

**The Marriage
(Same Sex Couples)
Act 2013:**

**The Equality and Human Rights
Implications for the Provision
of School Education**



What is the purpose of this publication?

This publication provides guidance on the Marriage (Same Sex Couples) Act 2013 which extends marriage to same sex couples in England and Wales. It explains how the Act affects teaching about marriage in schools and the implications of equality and human rights law in an education context.

Who is it for?

This document is useful for schools, local education authorities, governors, parents, teachers, and non-teaching staff employed by schools.

What is inside?

This guide covers:

- Teaching about marriage
- Freedom of expression and freedom of thought, conscience and religion
- Impact of equality law
- The right to education

When was it published?

This guide was first published in March 2014.

Why has the Commission produced it?

The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and human rights laws in England, Scotland and Wales.

What formats are available?

This Guide is available as a PDF file (in English) and as a Microsoft Word file (in English or Welsh) from www.equalityhumanrights.com.

Introduction

The Marriage (Same Sex Couples) Act 2013 (the Act) extends marriage to same sex couples in England and Wales. This guide explains how the Act affects teaching about marriage in schools and the implications of equality and human rights law in an education context. This document is useful for schools, local education authorities, governors, parents, teachers, and non-teaching staff employed by schools.

Rights under equality law protect against unlawful discrimination and harassment based on various protected characteristics, including marriage and civil partnership, religion or belief, sexual orientation and gender reassignment. Human rights law also provides protection against discrimination in the enjoyment of certain rights, and protects the right to freedom of thought, conscience and religion, freedom of assembly and freedom of expression. Our accompanying guidance on marriage and the law covers these rights in greater detail.

Key points

- Maintained secondary schools have a legal requirement to teach about the 'nature of marriage' when they are delivering sex education. Many academies (including free schools) also teach about this topic, and when they do so, they must have regard to the Secretary of State's guidance on sex and relationship education. Schools must accurately state the facts about marriage of same sex couples under the law of England and Wales, in a way that is appropriate to the age and level of understanding and awareness of the pupils.
- Teaching about marriage must be done in a sensitive, reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies, and anti-discrimination duties towards colleagues and pupils.
- No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships. Teachers must have regard to statutory guidance on

sex and relationship education, and to meet duties under equality and human rights law.

- Subject to the above, nothing in the Act affects the rights of schools with a religious character to continue to teach about marriage according to their religious doctrines or ethos. Any views expressed about marriage of same sex couples, by governors, teachers, other school staff, parents and pupils, may reflect the religious ethos of the school.
- Governors, teachers and non-teaching staff in schools, parents and pupils, are free to hold their own religious or philosophical beliefs about marriage of same sex couples. These rights are not limited by anything in the Act, education law, or equality and human rights law.
- Pre-existing parental opt-out rights in respect of sex and relationship education remain unaffected by the Act.

Teaching about marriage

Legal requirements

Schools are already familiar with teaching about sensitive issues such as civil partnership, contraception, reproduction and sexual health. A similar approach should be adopted for teaching about marriage of same sex couples. The Education Act 1996 and the statutory guidance prepared by the Secretary of State for Education under section 403 of that Act sets out how schools should teach about sex and relationships. Similar but separate guidance for Welsh schools has also been issued by the Welsh Assembly Government; schools in Wales must have regard to this.

Sex and relationship education

Section 403 of Education Act 1996 requires that sex and relationship education in a school is delivered in a way that teaches about the nature of marriage and its importance for family life and the bringing up of children. Teaching and materials must be appropriate for the age and the religious and cultural background of the pupils.

Statutory guidance

The Secretary of State's guidance for schools in England, and separate guidance issued for schools in Wales, are clear that teaching should be based on facts and should enable pupils to develop an understanding of difference and reduce prejudice. See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283599/sex_and_relationship_education_guidance.pdf and

<http://wales.gov.uk/topics/educationandskills/schoolshome/curriculuminwales/arevisedcurriculumforwales/sexeducation/?lang=en>

This includes teaching about relationships where, for example, partners are not married, are of the same sex or where one partner has undergone gender reassignment. Teaching about sex and relationships should not promote any sexual orientation (paragraphs 1.30-1.32 of the Secretary of State's guidance).

School governing bodies and head teachers are expected to consult parents and incorporate their wishes, where possible, into school policies about how a school will provide sex and relationship education. The policies should aim to reassure parents on what will be taught, as far as possible. The policies and practices must be inclusive and aim to prevent discrimination – including based on sexual orientation or gender reassignment.

Maintained schools, academies and free schools

Maintained schools and academies (including free schools) are required to teach a balanced and broadly-based curriculum. They must teach a curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and prepares pupils for the opportunities, responsibilities and experiences of later life (section 78 Education Act 2002, and section 1A (1)(b) Academies Act 2010).

Maintained secondary schools must teach sex education, and maintained primary schools may do so. Where sex education is taught, maintained schools are under a legal duty under section 403 of the Education Act 1996 to teach about 'the nature of marriage', and to have regard to the Secretary of State's guidance on sex and relationship education, issued under section 403.

Section 403 includes duties to teach sex and relationship education in a manner that encourages pupils to have 'due regard for moral considerations and the value of family life'. Schools may also cover marriage in religious education (RE), and potentially other subjects such as history, politics or law.

Many academies, including free schools, choose to teach sex and relationship education as it can help to meet their obligation to provide a broad and balanced curriculum, to safeguard pupils, and to promote their wellbeing. Where they do so, they must (through their funding agreements) have regard to the Secretary of State's guidance issued under section 403.

Independent schools

Independent schools must teach a curriculum which complies with standards on the spiritual, moral, cultural, mental and physical development of pupils. The curriculum must also prepare pupils for the opportunities, responsibilities and experiences of adult life (Independent School Standards (England) Regulations 2010).

Independent schools, whether privately funded or not, are free to choose how to teach about marriage, but must comply with the requirements of equality law.

Schools with a religious character

Schools with a religious character can continue to deliver sex and relationship education in accordance with their particular religious doctrines or ethos. They must do so in a sensitive, reasonable, respectful and balanced way.

When teaching about sex and relationships, schools with a religious character which are academies or free schools must have regard to the Secretary of State's guidance.

The particular exemptions for schools with a religious character provided under equality law, summarised below, remain unaffected by the Act.

Religious education (RE)

Teaching about marriage can take place in RE lessons and in GCSE Religious Studies classes, for example through discussion about rites of passage in different religions. When discussing marriage in RE classes, as elsewhere, teachers must adopt an informed, respectful, sensitive and balanced approach. The Religious

Education Council of England and Wales publishes a voluntary code for teachers of religious education, available on its website:

http://religiouseducationcouncil.org.uk/media/file/Practice_Code_for_Teachers_of_RE.pdf

In schools with a religious character, RE is taught in accordance with the religious ethos of the school.

Removal of children from lessons

Parents have the legal right to remove their children from all or part of sex and relationship education. The right to opt out does not apply to lessons where reproduction is taught, such as biology lessons. The Act does not change this position.

Parents also have the right to remove their children from RE classes under section 405 of the Education Act 1996. The Act does not alter this position.

Freedom of expression and freedom of thought, Conscience and religion

Human rights law protects freedom of thought, conscience and religion (Article 9 of the European Convention on Human Rights) and freedom of expression (Article 10). This includes the right for individuals to express their views freely in public and at work, but both rights are subject to limits to protect the rights and freedoms of others.

Teachers, other school staff, governors, parents and pupils are all free to hold whatever personal views they choose on marriage of same sex couples, including a view that marriage should only be between a man and a woman. The Government recognises that the belief that marriage can only be between a man and a woman is a belief worthy of respect in a democratic society.

Individuals are free to express positive or negative views about marriage of same sex couples, depending on the form of words used and the particular context in which they are used. This applies to all forms of communication in public and in the workplace. Individuals who express support for, or opposition to, marriage of same sex couples, in public or in work, should do so in reasonable and moderate terms, to ensure they are mindful of and do not breach the rights and freedoms of others.

Where relevant, teachers need to teach the facts about the legal meaning of marriage in England and Wales in a sensitive, reasonable and appropriate way to comply with professional and legal obligations, and school policies and practices. This will include providing accurate factual information about the law when delivering lessons.

Schools with a religious character may continue to teach the position of their particular faith on marriage and same sex relationships provided this is done in an appropriate, reasonable, professional and sensitive way (and provided they also teach the facts, where relevant, about the law concerning marriage in England and Wales).

Workplace policies and practices in schools should reflect the importance of the right to free expression, taking into account the particular circumstances under consideration. This will help to ensure that appropriate and justifiable decisions are made in situations when competing considerations, such as the right to free expression and the rights of others, have to be balanced.

Freedom of expression is explicitly protected under the Public Order Act 1986 (POA) provisions concerning the offences of inciting hatred on the grounds of religion or sexual orientation (see Part 3A and sections 29J and 29JA POA). Under the Act, Parliament has further protected the rights of individuals to express their views on marriage of same sex couples through discussion or criticism without facing any criminal sanction under the POA, by inserting a new sub-section into section 29JA. In order to guarantee that simply giving a view on marriage of same sex couples is not caught by the offences of threatening behaviour and hate speech on the grounds of sexual orientation, the new Section 29JA (2) of the POA specifies that: 'any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.' It mirrors the existing sub-section (1) which makes clear that 'the discussion or criticism of sexual conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred'. For conduct or behaviour in public to violate criminal law, the POA requires proof beyond reasonable doubt that the behaviour is threatening *and* is intended to stir up hatred on the grounds of religion or sexual orientation. The investigation, prosecution and determination of potential offences under the POA and criminal law more generally must be carried out in accordance with an individual's right to freedom of expression.

Impact of equality law

The anti-discrimination duties

Schools have responsibilities under equality law as employers and education bodies, as public authorities, and as service providers (where, for example, they hire out facilities or premises to the general public). Teachers also have obligations under equality law as employees of schools and as education providers.

As employers and service providers, schools must not unlawfully discriminate and must not harass or victimise job applicants, employees, ex-employees and service users based on protected characteristics. For the purpose of this guidance, the most relevant protected characteristics are religion or belief, gender reassignment and sexual orientation. These duties are explained in codes of practice tailored to each context, listed at the end of this guidance.

In addition, the admission of pupils and the provision of education and related services to pupils in schools must be provided without unlawful discrimination, harassment or victimisation. The harassment provisions of the Equality Act 2010 (the Equality Act) do not protect pupils from harassment by other pupils. However, the provisions on discrimination mean that schools have an obligation to ensure that bullying by pupils that is related to a protected characteristic is treated with the same level of seriousness as any other form of bullying.

Exceptions from equality law

The general exceptions in the Equality Act which enable schools with a religious character and other religious organisations to act in line with their religious doctrines and ethos are unchanged by the Act. Our guidance on marriage and the law lists the relevant exception provisions of the Equality Act.

The Equality Act and the School Standards and Framework Act 1998 allow schools with a religious character to impose requirements related to religion or belief and associated conduct when, for example, recruiting, promoting or dismissing staff in certain circumstances. These provisions are unaffected by the Act.

Schools' anti-discrimination duties relating to the protected characteristic of religion or belief (section 85(2) of the Equality Act) do not apply to acts of worship and

religious observance in schools, whether or not they form part of the curriculum. Schools are permitted to include a full range of issues and subjects in their teaching curriculum.

The equality duty

Maintained schools and academies also have positive obligations under the public sector equality duty (section 149 of the Equality Act), also known as the equality duty.

The equality duty places a general duty on public authorities and those exercising public functions to have 'due regard' when exercising their functions to three matters;

(a) eliminating conduct (such as discrimination, harassment and victimisation) that is prohibited by the Act, (b) advancing equality of opportunity between people who share a protected characteristic and those who do not, and (c) fostering good relations between people who share a protected characteristic and those who do not.

The second two matters apply to the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not apply to the protected characteristic of marriage and civil partnership.

The duty to have 'due regard' is not a duty to deliver prescribed or particular outcomes. It is not a duty, for example, to prioritise one aspect of equality over another. The equality duty could not be used to disadvantage individuals or organisations unjustifiably simply because of their beliefs concerning marriage of same sex couples.

The EHRC's codes of practice and technical guidance provide more guidance about how equality law operates, including further details about the meaning of each protected characteristic and the contexts in which they do, or do not apply. See below for details.

The right to education

Article 2 of Protocol 1 to the European Convention on Human Rights provides parents with the right to select education for their children that reflects their particular religious or philosophical convictions. In the United Kingdom, this right applies only in

so far as it is consistent with the provision of efficient education and avoids unreasonable public expenditure. In addition, case law has established that the State is not required to provide education of a particular kind or quality. This right will not be breached provided that religious and philosophical knowledge (and relationship education) is imparted within the education system in an objective way, that reflects diversity and is subject to critical analysis and scrutiny.

Further information

The EHRC has published a series of complementary guidance documents:

- *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Marriage and the Law in England and Wales*
- *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Public Authorities*
- *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Religious Organisations*
- *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for the Workplace and Service Delivery*
- *A Quick Guide to the Marriage (Same Sex Couples) Act 2013*

See also the following EHRC codes of practice and guidance documents:

- *Equality Act 2010 Code of Practice: Employment Statutory Code of Practice*
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employment_code.doc
- *Equality Act 2010 Code of Practice: Services, Public Functions & Associations*
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/services_code.doc

Continued...

- *Technical Guidance on the Public Sector Equality Duty England*
http://www.equalityhumanrights.com/uploaded_files/PSD/technical_guidance_on_the_public_sector_equality_duty_england.pdf
- *Technical Guidance on the Public Sector Equality Duty Wales*
http://www.equalityhumanrights.com/uploaded_files/PSD/technical_guidance_on_the_public_sector_equality_duty_wales.pdf
- *Technical Guidance for Schools in England*
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/ehrc263_code_england_v3.pdf
- *What Equality Law Means for You as an Education Provider in Wales: Schools*
http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/education_nsg_wales_-_final.pdf

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For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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