has been a barrier to building a supportive and tolerant society.

Although Section 28 does not affect what is and what is not taught in schools, we are very concerned to clarify the position, particularly in relation to dealing effectively with homophobic bullying. The Government is currently consulting on revised guidance on sex and relationship education and, as we have indicated again tonight, we are very willing to listen to everybody’s views and concerns and consider what further action is necessary.

However, let us be clear. With or without Section 28, parents, teachers and governors have the right to decide what is taught in their schools.

Abolishing Section 28 would not leave a vacuum, but would take away a symbol of intolerance and a source of confusion.<sup>60</sup>

Tony Blair restated his determination to press ahead with the repeal of Section 28 when challenged by William Hague in Prime Minister’s Questions on 9 February 2000.<sup>61</sup>

The Section 28 issues were debated again at the Bill’s Report and Third Reading stages in the House of Lords, although no further substantive amendments were made.<sup>62</sup> On 28 February 2000 Lord Whitty referred to the ‘constructive discussions’ that were taking place between the Churches and the Secretary of State for Education, and signalled that

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<sup>60</sup> ‘Statement from DETR – Local Government Bill’ – *DETR press notice* 8 February 2000

<sup>61</sup> HC Deb 9 February 2000 vol 344 cc240-1

<sup>62</sup> HL Deb 28 February 2000 vol 610 cc326-33; 2 March 2000 cc733-41; 9 March 2000 cc1234-9

debate on their outcome would take place in the *Learning and Skills Bill* (c332). This is discussed below (see page 26).

It was reported that the Conservative Party's position has moved from outright opposition to repeal of Section 28, to support for an attempt to clarify the provision while still resisting Government moves to abolish it.<sup>63</sup> William Hague is reported as having confirmed that Conservatives will be whipped to oppose its repeal.<sup>64</sup>

Suggestions that Labour might allow a free vote on the issue were greeted angrily by some back-benchers, who feared that this might suggest that the Government were not fully committed to repeal. At a meeting of the Parliamentary Labour Party on 26 January 2000 Tony Blair is reported to have said that it was highly likely that the party whip would be imposed.<sup>65</sup>

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<sup>63</sup> 'Tories change stance in gay row' – *BBC News Online* 11 December 1999; 'Threat of revolt forces Tory U-turn on gays' – *Times* 11 December 1999

<sup>64</sup> see for example "‘Family values’ schools sex advice rushed out' – *Independent* 28 January 2000

<sup>65</sup> 'Rebel MPs force Blair to abandon free vote on gays' – *Independent* 27 January 2000

## **IV Sex Education (Gillian Allen)<sup>66</sup>**

### **A. Law**

The statutory provisions for sex education are in sections 352 and 403-405 of the *Education Act 1996*. In primary schools, governing bodies must have a written policy on sex education but decide themselves whether or at what stage to provide such education. In secondary schools, sex education must be provided for all pupils and must include education about AIDS, HIV and other sexually transmitted diseases.<sup>67</sup> The governing body in a secondary school is also required to have a written policy on sex education which, like primary school policies, must be available to all parents.

Sex education given to any pupils must be ‘given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life’.<sup>68</sup> Parents have the right to withdraw their child from all or part of any sex education provided.<sup>69</sup> This right does not extend to sex education within the National Curriculum.

The programme of study for science in the National Curriculum at Key Stages 1-4 (5-16 year olds) covers the biological aspects of sex education under the heading: Science 2: Life processes and living things.<sup>70</sup>

### **B. Guidance**

The current guidance on sex education was issued in 1994: *Education Act 1993: Sex Education in Schools* DfEE circular 5/94. The guidance sets sex education in the context of the general duty of LEAs, governors and headteachers to provide a curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils and prepares them for adult life.<sup>71</sup> The guidance covers the content and purpose of sex education but does not set out what materials or information might be appropriate at each stage. The recent Social Exclusion Unit report: *Teenage Pregnancy* found that that led to a wide variety of practice in schools.<sup>72</sup> The guidance does make an explicit statement on Section 28.

Section 2 of the Local Government Act 1986 (as amended by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality or publishing material with that intention, and from promoting the teaching in any maintained school of the acceptability of

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<sup>66</sup> This section updates and expands Section K of Research Paper 00/039

<sup>67</sup> s352 (3)

<sup>68</sup> s403 (1)

<sup>69</sup> s405

<sup>70</sup> National Curriculum. Science. Key Stages 1-4. DfEE 1999 - <http://www.nc.uk.net>

<sup>71</sup> Education Act 1996. s. 351 originally in s. 1 of the Education Reform Act 1988

<sup>72</sup> Cm 4342 para. 5.11-5.22

homosexuality as a pretended family relationship. This prohibition applies to the activities of local authorities themselves, as distinct from the activities of the governing bodies and staff of schools on their own behalf.<sup>73</sup>

The Government intended to issue new guidance on sex education to replace Circular 5/94 as part of the action plan to reduce teenage pregnancy.<sup>74</sup> The main elements of the new guidance outlined in the Social Exclusion Unit Report emphasised making pupils aware of the risks of pregnancy and the consequences of early pregnancy.

Following the controversy over the repeal of Section 28, the DfEE issued details of the core principles of the new guidance on what is now called sex and relationship education.<sup>75</sup> This set the guidance within the framework for Personal, Social and Health Education (PSHE) and stated:

The guidance will also make it clear that it is not the job of teachers to promote a particular sexual orientation. Teachers will not be promoting homosexual relations. They will be teaching pupils to understand human sexuality and to respect themselves and others. Pupils should be given accurate information to enable them to understand difference and to help to remove prejudice.

There is no intention for the new guidance to be a vehicle for the deliberate promotion of any sexual orientation. The guidance will set sex and relationships education within a broader base of self-esteem, respect and responsibility, and will give young people a clear understanding of the arguments for delaying sexual activity.

It will ensure that teachers are in a position to offer information and support to all young people as they develop into adults and to address incidents of homophobic bullying. Pupils have a right to develop without being subject to any physical or verbal abuse about sexual orientation.

### **C. New draft guidance**

A draft of *Sex and Relationship Education Guidance* was issued for consultation on 16 March.<sup>76</sup> The consultation closes on 20 April 2000. The guidance will replace Circular 5/94 and give more specific information on suitable content. The introduction states:

It has been written to take account of the revised National Curriculum, published in September 1999, the need for guidance arising out of the new Personal, Social and Health Education (PSHE) framework and the Social Exclusion Unit report on teenage pregnancy.

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<sup>73</sup> DfEE Circular 5/94. Annex A: Sex Education: Schools' Legal Obligations

<sup>74</sup> *Teenage Pregnancy*. Social Exclusion Unit. Cm 4342 Chapter 11 para. 11.9 and Annex 4

<sup>75</sup> DfEE PN 046/00: Sex and relationship education. 7 February 2000

<sup>76</sup> <http://www.dfes.gov.uk/sre-guidance/index.htm>



We have also taken account of the need for clarification arising out of Government proposals to repeal Section 28 of the Local Government Act 1988.<sup>77</sup>

There is specific guidance on sexual identity and sexual orientation:

1.30. It is up to schools to make sure that the needs of all pupils are met in their programmes. Young people, whatever their developing sexuality, need to feel that it is relevant to them and sensitive to their needs. The Secretary of State for Education and Employment is clear that teachers should be able to deal honestly and sensitively with sexual orientation, answer appropriate questions and offer support. There should be no direct promotion of sexual orientation.

1.31. Sexual orientation and what is taught in schools is an area of concern for some parents. Schools that liaise closely with parents when developing their sex and relationship education policy and programme should be able to reassure parents of the content of the programme and the context in which it will be presented.

1.32. Guidance issued by the Department (Social Inclusion: Pupil Support Circular 10/99) dealt with the unacceptability of and emotional distress and harm caused by bullying in whatever form - be it racial, as a result of a pupil's appearance, related to sexual orientation or for any other reason.<sup>78</sup>

The summary of legal requirements makes it clear that Section 28 does not apply to schools:

A.9. Section 28 of the Local Government Act 1988 prohibits local authorities from intentionally promoting homosexuality or promoting the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.

A. 10. Section 28 does not apply to schools and should not affect the delivery of sex and relationship education in schools. It does not affect the activities of school governors or of teachers. It does not prevent the objective discussion of homosexuality in the classroom, and schools can provide counselling, guidance, advice and support to pupils.<sup>79</sup>

## **D. The Local Government Bill [HL]**

Lord Whitty, in the debate on the repeal of Section 28, gave a commitment that the Secretary of State for Education would consult with the Churches and others to see

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<sup>77</sup> op. cit p2

<sup>78</sup> op. cit para. 1.30-1.32. p.9

<sup>79</sup> op. cit p29 para A.9 and A.10

whether an amendment addressing educational concerns could be made to the Learning and Skills Bill.<sup>80</sup>

### **E. The Learning and Skills Bill [HL]<sup>81</sup>**

At Third Reading in the Lords, the Government amended section 403(1) of the *Education Act 1996* by the addition of ‘and sexual health’ to the requirement to have due regard to ‘moral considerations and the value of family life’.<sup>82</sup>

In response to the commitment given to the Lord Bishop of Blackburn at Committee stage, the Government also sought to add a new section on *Sex Education: Secretary of State’s Guidance*<sup>83</sup> after section 403 of the *Education Act 1996*.<sup>84</sup> The Bishop had moved, and then withdrawn, an amendment to Section 403. The Government’s New Clause was altered by amendments from Baroness Young, the first of which was successful on a vote and the others accepted by the Government following the vote. These amendments inserted the additional phrase ‘the key building block of society’ after marriage in subsection 2(a), replaced 2(b), (d) and (c), added the requirement for approval by the affirmative procedure to subsection (6) and added the new subsection (9) on consultation.<sup>85</sup> The new subsection 2(d) set a standard for teaching and materials which relied on not using anything ‘which a reasonable person would regard as inappropriate’. The requirement for pupils to be given accurate information to enable them to understand differences and to prevent or remove prejudice (original 2(d)) is omitted.

Clause 117 and the Government’s original proposed amendment are reproduced in Appendix 1 to this paper.

There was a lengthy debate on the new clause<sup>86</sup> and the other amendments on Third Reading.<sup>87</sup> Baroness Blackstone made it clear that the Government’s amendments had been brought forward ‘to set aside fears and concerns’ about the repeal of Section 28 and to place a clear statutory duty on the Secretary of State to issue positive guidance on sex and relationship education. She also gave an explanation of the amendment and referred to the consultation not only with the Bishop of Blackburn, as Chair of the Church of England Board of Education, and Archbishop Nichols of the Catholic Education Service, but also representatives of all the major faith groups and others such as health professionals.<sup>88</sup>

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<sup>80</sup> HL Deb 7 February 2000 cc396-486

<sup>81</sup> Bill 96 of 1999/2000

<sup>82</sup> see above, page 24

<sup>83</sup> s403A

<sup>84</sup> HL Deb 17 February 2000 cc1402-07

<sup>85</sup> see Marshallled List of Amendments to be moved on Third Reading HL Bill 47-I

<sup>86</sup> now Clause 117 of Bill 96

<sup>87</sup> HL Deb 23 March cc431-482

<sup>88</sup> cc431-436

The Government amendment had the support of the Lord Bishop of Blackburn despite his concerns about the vagueness of some of the language. The Bishop also drew attention to the essential and difficult role of teachers in delivering sex education.<sup>89</sup>

Baroness Young made it clear that the Government amendment was not acceptable as a substitute for Section 28. She drew attention to the very considerable support she had received: 'some 4,000 letters'. She sought both the retention of Section 28 and the removal of what she saw as the major flaw in the Government's proposals: the use of the phrase 'stable relationships' which could mean homosexual unions. She concluded:

In summing up, in my amendments I do not object to or speak against the whole of the government amendment. I have already said that I welcome the statement on marriage and, in subsection (4)(b),

'the reasons for delaying sexual activity and the benefits to be gained from such delay'.

Like all noble Lords, I am appalled that we have the highest rate of teenage pregnancy in the European Union. Clearly, if anything can be done to correct that situation then, of course, it should be done.

The amendments which I tabled today are designed to strengthen marriage, increase the safeguards against inappropriate material, safeguard Parliament's right over the curriculum and strengthen the rights of parents. Above all, they are designed to protect children. Had the government amendment been recommitted, we would have had time to discuss the matter more fully and I would have given a longer and more detailed explanation of all the points that I have put forward. As it is, I hope very much that these amendments will commend themselves to the House. I believe that that would enable us to accept an amended government amendment which would improve the Learning and Skills Bill. I beg to move.<sup>90</sup>

Other amendments were tabled but not moved by Earl Ferrers who also objected strongly to the use of 'stable relationships' as a building block of the community and society when it could cover homosexual relationships.

Peers divided between those who accepted the Government's compromise and those who, like Baroness Young, felt it was not a matter for compromise.

Lord Tope urged the House to accept the compromise<sup>91</sup> but Baroness Blatch, linking the argument with the debate in Scotland, said:

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<sup>89</sup> cc440-447

<sup>90</sup> HL Deb 23 March 2000 c440

<sup>91</sup> c467-8

Public surveys north and south of the Border confirm that Section 28 has worked and should be kept. Childhood should be nurtured and cherished and not be made subject to the distorted message of much of the material that would surely circulate if Section 28 was repealed. My noble friend's amendments strengthen the Government's amendment by strengthening the role of marriage, protecting children from inappropriate teaching materials - there are proper tests now in the amendment to make that judgement - and give parents and governors not just the right they have at the moment but a strengthened right not only to be concerned about sex education in schools but also to have a statutory right over control of the materials and the curriculum arrangements for sex education in schools and its teaching. I believe that that is an important extension.

The people of Ayr have spoken on this matter. I hope that noble Lords, will follow my noble friend into the Division Lobby tonight, she can certainly count on my support. Meanwhile, as I said earlier, whether or not the amendment is amended, the fight to retain Section 28 on the statute book will continue.<sup>92</sup>

Baroness Blackstone made it clear that the Government, would seek to delete Baroness Young's amendment. She said:

My Lords, with the leave of the House, this amendment has demolished the carefully constructed agreement and safeguards built into the government amendment to the Learning and Skills Bill on the provision of sex education. It has deliberately excluded the key objective that pupils are given accurate information for the purposes of enabling them to understand difference and preventing or removing prejudice.

The prevention and removal of prejudice are essential to the building of a society in which citizens respect one another. The Government are not prepared to support legislation which will leave children from different family backgrounds to be stigmatised and could lead to discrimination and bullying.

In the light of this amendment, and after my right honourable friend the Secretary of State for Education and Employment has consulted the Prime Minister and the Deputy Prime Minister, I wish to tell the House that we shall seek to delete this amendment in another place. It remains for me to pay tribute to those who at some personal cost have been prepared to sit down and work out a rational way forward.<sup>93</sup>

In moving the order for Second Reading in the Commons, David Blunkett said of Clause 117:

We will remove the Baroness's amendment and come back in due course with the way in which we intend to proceed.

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<sup>92</sup> HL Deb 23 March 2000 c458

<sup>93</sup> HL Deb 23 March 2000 c480

In the meantime, I make it clear that, subject to the consultation, that I will issue the guidance to schools, on which there appears to be very little disagreement, which illustrates our difficulty in ensuring that light, rather than heat, has been available on the issue.<sup>94</sup>

In response to an intervention from Fiona Mactaggart MP seeking the removal of the clause in its entirety, he said:

Given the changes that the House of Lords made, progress will not be made simply by eliminating the words that were used. I intend to go forward with the guidance, which is being consulted on separately.

The original objective of the proposals in the Bill was precisely to underpin the reassurance sought by many in the country that we were not promoting forms of sexual orientation in the classroom. We are not doing that, as the guidance makes clear.

Very few people who have been debating the matter in the newspapers or in the House of Lords seem to have bothered to have read the guidance. That is a great shame, for them and for the rational thinking that democracy demands. My right hon. Friend the Prime Minister rightly said yesterday that it would be absurd for us to expect teachers to promote sexuality - their own or someone else's - in the classroom. That is not their job, and we would not countenance it. I think that my hon. Friend the Member for Slough (Fiona Mactaggart) will find that the situation is she would wish it to be.<sup>95</sup>

Mrs Theresa May MP, moving the Opposition's amendment to the Bill, interpreted that statement as a Government intention to remove the whole of Clause 117. This has not been confirmed but the position should be made clear when the Government amendments for Committee stage are published. The *Learning and Skills Bill* is expected to start in Committee in the week beginning 10 April 2000.

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<sup>94</sup> HC Deb 30 March 2000 c521

<sup>95</sup> HC Deb 30 March 2000 c522

## V Some arguments relating to homosexuality

### A. The promotion of homosexuality

One of the arguments in support of Section 28 is that it prevents young people from being persuaded to become homosexual. Dr Jonathan Sacks, the Chief Rabbi, is reported as having said that repeal of the provision would ‘confuse many young people whose sexual identities are still fluid’.<sup>96</sup> Others have referred to the deeply impressionable nature of some teenagers, who may go through periods of same-sex attraction which they later regret.<sup>97</sup> An organisation called the ‘Courage Trust’, which believes that men become homosexual through circumstance not birth, tries to help men overcome their homosexuality.<sup>98</sup>

However, there is some evidence to suggest that sexuality is an innate characteristic, perhaps genetically influenced, perhaps linked to exposure to particular hormones in the womb. Chandler Burr’s book *A Separate Creation: how biology makes us gay* (1996) analyses the research into possible genetic or other biological factors affecting sexual orientation. Donald J West also looks at some of the supposed origins of homosexuality in his chapter of *Sociolegal Control of Homosexuality*. He suggests that:

The development of a homosexual orientation is undoubtedly governed by a multiplicity of interacting factors that differ in their relative importance from one person to another. In some cases homosexual fantasy and feeling develop very early and initial homosexual contacts may be actively sought out rather than incidentally encountered. In the days when Western psychiatrists applied heroic measures to convert male homosexuals they were met with scant success. A sense of homosexual identity is so often ingrained that change seems inconceivable. On the other hand, changes in orientation do sometimes occur and immutability is not invariable.<sup>99</sup>

Recent research published in *Nature* suggested that relative lengths of the index finger and the ring finger are related to exposure to the same sex hormones (foetal androgens) in the womb that are believed to have an influence over sexual orientation.<sup>100</sup>

A recent book by Bruce Bagemihl, *Biological Exuberance*, details examples of homosexual behaviour amongst animals, suggesting that this is not ‘unnatural’ behaviour.

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<sup>96</sup> ‘Chief Rabbi joins the fight against scrapping gay law’ – *Telegraph* 27 January 2000

<sup>97</sup> see for example Earl Peel – HL Deb 7 February 2000 cc468-9

<sup>98</sup> ‘Sex and salvation’ – *Guardian* 2 March 2000

<sup>99</sup> chapter 20 of D West and R Green (eds) *Sociolegal Control of Homosexuality: a Multi-Nation Comparison* (1997)

<sup>100</sup> reported in ‘Length of fingers “gives clue to sexual orientation”’ – *Independent* 30 March 2000

Providing information on homosexuality, or even promoting it, would therefore (so the argument goes) only allow people to come to terms with their existing sexuality rather than persuade them to change it. Minette Marrin, writing in the *Telegraph*, says:

Even if some schools did go in for the active promotion of homosexuality that many people fear and some people hope for, it is highly unlikely that any young people would be turned away from heterosexuality to a homosexual life.<sup>101</sup>

The same point has been made more drily by Lord Harris of Haringey:

once cannot teach someone to be lesbian or gay by a video, or even by one or two lessons in a classroom. My goodness, how wonderful the maths, English and science results would be in this country if it was that easy to inculcate things into our children.<sup>102</sup>

Many young people are undoubtedly aware that they are homosexual at an early age. Baroness Richardson of Clow (who taught sex education in a comprehensive school) has suggested that a typical class of 30 pupils who are 13 to 14 years old, there will be between three and nine pupils who are seriously questioning their sexual orientation.<sup>103</sup> The majority of teachers responding to a survey of 307 randomly-chosen secondary schools knew of lesbian, gay or bisexual pupils attending their schools (61%). 42% of the respondents had also been asked by pupils (or were aware of colleagues having been asked by pupils) for advice about being lesbian, gay or bisexual.<sup>104</sup>

## **B. Homosexuality and ‘family life’**

Many homosexual people with children or in long-term relationships (or both) find it insulting to suggest that theirs is a ‘pretended family relationship’. For example both David Borrow (an openly homosexual MP)<sup>105</sup> and Lord Rea (who was brought up by his mother and her lesbian partner)<sup>106</sup> have made this point.

There are numbers of children who live with a homosexual parent. It was to provide a book for such children to identify with that *Jenny lives with Eric and Martin* was written in Denmark in 1981.<sup>107</sup> When deciding residence and contact applications, the court’s primary concern is for the welfare of the child: there is no statutory prohibition against

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<sup>101</sup> ‘Scrapped or saved, that section doesn’t matter’ – *Telegraph* 28 January 2000

<sup>102</sup> HL Deb 7 February 2000 c474

<sup>103</sup> HL Deb 7 February 2000 c423

<sup>104</sup> N Douglas et al, *Playing it safe: responses of secondary school teachers to lesbian, gay and bisexual pupils, bullying, HIV and AIDS education and Section 28*, Health Education Research Unit, Institute of Education, University of London (November 1997)

<sup>105</sup> quoted in ‘Law hinders counselling for pupils with problems’ – *Telegraph* 28 January 2000

<sup>106</sup> HL Deb 7 February 2000 cc459-60

<sup>107</sup> Susanne Bosche, ‘Jenny, Eric, Martin... and me’ – *Guardian* 31 January 2000

custody being given to a homosexual parent.<sup>108</sup> The Psychology Department at Birkbeck College is currently undertaking a survey of gay and bisexual parenting.<sup>109</sup>

The House of Lords decided last October that in certain circumstances two men or two women living together in a stable and permanent sexual relationship are capable of being members of a family. The case in question turned on whether the Rent Act could be interpreted to allow a man to stay on in the housing association flat they shared after his gay partner, the official tenant, had died.<sup>110</sup> Lord Nicholls of Birkenhead said in this case:

Where sexual partners are involved, whether heterosexual or homosexual, there is scope for the intimate mutual love and affection and long term commitment that typically characterise the relationship of husband and wife.<sup>111</sup>

There is also recognition of stable, committed homosexual relationships in immigration policy. A new concessionary arrangement outside the immigration rules allows both heterosexual and homosexual relationships to be considered 'akin to marriage'. The Home Office minister Mike O'Brien defined a relationship akin to marriage as one which involves a committed relationship which can be demonstrated by evidence such as joint commitments, financial or otherwise.<sup>112</sup> In order to benefit from the concession, an unmarried couple will need to prove, among other matters, that they are legally unable to marry; that they have been living together for two years or more; that they intend to live together permanently; that any previous marriage or similar relationship has permanently broken down; and that they will be able to maintain and accommodate themselves without recourse to public funds.

A recent poll conducted by Gallup for the *Daily Telegraph* suggests that 40% of people feel that a sexual relationship between a man and a woman is superior to one between two people of the same sex, but that 53% consider both kinds of relationship to be of equal value.<sup>113</sup>

### **C. Human rights arguments<sup>114</sup>**

A statement on compatibility with the European Convention on Human Rights (ECHR) is required on each Government Bill under section 19(1)(b) of the *Human Rights Act 1998*. The *Local Government Bill 1999-2000* as presented to the House of Commons on 13 March 2000 contains the following statement on its cover:

<sup>108</sup> *Children Act 1989*

<sup>109</sup> see 'Calling all gay dads' – *Gay Times* December 1999

<sup>110</sup> *Fitzpatrick v Sterling Housing Association* [1999] 3 WLR 1113 (judgment 28 October 2000), <http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd991028/fitz01.htm>

<sup>111</sup> quoted by Lord Lester of Herne Hill, HL Deb 7 February 2000 c464

<sup>112</sup> HC Deb 30 October 1997 vol 299 c844w

<sup>113</sup> 'Small majority favours retaining Section 28' – *Telegraph* 11 February 2000

<sup>114</sup> For further discussion of this issue, see Robert Wintemute *Sexual orientation and human rights* (1995)



I am unable to make a statement that in my view the provisions of the Local Government Bill are compatible with the Convention rights but the Government nevertheless wishes the House to proceed with the Local Government Bill.

When asked the reasons for this in a Parliamentary Question, Hilary Armstrong replied:

There are considerable doubts whether section 2A of the Local Government Act 1986 is compatible with the European Convention on Human Rights (ECHR). Clause 91 of the Local Government Bill amends, but also reaffirms, the provisions of section 2A. It is for this reason that it is doubtful whether the Bill is compatible with the ECHR.

This Government have already said that they intend to remove clause 91 of the Bill and, in its place, provide for the repeal of section 2A of the 1986 Act. The Bill will then be compatible with the ECHR.<sup>115</sup>

In this context Articles 8 and 10 of the ECHR, in combination with Article 14, could be seen to be particularly relevant. Article 8 declares the right to respect for private and family life; Article 10 guarantees the right to freedom of expression; and Article 14 provides that the enjoyment of the rights and freedoms set out in the Convention shall be secured 'without discrimination on any ground such as sex, race, colour ... or other status'. These words could be considered wide enough to prevent discrimination against people on the ground of their sexual orientation.<sup>116</sup> All these articles have been included in the scope of the *Human Rights Act 1998*, which seeks to give effect to in domestic UK law to the rights contained in the European Convention. The *Human Rights Act 1998* comes fully into force on 2 October 2000.

The European Court of Human Rights has held in several cases that Article 8 can give protection to gay men. In the cases of *Dudgeon v United Kingdom* (1981)<sup>117</sup> and *Norris v Republic of Ireland* (1988)<sup>118</sup> the court held that legislation penalising homosexual acts between men over 21 constituted breaches of the right to respect for private life under Article 8. It decided that these breaches were not justifiable under Article 8(2) for the protection of morals and of the rights of others. When the European Commission of Human Rights considered the cases of *Sutherland* and *Morris* against the UK, it concluded that the distinction between the heterosexual and homosexual ages of consent could not be justified by 'society's claimed entitlement to indicate disapproval of homosexual conduct and its preference for a heterosexual lifestyle'.<sup>119</sup>

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<sup>115</sup> HC Deb 23 March 2000 vol 346 c623W

<sup>116</sup> see for example a legal opinion from Lord Gifford QC, referred to in M Colvin and J Hawksley, *Section 28: A Practical Guide to the Law and its Implications*, Liberty, 1989 p60

<sup>117</sup> Series A no 45, 17 (judgment of 22 October 1981)

<sup>118</sup> Series A no 142, 21 (judgment of 26 October 1988)

<sup>119</sup> Application 25186/94; complaint brought June 1994; Commission ruling adopted 1 July 1997

However, in 1983 the European Commission of Human Rights decided that a relationship between homosexuals was not protected by the right to respect for family life ensured by Article 8.<sup>120</sup> This was despite other Strasbourg case-law holding that ‘family life’ is not restricted to relationships between married couples and their children but extends to relations between cohabiting couples,<sup>121</sup> between brothers and sisters and other relatives,<sup>122</sup> and between unmarried parents and their children.<sup>123</sup>

In a recent article in *The Times*, David Pannick QC argued that Section 28 breaches Convention rights and noted that:

The European Court of Human Rights has repeatedly emphasised that the regulation of homosexual relationships concerns ‘a most intimate aspect of private life,’ in respect of which ‘there must be serious reasons before interferences on the part of the public can be legitimate’.<sup>124</sup>

Lord Lester of Herne Hill devoted his speech in the Committee stage of the *Local Government Bill 1999-2000* to his argument that Section 28 conflicts with Convention rights, including the right to private and family life and freedom of speech. He suggested that it would be legitimate to forbid the promotion by local authorities of any form of human sexuality, but that Section 28 as it stands discriminates against homosexuals and has no objective or reasonable justification.<sup>125</sup>

Under the provisions of the *Scotland Act 1998*, the Scottish Parliament and Scottish Executive must, in the exercise of their powers, comply with the European Convention of Human Rights. This provision applies even before the Human Rights Act 1998, <http://www.legislation.hmso.gov.uk/acts/acts1998/19980042.htm> comes into force. The Scottish Executive has determined that the repeal of the section 2A does not give rise to any infringement of the ECHR.<sup>126</sup>

## D. Religious views

### Christianity

The story of Sodom is the classical starting point for those who believe the Bible prohibits homosexual behaviour:

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<sup>120</sup> Application 9369/81, *X and Y v UK* (1983) DR 32, 220 at 221

<sup>121</sup> see eg Applications 7289/75 and 7349/76, *X and Y v Switzerland*, Yearbook XX (1977) 168 at 172

<sup>122</sup> Judgment of 13 June 1979, *Marckx*, Series A no 31, 21

<sup>123</sup> *ibid*, 14

<sup>124</sup> David Pannick ‘Europe will have the final word in Section 28 debate’ - *The Times* 29 February 2000

<sup>125</sup> HL Deb 7 February 2000 cc463-7

<sup>126</sup> Ethical Standards in Public Life etc. (Scotland) Bill Policy Memorandum, 1 March 2000

- 1 And there came two angels to Sodom at even; and Lot sat in the gate of Sodom: and Lot seeing them rose up to meet them; and he bowed himself with his face toward the ground;
- 2 And he said, Behold now, my lords, turn in, I pray you, into your servant's house, and tarry all night, and wash your feet, and ye shall rise up early, and go on your ways. And they said, Nay; but we will abide in the street all night.
- 3 And he pressed upon them greatly; and they turned in unto him, and entered into his house; and he made them a feast, and did bake unleavened bread, and they did eat.
- 4 But before they lay down, the men of the city, even the men of Sodom, compassed the house round, both old and young, all the people from every quarter:
- 5 And they called unto Lot, and said unto him, Where are the men which came in to thee this night? bring them out unto us, that we may know them.
- 6 And Lot went out at the door unto them, and shut the door after him,
- 7 And said, I pray you, brethren, do not so wickedly.
- 8 Behold now, I have two daughters which have not known man; let me, I pray you, bring them out unto you, and do ye to them as is good in your eyes: only unto these men do nothing; for therefore came they under the shadow of my roof.
- 9 And they said, Stand back. And they said again, This one fellow came in to sojourn, and he will needs be a judge: now will we deal worse with thee, than with them. And they pressed sore upon the man, even Lot, and came near to break the door.
- 10 But the men put forth their hand, and pulled Lot into the house to them, and shut to the door.
- 11 And they smote the men that were at the door of the house with blindness, both small and great: so that they wearied themselves to find the door.<sup>127</sup>

Leviticus 20 is also cited against homosexuality:

- 10 And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death.
- 11 And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them.
- 12 And if a man lie with his daughter in law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them.
- 13 If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.

St Paul and other Epistle writers of the New Testament, such as Jude, used for non-procreative sex a word that is usually translated as 'fornication'. This is treated in very much the same way as adultery and drunkenness:

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<sup>127</sup> Genesis 19

neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, shall inherit the kingdom of God.<sup>128</sup>

It is in the Epistle to the Romans that the main reference occurs:

24 Wherefore God also gave them up to uncleanness through the lusts of their own hearts, to dishonour their own bodies between themselves:

25 Who changed the truth of God into a lie, and worshipped and served the creature more than the Creator, who is blessed for ever. Amen.

26 For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature:

27 And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence of their error which was meet.

In an article in *Widening the Horizons*, the Reverend Dr Jeffrey Johns suggests that the Sodom story relates to attempted gang rape and has no relevance to the ethical issues surrounding homosexuality; and that the Pauline reference forms part of a larger rhetorical question designed to bring together the Jewish and Gentile factions in the Roman church.<sup>129</sup>

It has been reported that John Elford, Canon Theologian of Liverpool Cathedral is about to publish a book suggesting that the passages in the Bible generally considered to prohibit homosexuality have been misinterpreted. He argues that the Bible does not take a moral view on homosexuality.<sup>130</sup>

The general attitude of the Church of England is opposition to the practice of homosexual acts but acceptance of gay people in the church. The official position of the Roman Catholic Church is somewhat stronger: it is a mortal sin to engage in homosexual acts. Cardinal Thomas Winning, leader of the Roman Catholic community in Scotland, has been vociferous in his opposition to the repeal of Section 28. He has referred to the Catholic Church's condemnation of the homosexual act but also its defence of homosexual persons from bullying and unjust discrimination.<sup>131</sup>

By contrast, the moderator of the General Assembly of the Church of Scotland, the Right Reverend John Cairns, has expressed the view that repeal of Section 28 is not alarming.

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<sup>128</sup> 1 Corinthians 6, verses 9, 10

<sup>129</sup> *Christian Action Journal* (Summer 199) p12ff

<sup>130</sup> 'Top theologian revises biblical prohibitions' – *Times* 27 March 2000. The book is to be called *The Ethics of Uncertainty* and is due to be published later this month.

<sup>131</sup> see his articles 'Morality open to abuse' – *Scotland on Sunday* 17 November 1999; 'Why are you silent on Section 28?' – *Telegraph* 19 January 2000; 'Cardinal Winning and the speech he gave in Malta last week' – *Scotland on Sunday* 30 January 2000

He felt that children should, at an appropriate stage in their development, be taught ‘what the reality of the world is today’.<sup>132</sup>

### **Judaism**

Traditional Jewish law prohibits sexual relations between members of the same sex. It takes a harsher position against sexual relations between men than those between women, because it considers the former to be prohibited by biblical injunctions whereas the latter are prohibited only by later rabbinical legislation.

### **Islam**

The Quran (the primary source of Islam) and *hadith* (‘traditions’) which supplement it are explicit in their condemnation of homosexuality. Little debate on the issue has taken place in Muslim societies and it is thought that there has been no attempt at granting any kind of recognition of equality to homosexual believers.<sup>133</sup>

### **Hinduism**

The theology of Hinduism is extremely complicated. In general Hinduism is a sex-positive religion, but some literature is opposed to homosexuality and others do not markedly support it.<sup>134</sup>

### **Buddhism**

The diversity of Buddhist tradition has, at different places and times, led to divergent opinions on homosexuality. The evidence seems to suggest, however, that Buddhism has been for the most part neutral on the subject. The principal question for Buddhism has not been one of heterosexuality/homosexuality but one of sexuality/celebrity.<sup>135</sup>

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<sup>132</sup> ‘Kirk split on call by Moderator to scrap Section 28’ – *Scotsman* 19 January 2000

<sup>133</sup> Arlene Swidler (ed), *Homosexuality and World Religions* 1993 p181

<sup>134</sup> *ibid* Ch 2

<sup>135</sup> *ibid* Ch 3

## VI Scotland

The *Ethical Standards in Public Life etc. (Scotland) Bill* was introduced in the Scottish Parliament on 1 March 2000. Part four of the Bill makes provision for the repeal of section 2A (commonly referred to as Section 28 or Clause 28) of the *Local Government Act 1986*.

The proposed repeal of section 2A has been the focus of intense media interest and debate in Scotland. This section considers the Scottish background to the proposed repeal of section 2A, as well as examining issues arising from the current debate, the Scottish Executive's consultation exercise, and the pre-legislative scrutiny stage of the Scottish Parliament's legislative process. It is largely drawn from a research note prepared by the Scottish Parliament Information Centre.<sup>136</sup>

### A. Scottish Executive proposals for reform

Although the repeal of section 28 did not appear specifically in the Scottish Labour Party's manifesto in 1997, the Policy Memorandum [http://www.scottish.parliament.uk/parl\\_bus/bills/b9s1pm.pdf](http://www.scottish.parliament.uk/parl_bus/bills/b9s1pm.pdf) issued as an accompanying document to the *Ethical Standards in Public Life etc. (Scotland) Bill* stated:

The Executive is committed to building a modern, forward-looking society in which people can live together freely in a spirit of solidarity, respect and tolerance. Repeal of section 2A has been longstanding policy for Labour and the Liberal Democrats. A number of other political parties in the Scottish Parliament also support its repeal.<sup>137</sup>

Jackie Baillie, Deputy Minister for Communities, announced Scottish Ministers' desire to repeal Section 2A to the Equal Opportunities Committee of the Parliament on 28 September 1999.<sup>138</sup> The Executive's intention to repeal the legislation *at the earliest opportunity* was repeated in a speech given by Wendy Alexander, Minister for Communities, at Glasgow University on 29 October 1999.

The proposed repeal was included in the *draft Ethical Standards in Public Life etc. (Scotland) Bill* and an accompanying consultation paper *Standards in Public Life: Consultation on the Ethical Standards in Public Life etc. (Scotland) Bill*, <http://www.scotland.gov.uk/library2/doc07/sipl-00.htm> published in November 1999. In the consultation paper the Scottish Executive set out its case for reform, basing its arguments on the principles of tackling social exclusion and promoting equality and tolerance. The Executive argued that the legislation was 'ill-conceived' and that its existence had:

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<sup>136</sup> SPICe Research Note 00/23, *Section 2A (Section 28)*, 28 March 2000

<sup>137</sup> The Scottish Executive, 'Ethical Standards in Public Life etc. (Scotland) Bill: Policy Memorandum', [http://www.scottish.parliament.uk/parl\\_bus/bills/b9s1pm.pdf](http://www.scottish.parliament.uk/parl_bus/bills/b9s1pm.pdf)

<sup>138</sup> Equal Opportunities Committee OR col 79, 28 September 1999, [http://www.scottish.parliament.uk/official\\_report/cttee/equal99-00/eo0403.htm](http://www.scottish.parliament.uk/official_report/cttee/equal99-00/eo0403.htm)

- served to legitimise intolerance and prejudice and, arguably to raise the level of homophobia;
- acted as an unhelpful constraint on the ability of local authorities to develop best practice in sex education and bullying; and
- constrained the ability of local authorities to provide grants or funds to gay and lesbian groups in the community.<sup>139</sup>

The consultation period on the draft Bill ended on 14 January 2000. Over 6,500 copies of the consultation paper were distributed and over 2,300 responses were received. More than 80 per cent of those who responded backed repeal. Both the Educational Institute of Scotland and the Scottish Secondary Teachers' Association, as well as some children's bodies (NCH Action for Children, Save the Children and Children in Scotland), the Convention of Scottish Local Authorities, and 12 of the 16 councils who responded, argued for repeal.<sup>140</sup>

Concerns were raised during the consultation period on the use of inappropriate material within schools in the teaching of sex education. In response, Sam Galbraith, Minister for Education and Children, wrote to all chairs of school boards and head teachers in Scotland outlining a package of safeguards. The package included:

- Strong and clear guidance to education authorities on the provision of sex education in schools through an official circular to be sent to all education authorities (a draft circular was issued for consultation with the Bill)
- Reiteration of current good practice that schools consult with parents in advance of sex education planning
- Simple procedures for parents to raise any concerns about any aspects of their child's teaching
- Review of curriculum advice and supporting materials for schools and teachers
- Establishment of a Working Group to consider the existing curricular advice and supporting materials used in the teaching of sex education in schools<sup>141</sup>

Membership of the working group is drawn from representatives of churches, parents, teachers and education authorities. The Group's remit is to:

- consider the scope and general content of the package of safeguards;
- report to the Scottish Executive on whether this package is sufficiently wide-ranging and robust to meet the legitimate concerns of the public, parents and teachers;
- review existing curriculum guidelines, advice and support information bearing on sex education;

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<sup>139</sup> The Scottish Executive, Standards in Public Life: Consultation on the Ethical Standards in Public Life etc. (Scotland) Bill, November 1999, <http://www.scotland.gov.uk/library2/doc07/sipl-00.htm>

<sup>140</sup> SPOR Vol 5 col 166, 24 February 2000, [http://www.scottish.parliament.uk/official\\_report/session99-00/or050204.htm](http://www.scottish.parliament.uk/official_report/session99-00/or050204.htm)

<sup>141</sup> Letter from Sam Galbraith, Minister for Children and Education, to Chairs of School Boards and Headteachers, 27 January 2000

- consider whether these existing materials and the existing arrangements for ongoing review are sufficient to meet the legitimate concerns of the public, parents and teachers;
- report to the Scottish Executive with recommendations for any revisions or additions to these existing materials and arrangements;
- commission with the Scottish Executive any agreed revisions and/or the development of any agreed new materials, which are to be completed before repeal of section 2A is brought into force.<sup>142</sup>

The Minister also stated that section 2A would not be repealed until the Working Group had completed its review. The proposals of the Working Group are to be made available to MSPs before a final vote is taken on the *Ethical Standards in Public Life etc. (Scotland) Bill*.

## **B. Sex education in Scotland**

A key area of the debate has centred around the provision of appropriate guidelines and safeguards on the teaching personal relationships and sex education within schools, and whether or not such guidelines should be set in statute. The present system makes a distinction between teaching on homosexuality (statutorily limited) and teaching about other sensitive topics such as drugs and abortion (non-statutory guidance only).

In Scotland there is no national curriculum prescribed by statute or regulation. However, the Scottish Executive Education Department, after consultation, produces curriculum advice and guidelines in various publications. At a local level, the 32 education authorities and individual school managers are responsible for adherence to and delivery of the curriculum within schools. To inform the current debate, the Scottish Executive has produced a summary of the relevant sources of national advice that impact upon sex and personal education in schools. The summary states:

National advice does not address issues surrounding homosexuality directly, although it has much to say about the importance of pupils developing self-esteem, respect for others, good personal relationships, and respect for diversity thus creating opportunities for consideration of sensitive aspects of sex education such as homosexuality.<sup>143</sup>

No separate education or curriculum guidance was issued on the impact of the introduction of section 2A on the provision of sex education in schools. However, the general circular distributed by the Scottish Development Department to all local authority chief executives on the implementation of the *Local Government Act 1988* stated:

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<sup>142</sup> Scottish Parliament Written Answers Report Vol 4 No 7, [http://www.scottish.parliament.uk/official\\_report/wa99-00/wa0210.htm](http://www.scottish.parliament.uk/official_report/wa99-00/wa0210.htm)

<sup>143</sup> The Scottish Executive, *Sex Education in Scottish Schools: Summary of National Advice*, February 2000



the effect of [the introduction of section 2A] will be to prohibit the promotion of homosexuality in the expression of its policy on sex education. Sex education will continue to be an element of social and health education in schools. It will not prevent the objective discussion of homosexuality in the classroom or the counselling of pupils concerned about their sexuality.<sup>144</sup>

As part of the Executive safeguards, a draft circular to all Directors of Education on the impact of the repeal on the conduct of sex education in schools was issued for consultation. The circular outlines how the new duty on local authorities, as introduced by the proposed amendment, will affect the conduct of sex education in schools. It includes

- an overview of the existing curriculum advice on health, social and sex education
- good practice for involving and consulting parents and carers' involvement in aspects of the curriculum
- a commitment to the continued role of religious authorities in providing guidance to denominational schools

The guidance concludes that all education should be based on a partnership between schools and parents and carers.

3. Sex education forms a key element of personal, social and health education in schools and is an important part of children's preparations for adult life. The purpose of sex education is to provide knowledge and understanding of the nature of sexuality and the processes of human reproduction within the context of relationships based on love and respect. It should develop understanding and attitudes which will help pupils to form relationships in a responsible and healthy manner. It is important that sex education programmes should be well matched to pupils' needs and levels of maturity. Teaching materials should be selected with great care and sensitivity to the age and understanding of the pupils.

4. Programmes of sex education should present facts in an objective, balanced and sensitive manner within a framework of sound values and an awareness of the law on sexual behaviour. Pupils should be encouraged to appreciate the value of stable family life. At the same time, teachers must respect and avoid causing hurt or offence to those who come from backgrounds that do not reflect this value. All pupils should be encouraged to understand the importance of self-restraint, dignity respect for themselves and the views of others. They should be encouraged to recognise the physical, emotional and moral implications and risks of certain types of behaviour and to accept that both sexes must behave responsibly.

In giving evidence to the Local Government Committee, representatives from the Association of Directors of Education in Scotland (ADES) said:

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<sup>144</sup> Scottish Development Department Circular No 9/1988: *Local Government Act 1988*

It is important to state that guidelines and guidance should provide parameters, not prescription. There must be a degree of flexibility to allow the diversity of communities in Scotland to be recognised. For the last 30 or 40 years, Scottish education has worked well with a system of guidelines and guidance. Bearing in mind the principle of subsidiarity, we can see that the system rightly encourages dialogue. Bottom-up development can inform central development. Prescription destroys that two-way process and undermines the local authority and, consequently, the discretion of the head teacher. There is a suggestion that we should try to find neat and easy solutions, but democracy means that the majority rule should have regard for the minority right. We have to have in place models that allow us to do that.<sup>145</sup>

### C. Scottish Parliament Debate

The issue of the repeal of section 2A was debated in the Scottish Parliament even before the introduction of a Bill. On 10 February 2000 the Conservative MSP Annabel Goldie moved a motion opposing repeal of Section 2A, saying that she did so because she was listening to the fears and concerns of the electorate, not to the ‘zealous naivety’ of the Executive.<sup>146</sup> This motion was however defeated by 88 votes to 17 (3 abstentions).

During the course of the debate Wendy Alexander, Minister for Communities, commented upon the media coverage of the debate that had ensued in Scotland:

... in January, on the last day of an eight-week consultation, when the end of the hype about the millennium had left the news pages bereft, came a carefully co-ordinated campaign of misinformation. That campaign was intent on fostering fear, rather than debate. The clearest example of that fear was the claim that gay sex lessons would be taught in Scottish schools. In place of that fear, let us place on record the facts: before 1998 there were no gay sex lessons in Scottish schools; today there are no gay sex lessons in Scottish schools; and in future there will be no gay sex lessons in Scottish schools. Effective safeguards existed before 1988, they exist today and they will exist in the future. I do not dismiss the damage that is caused by the fiction about proselytising teachers, titillating texts and terrible threats. That fiction has squeezed out the facts, and parents, the public and pupils have become perplexed. The section has never been used for the protection of children in a court of law. It is not that law, but existing procedures that daily protect our children - now and in future, parental preferences and good teacher sense will shape practice in Scottish classrooms. Fear has undermined parental confidence. Our challenge is to restore that confidence.<sup>147</sup>

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<sup>145</sup> Local Government Committee OR col 714 14.03.00,

[http://www.scottish.parliament.uk/official\\_report/cttee/local-00/lg00-0902.htm](http://www.scottish.parliament.uk/official_report/cttee/local-00/lg00-0902.htm)

<sup>146</sup> SPOR Vol 4 col 940 10.02.00,

[http://www.scottish.parliament.uk/official\\_report/session99-00/or041003.htm](http://www.scottish.parliament.uk/official_report/session99-00/or041003.htm)

<sup>147</sup> SPOR Vol 4 col 942 10.02.00,

[http://www.scottish.parliament.uk/official\\_report/session99-00/or041003.htm](http://www.scottish.parliament.uk/official_report/session99-00/or041003.htm)

## D. Representations on Section 28 in Scotland

The repeal of section 28 has received almost daily media attention since the Executive proposed its repeal in October 1999. The following section aims to summarise some of the main arguments that have been put forward by a wide range of groups, individuals and organisations to support or oppose the case for repealing the legislation.

In addition to the Scottish Executive consultation exercise on the draft Bill, three of the Parliament Committees' (Equal Opportunities; Education, Culture and Sport; and Local Government) have been taking evidence from a range of groups and organisations. The Local Government Committee is the leading committee on the Bill and will produce a report for the consideration of the Scottish Parliament after the Easter recess.

The groups making representations represented a wide spectrum of interests, including teacher and parent representatives, gay and lesbian groups, and religious and faith organisations. Representatives from two umbrella organisations - the 'Keep the Clause' campaign and the Equality Network - have given oral evidence. 'Keep the Clause' has fielded a high-profile media and advertising campaign, which was launched on 19 January 2000. The advertising campaign is financially supported by Brian Souter, Chief Executive of Stagecoach, and organised by a professional media relations company. The campaign describes itself as:

an umbrella organisation drawing support from secular, religious and ethnic groups across Scotland, all united in their concern over the Scottish Executive's plans to repeal Section 2A.<sup>148</sup>

The Equality Network, <http://www.diversity.org.uk/equality/> is an umbrella organisation which campaigns for human rights for lesbian, gay, bisexual and transgender (LGBT) people in Scotland and for the repeal of section 2A.

Some of the arguments against the repeal that have been advanced during the course of the debate could be summarised as follows:

- objections to homosexual relationships based on grounds derived from religious faith and teachings
- objections to homosexual relationships being given moral equivalence to heterosexual relationships within marriage
- concern that repeal would result in the 'active promotion' of homosexuality in schools
- concern about the type of material which may be available to children in schools if the legislative sanction was removed, in particular with regard to the provision of sex education in schools

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<sup>148</sup> Keep the Clause Campaign, written submission to Equal Opportunities Committee, 20 March 2000

- feelings that the proposed guidelines and safeguards are not an adequate replacement for the perceived protection afforded by the existing legislation
- rejection of the Executive's arguments that within the current regulations section 2A has acted as a constraint on teachers in tackling issues such as the incidence of homophobic bullying in schools

Some of the main arguments which have been put in support of repeal of section 2A are:

- it legitimises discrimination against, and intolerance of, lesbian, gay, bi-sexual or transgendered people
- it is unclear (eg what is meant by intentionally promoting homosexuality, as sexual preference is regarded as an immutable characteristic and therefore by definition cannot be promoted)
- the legislation was unnecessary in the first place as there was no evidence to demonstrate the use of inappropriate material in Scottish schools either before or after the introduction of the legislation
- repeal would enable teachers to deal more effectively and sensitively with incidences of homophobic bullying in schools
- the existing legislation is ill-defined and this has led to: inconsistency in interpretation and local authority practice (eg. funding of gay and lesbian voluntary projects and events)
- the guidelines which would be introduced, coupled with the professional judgement of teachers, would prevent inappropriate material being made available in schools

## **E. The *Ethical Standards in Public Life etc. (Scotland) Bill***

The focus of the debate changed on the introduction of the authoritative version of the Ethical Standards in Public Life etc. (Scotland) Bill on 1 March 2000, [http://www.scottish.parliament.uk/parl\\_bus/bills/b9s1.pdf](http://www.scottish.parliament.uk/parl_bus/bills/b9s1.pdf). The Bill has been amended since its publication in draft, and now proposes a new duty on local authorities: in the provision of services for children, they should consider the value of a 'stable family life', and have regard to a child's age, understanding and stage of development. The full text of the new section on the Bill as introduced is as follows:

### CHANGES IN LAW ABOUT TEACHING AND WELFARE OF CHILDREN

#### **25 Repeal of section 2A of Local Government Act 1986**

Section 2A (prohibition on local authorities' activities in connection with same-sex relationships) of the Local Government Act 1986 (c.10) is repealed.

#### **26 Councils' duties to children**

(1) It is the duty of a council, in the performance of those of its functions which relate principally to children, to have regard to -

(a) the value of stable family life in a child's development; and

(b) the need to ensure that the content of instruction provided in the performance of those functions is appropriate, having regard to each child's age, understanding and stage of development.

(2) In this section -

“children” means persons of school age within the meaning of section 31 of the Education (Scotland) Act 1980 (c.44) and “child’s” in subsection (1)(b) is to be construed accordingly;

“council” has the same meaning as in Parts 1 and 2 of this Act.

The Policy Memorandum [http://www.scottish.parliament.uk/parl\\_bus/bills/b9s1pm.pdf](http://www.scottish.parliament.uk/parl_bus/bills/b9s1pm.pdf) published with the Bill says that the Scottish Executive believes this provision builds on local authorities' common-law duty of care towards pupils while they are at school, and gives a statutory basis to the sensitive and appropriate teaching and delivery of services to children.<sup>149</sup>

Some opponents of the proposed repeal stated that the new amendment does not address their objection to a homosexual relationship being given the same moral equivalence as a heterosexual relationship within marriage. On giving evidence to the Equal Opportunities Committee, representatives from ‘Keep the Clause’ acknowledged that section 2A was going to be repealed and stated they were concentrating on a campaign that emphasised the teaching of marriage as the ‘central building block of the society’.<sup>150</sup>

In their written response to the Equal Opportunities Committee, the Equality Network highlighted the diversity of the structure of family relationships in Scotland:

There have been calls for section 26 [of the *Ethical Standards in Public Life etc. (Scotland) Bill*] to be amended to stress the importance of marriage. A significant proportion of Scottish families are not headed by a married couple. We believe that the important values in family relationships are stability, commitment, love, honesty and respect. We are sure that even those who wish to see section 26 amended would agree that a family headed by unmarried parents or a single parent that embodies those values is a better environment for bringing up children than an unloving marriage in which those values are missing. We believe that the danger of specifying in law that marriage is the principal aspect of importance to a family is that this will reduce the perceived importance of these vital values, and will stigmatise children whose parents are divorced or not married.

The Executive has not defined a stable family life within the bounds of marriage. The draft circular issued for consultation by the Scottish Executive Education Department (SEED) on the conduct of sex education in Scottish schools states:

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<sup>149</sup> Ethical Standards in Public Life etc. (Scotland) Bill Policy Memorandum, 1 March 2000

<sup>150</sup> Equal Opportunities Committee OR col 520 20 March 2000,  
[http://www.scottish.parliament.uk/official\\_report/cttee/equal-00/eo00-0802.htm](http://www.scottish.parliament.uk/official_report/cttee/equal-00/eo00-0802.htm)

Pupils should be encouraged to appreciate the value of a stable family life. At the same time, teachers must respect and avoid causing hurt or offence to those who come from backgrounds that do not reflect this value.

Furthermore, in a response to the following written question on 14 March 2000 tabled by Brian Monteith MSP, Wendy Alexander said:

The term “stable family life” is an inclusive one which reflects the diversity of family composition in Scotland today and, as the First Minister made clear in his statement in the chamber on this matter, marriage is an important part of the mix that we have in our society. The vital consideration is a stable and secure background for the bringing up of children.<sup>151</sup>

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<sup>151</sup> SPOR Vol 5 No 4 13-17 March 2000,  
[http://www.scottish.parliament.uk/official\\_report/wa-00/wa0314.htm](http://www.scottish.parliament.uk/official_report/wa-00/wa0314.htm)

## Appendix 1: Lords Amendments to the *Learning and Skills Bill* [HL] 1999-2000

### 1. Government new Clause:<sup>152</sup>

After Clause 116  
BY THE BARONESS BLACKSTONE

Insert the following new Clause-

“(1) The Education Act 1996 shall be amended as follows.

(2) In section 403 (sex education: manner of provision) in subsection (1) for the words “and the value of family life” substitute “, the value of family life and sexual health”.

(3) After section 403 insert-

"Sex education: Secretary of State's guidance. 403A.-(1) The Secretary of State must issue guidance designed to secure that the following general objectives are met when sex education is given to registered pupils at maintained schools.

Sex education:  
Secretary of  
State's guidance  
1996 c. 56.

- (2) The general objectives are that the pupils-
- (a) learn about the nature of marriage and its importance for family life and for the bringing up of children;
  - (b) learn the significance of marriage and stable relationships as key building blocks of community and society;
  - (c) learn to respect themselves and others;
  - (d) are given accurate information for the purposes of enabling them to understand difference and of preventing or removing prejudice;
  - (e) are protected from inappropriate teaching and materials.

(3) When sex education is given to pupils who are in the third or fourth key stage or over compulsory school age, the general objectives referred to in subsection (1) are to include the following additional objectives.

- (4) The additional objectives are that the pupils-
- (a) learn to understand human sexuality;
  - (b) learn the reasons for delaying sexual activity and the benefits to be gained from such delay;
  - (c) learn about obtaining appropriate advice on sexual health.

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<sup>152</sup> Marshalled List of Amendments to be moved on Third Reading HL Bill 47-I

(5) The Secretary of State's guidance must also be designed to secure that sex education given to registered pupils at maintained schools contributes to-

- (a) promoting the spiritual, moral, cultural, mental and physical development of the pupils and of society;
- (b) preparing the pupils for the opportunities, responsibilities and experiences of adult life.

(6) The Secretary of State may at any time revise his guidance.

(7) Local education authorities, governing bodies and head teachers must, in discharging their functions under section 403, have regard to the Secretary of State's guidance.

(8) In this section "maintained school" includes a community or foundation special school established in a hospital."")

## 2. The Clause as amended in the Lords:<sup>153</sup>

117. - (1) The Education Act 1996 shall be amended as follows.

(2) In section 403 (sex education: manner of provision) in subsection (1) for the words "and the value of family life" substitute "the value of family life and sexual health".

(3) After section 403 insert-

"Sex education: Secretary of State's guidance. 403A. - (1) The Secretary of State must issue guidance designed to secure that the following general objectives are met when sex education is given to registered pupils at maintained schools.

(2) The general objectives are that the pupils-

- (a) learn about the nature of marriage as the key building block of society and its importance for family life and for the bringing up of children;
- (b) learn about the significance of stability in family relationships;
- (c) learn to respect themselves and others;
- (d) are protected from teaching and materials which a reasonable person would regard as inappropriate having regard to-
  - (i) whether information is accurate and objective;
  - (ii) the language and images used;
  - (iii) the age of the pupils; and
  - (iv) the provisions of section 403, this section and section 403B.

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<sup>153</sup> Clause 117 [Bill 96]



(3) When sex education is given to pupils who are in the third or fourth key stage or over compulsory school age, the general objectives referred to in subsection (1) are to include the following additional objectives.

(4) The additional objectives are that the pupils-

- (a) learn to understand human sexuality;
- (b) learn the reasons for delaying sexual activity and the benefits to be gained from such delay;
- (c) learn about obtaining appropriate advice on sexual health.

(5) The Secretary of State's guidance must also be designed to secure that sex education given to registered pupils at maintained schools contributes to-

- (a) promoting the spiritual, moral, cultural, mental and physical development of the pupils and of society;
- (b) preparing the pupils for the opportunities, responsibilities and experiences of adult life.

(6) No guidance under subsection (1) shall be issued or substantially revised unless a draft of the guidance has been laid in draft before and approved by a resolution of each House of Parliament.

(7) Local education authorities, governing bodies and head teachers must, in discharging their functions under section 403, have regard to the Secretary of State's guidance.

(8) In this section "maintained school" includes a community or foundation special school established in a hospital.

Curriculum etc.  
for sex  
education:  
consultation and  
approval.

403B. - (1) No curriculum, syllabus or teaching material may be used for the purpose of giving sex education to registered pupils at a maintained school unless-

- (a) reasonable steps have been taken to ensure that the parents or guardians of the relevant pupils have been consulted about its nature and content; and
- (b) the governing body of the school has approved its use.

(2) In this section-

"maintained school" has the meaning given in section 403A, and

"relevant pupils" means pupils to whom the education in question is to be given."

## Appendix 2: Organisations expressing a view on Section 28<sup>154</sup>

### 1. Groups expressing support for repeal of Section 28

1. Brighton & Hove Council
2. British Medical Association
3. Changing Attitudes, London
4. Chorley and South Ribble NHS Trust
5. Colchester Borough Council
6. Family Planning Association
7. Kirklees Metropolitan Council
8. Lincolnshire County Council
9. Local Government Association
10. London Road Church of Scotland
11. Manchester Metropolitan Students Union
12. MESMAC North East
13. National Association of Head Teachers
14. National Children's Bureau
15. National Union of Teachers
16. Outrage
17. Rathlin Pitville Circus
18. Redcar & Cleveland Borough Council
19. Royal College of Nurses
20. Sandwell Citizens Advice Bureau, West Bromwich
21. Save the Children
22. Selwyn College, Cambridge
23. Stonewall
24. Swindon Borough Council
25. Terence Higgins Trust
26. Trade Unions Congress
27. University of Bath Students Union
28. Warren Centre, Kingston upon Hull
29. Wolverhampton Council

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<sup>154</sup> Dep 00/428 – see HC Deb 29 February 2000 c197-8W; and HC Deb 9 February 2000 c240-1

## **2. Groups expressing opposition to repeal of Section 28**

1. ABY Metropolitan, Middlesex
2. AOG, Scunthorpe
3. Animal Rescue Centre, Uckfield
4. Association of Christian Teachers
5. Beauchamp Community, Worcs
6. British Ex-Servicemen's Bible Christian Association
7. Bude Christian Fellowship
8. Catholic Children's Society
9. Christian Institute
10. Christian Life Centre, Wolverhampton
11. Church of England Archbishops' Council
12. City Armagh High School
13. Concern for Family and Womanhood, Cheltenham
14. CROPS Trust, Peterborough
15. Good News Broadcasting Association
16. Ham Christian Centre, Surrey
17. Intercessors for Britain
18. Interface Youth Group
19. Jeal Enterprise Childcare, Clapham Old Town
20. Lawyers' Christian Fellowship
21. Lighthouse Enterprises, Middlesex
22. Midlands Bible School
23. Moats Tye School
24. National Union of Journalists
25. New Tribes Mission, Grimsby
26. Preston Acute Hospital NHS Trust
27. Renewal Christian Centre
28. Riverside Christian Centre, Exeter
29. Templefield Lower School
30. Wigan Family Care Centre
31. Various individual churches

### Appendix 3: ‘Anti-promotion’ legislation in other countries<sup>155</sup>

- **Isle of Man**  
*Sexual Offences Act 1992* s38 (same as Section 28 but applies to any ‘public body’)
- **Western Australia**  
*Law Reform (Decriminalisation of Sodomy) Act 1989* SWA 1989 no32, ss23-24 (encouraging or promoting ‘homosexual behaviour’ is contrary to public policy and shall not be part of the teaching in primary or secondary schools)
- **Connecticut**  
*Conn Gen Stat* s46a-81r(2) (anti-discrimination law shall not be construed ‘to authorise the promotion of homosexuality or bisexuality in educational institutions or requiring the teaching...of homosexuality or bisexuality as an acceptable lifestyle’)
- **Minnesota**  
*Minn Stat Ann* s363.021(2) (same as Connecticut)
- **Austria**  
*Penal Code* ss220-221 (unlawful to ‘publicly advocate, promote or encourage homosexual acts’ or to ‘establish or belong to an organisation which supports “homosexual lewdness” and which causes public offence’)
- **Finland**  
*Penal Code* s 20:9.2 (prohibiting the ‘public encouragement of fornication between persons of the same sex’)

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<sup>155</sup> from Robert Wintemute *Sexual orientation and human rights* (1995)