

A Quick Guide to the Marriage (Same Sex Couples) Act 2013



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 the main implications of the Act, particularly in terms of equality and human rights, through answers to key questions.

Who is it for?

This document is useful for same sex couples, employers, employees, service providers, customers, public authorities and their service users, religious organisations and their officials, as well as schools, their employees, pupils, governors and teachers.

What is inside?

This guide covers:

- Impact on same sex couples
- Impact on religious organisations
- Freedom of expression
- Impact on service providers
- Impact on public authorities
- Impact on employers and employees
- Impact on schools

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) allows same sex couples to marry in accordance with legal requirements in England and Wales.

This guide explains the main implications of the Act, particularly in terms of equality and human rights, through answers to key questions. This guide is relevant for: same sex couples wishing to marry; religious organisations; employers, employees and service providers; public authorities; trade unions; and schools.

Impact on same sex couples

1. What impact will the Act have on same sex couples in Great Britain?

The Marriage (Same Sex Couples) Act 2013 (the Act) extends marriage to same sex couples in England and Wales, and marriage laws have been amended accordingly. Information on how to get married is available at: <https://www.gov.uk/marriages-civil-partnerships>. All register offices in England and Wales can conduct civil marriages for same sex couples from 29 March 2014, although couples will need to make sure that they have given the appropriate notice before that date. Civil partners will be able to convert their partnership into a marriage at a later date (likely to be by the end of 2014) in accordance with a procedure to be set out in Regulations.

The Act does not permit the Church of England and the Church in Wales to marry same sex couples. It does allow other religious organisations to choose to 'opt in' to marry same sex couples according to their rites and marriage procedures.

Scotland has a different legal system and has its own legislation about marriage. Marriage is a devolved matter for consideration by the Scottish Parliament, which has passed the Marriage and Civil Partnership (Scotland) Act 2014. Before marriage of same sex couples becomes lawful in Scotland, a marriage of a same sex couple formed under the law of England and Wales will be treated as a civil partnership in Scotland.

Similarly, marriage in Northern Ireland is a devolved matter. A marriage of a same sex couple formed under the law of England and Wales will be treated as a civil partnership in Northern Ireland.

Same sex couples married overseas, where this is possible, will be recognised as married in England and Wales from 13 March 2014.

2. Why can't couples convert their civil partnerships into a marriage at the same time the law allows same sex couples to marry?

The Government has been clear since the Act was passed in July 2013 that the process of conversion from civil partnership into marriage would be implemented later than marriage of same sex couples because completely new procedures and processes need to be introduced. To make new marriages of same sex couples possible, the Government could build on existing processes so making implementation more straightforward. The Government is aiming to have everything in place to enable couples to convert their civil partnerships into marriages by the end of 2014.

3. How does the Act affect a married person who wishes to change legal gender?

The Gender Recognition Act 2004 (GRA) enables an individual to change their legal gender by the issue of a full Gender Recognition Certificate (GRC). If an applicant for a GRC is married or in a civil partnership, the applicant has to end that legal relationship before a full GRC can be issued (since marriage has only been available to opposite sex couples and civil partnerships are only available to same sex couples).

Amendments to the GRA made by the Act will enable a spouse married to a person of the opposite sex who wishes to change legal gender to do so; s/he will no longer have to end the marriage in order to receive a full GRC. Instead, the original marriage can continue as a marriage of a same sex couple provided that the applicant's spouse consents by making a statutory declaration.

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4. Is it lawful to apply different restrictions on married same sex couples' occupational pension benefits?

The rights to occupational pension benefits for a surviving same sex spouse – other than those who were married to a man who changed legal gender to a woman – are limited under domestic equality law to benefits accrued since 5 December 2005. This restriction does not apply to married opposite sex couples. At the time of writing, litigation concerning this provision has determined that it is lawful under European Union law through the case *Innospec Limited & Others v Mr J Walker (2014 UKEAT 0232)*. However, this case may proceed further through the appeal courts so that conclusion is not final or definitive at this point in time. The Government is also currently reviewing differences in survivor benefits of same sex couples and opposite sex couples.

Impact on religious organisations

5. How does a religious organisation decide to opt in to marrying same sex couples and what process should it follow if it does?

The Act states that only a 'relevant governing authority' (RGA) of a religious organisation can opt in to marrying same sex couples.

The RGA of a religious organisation is the body which is recognised as such by its members as having authority over them. In some cases, it will be the recognised national body of that organisation; in others, where there is no hierarchical structure, it will be local congregations or groups. In some instances, the RGA will be an external body. It is beyond the scope of this guidance to state the RGA for all religious organisations, but the provisions of sections 4(4) and 5(5) of the Act should assist in identifying the RGA.

6. Are religious organisations required to solemnize marriages between same sex couples when requested?

No, only religious organisations that have explicitly opted in can solemnize marriages of same sex couples that are recognised by the law in England and Wales. The Act allows most religious organisations to choose whether they

wish to 'opt in' to marry same sex couples according to their rites and marriage procedures.

The Act protects religious freedom, recognising that the belief that marriage can only be between a man and a woman is a belief worthy of respect in a democratic society. The 'quadruple lock' in the Act means that religious organisations and their officials cannot be compelled to opt in or marry same sex couples. They are not required to take a position on whether to opt in or opt out.

The Church of England, the Church in Wales and their officials cannot opt in or conduct such marriages (though either body can seek a change to the law to allow it).

7. Can a religious official solemnize a marriage of a same sex couple if the religious organisation for which s/he acts has not opted in?

No. Only officials of religious organisations that have opted in can marry same sex couples. If a religious official of an organisation which has not opted in marries a same sex couple, the marriage is unlikely to be recognised under the marriage law of England or Wales and will be void if the couple is aware that the organisation has not opted in.

Religious officials mean those appointed and authorised by the religious organisation to solemnize or be present at marriages according to their marriage procedures.

8. Can an official appointed to carry out marriages by a religious organisation that has opted in refuse to marry a same sex couple?

Yes. The Act states that religious officials cannot be compelled to undertake any activities concerning the marriage of same sex couples, even when the religious organisation they work for has opted in to marrying same sex couples. We strongly advise opting in organisations and their officials to discuss and mutually agree who will and who will not marry same sex couples. This should include what needs to be done, and by whom, in the event an official refuses, at short notice, to officiate over a marriage because it is a marriage of a same sex couple. This will help to avoid internal conflict and will ensure that the legitimate and reasonable expectations of same sex couples can be met.

9. Is it contrary to equality and/or human rights law to refuse to opt in or fail to do so?

No. For reasons explained in our guidance documents, a decision not to undertake marriages of same sex couples should not engage human rights law and is explicitly permitted by equality law. Even if a case is brought to court to argue that a religious organisation should be compelled to undertake marriages of same sex couples, it is extremely unlikely that such a case would be successful.

10. Can an official of a religious organisation be penalised for expressing opposition to, or support for, marriage of same sex couples?

No, assuming that this accords with the religious doctrines and ethos of the organisation they represent. Religious organisations retain the right to maintain and enforce adherence to their religious tenets.

11. Can a religious organisation be denied access to public services, facilities or funds because of its beliefs on marriage of same sex couples?

It depends on the relevance of the religious organisation's beliefs on marriage of same sex couples to the particular context. For example, a public authority should not refuse to hire its publicly available premises simply because a religious organisation opposes marriage of same sex couples, since this will not be a relevant consideration. However, it is likely to be a relevant consideration if its views on marriage of same sex couples mean that an organisation cannot deliver public services or exercise public functions without discriminating in breach of equality and/or human rights law. For example, a public body funding public services might reasonably take account of a religious organisation's beliefs on marriage of same sex couples in deciding on funding for marriage guidance services, but the organisation's beliefs are unlikely to be relevant to funding the provision of a food bank. The need to prevent unlawful discrimination or harassment in the delivery of services or exercise of public functions on behalf of the public authority is a paramount consideration that is likely to be a decisive factor.

12. Can a religious organisation refuse to provide marriage counselling and marriage preparation services, or hire out its facilities, to same sex couples?

This depends on the circumstances. Such services or facilities must be provided without discrimination against same sex couples when goods, facilities and services are publicly available and the main purpose of the religious organisation is commercial. If the religious organisation is not a commercial one, the religious organisation can restrict them on the basis of sexual orientation in certain circumstances. However, services provided on behalf of, and under contract with, a public authority must be provided without discrimination because of sexual orientation. This is covered in more detail in our guidance for the workplace and service delivery.

Freedom of expression

13. Does the Act protect freedom of expression, including freedom to express religious or other beliefs?

Yes. People are free to express personal views on marriage of same sex couples, depending on the form of words used and the particular context in which they are used, subject to limitations (see also the response to question 14). This applies to all forms of communication in public and in the workplace. Workplace rules and policies will be relevant, as well as other institutional and professional requirements. 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. The Government has recognised that the belief that marriage can only be between a man and a woman is a belief worthy of respect in a democratic society.

14. Are there limits on the rights to free expression and freedom to express religious or other beliefs?

Yes, both rights can be limited where appropriate and necessary to protect the rights and freedoms of others.

Individuals who publicly express support for, or opposition to, marriage of same sex couples must avoid abusive or threatening behaviour which is illegal. Conduct during employment or service provision should not breach laws on discrimination and harassment on the grounds of marriage and civil partnership, gender reassignment, sexual orientation or religion or belief (and, where relevant, other protected characteristics under the Equality Act 2010 (the Equality Act)).

At work, employers require employees to follow their dignity at work and/or equality and diversity policies. Those policies should reflect, and be applied in accordance with, individual rights to free expression and the freedom to express religious and other beliefs.

Religious organisations expect and can require their officials to comply with religious doctrines.

At school, teachers must follow rules about the education curriculum and the religious ethos of the school. These are explained in our guidance for schools.

Impact on service providers

15. Can service providers refuse to provide services to same sex couples who intend to marry?

Yes and no – it all depends on the type of service provider.

Service providers who provide services to the public (whether or not for payment) must do so without discrimination based on sexual orientation, gender reassignment, religion or belief or other applicable protected characteristics. Individuals and organisations who provide such services, such as florists, photographers, car hire agencies and other marriage-related service providers, are not allowed to refuse to provide services to same sex couples who are getting married.

Services provided on a non-commercial basis by, or on behalf of, an organisation relating to religion or belief can be restricted on the basis of sexual orientation in certain circumstances. However, services provided on behalf of, and under contract with, a public authority must be provided without prohibited discrimination relating to sexual orientation.

16. Can a provider of services to the public refuse to hire out rooms and facilities to individuals and organisations opposing the marriage of same sex couples?

No. Under the Equality Act, it will be unlawful discrimination based on religion or belief to refuse to provide goods, services or facilities simply because an individual or organisation opposes marriage of same sex couples. For example, if a hotel or other commercial premises approved for civil marriages wishes to continue to host marriages of opposite sex couples, it cannot refuse to do so for same sex couples. It would either have to conduct all marriages or ask for its licence for marriages to be revoked.

Impact on public authorities

17. What new duties are placed as a result of the Act on marriage register offices?

All register offices are now designated and required by law to conduct civil marriages of same sex couples. The requirements and formalities for marriage are the same for all couples intending to marry in a register office. These are available at: <https://www.gov.uk/marriages-civil-partnerships>

Register offices and registrars are prohibited from treating same sex couples less favourably than opposite sex couples in relation to marriage services. This will amount to unlawful discrimination based on sexual orientation in the delivery of services or exercise of public functions under the Equality Act.

18. Can marriage registrars refuse to conduct marriages between same sex couples based on conscientious objection?

No. If a marriage registrar refuses to conduct duties related to the marriage of same sex couples, this will be unlawful discrimination.

A registrar whose religious or other belief prevents them undertaking all the responsibilities of their public office following the Act can explore the potential options with their employer. However, the legal framework does not expressly permit employers to grant individuals an exemption from any part of their duties as a registrar. Parliament did not provide an exemption for this purpose in the

Act and it is therefore most likely that granting one is not a permissible option, although this has yet to be explicitly tested in the courts.

19. Can chaplains be penalised for adhering to their religious requirements?

Chaplains have the same rights to free expression and religious freedom as everyone else. As officials of particular religious organisations, they are free to express views about the marriage of same sex couples in accordance with their religious doctrine in a religious sermon, or in other religious contexts.

When working in non-religious settings such as prisons, education establishments and hospitals, chaplains are expected to follow dignity at work and equality and diversity workplace policies and practices of the non-religious employer. A chaplain cannot refuse to provide chaplaincy services based on sexual orientation when working in non-religious settings as this would be unlawful discrimination. A chaplain cannot use compliance with religious doctrine as a defence to discriminatory conduct in these circumstances.

Generally, a chaplain's actions or conduct in religious and non-religious settings should be considered separately. What s/he says about marriage of same sex couples in a religious sermon in a church should not be the basis for being disadvantaged or subjected to a detriment in the non-religious workplace. This could constitute unlawful discrimination against the chaplain based on religion or belief.

20. Can public authorities refuse to hire out publicly available rooms and facilities to individuals and organisations because they support or oppose the marriage of same sex couples?

No. Under the Equality Act 2010 it will be unlawful discrimination based on religion or belief or sexual orientation to refuse to provide goods, services or facilities to the public simply because an individual or organisation opposes or supports marriage of same sex couples.

21. Do public authorities have to ignore an organisation's views on the marriage of same sex couples when contracting out, procuring services or exercising other public functions?

Not always. The key question is whether those views are relevant to the context in which public functions are being carried out. In many situations, such views, whether in support of, or opposed to, marriage of same sex couples, will be irrelevant. Sometimes, however, those views are relevant because, for example, they may suggest that services will not be provided fairly to all without unlawful discrimination, or they reveal that the interests of children could be adversely affected. In those situations, the organisation's views on marriage of same sex couples will be relevant and important factors for a public authority to consider in order to prevent unlawful discrimination or to protect the interests of children.

22. Does the public sector equality duty require a public authority to promote marriage of same sex couples?

No. The duty on public authorities to have 'due regard' when exercising their functions does not constitute a duty to deliver prescribed or particular outcomes. So it does not require them to promote marriage of same sex couples, although equally it does not preclude them from doing so. Decisions or actions must be consistent with duties not to discriminate against same sex and/or opposite sex couples.

23. Does compliance with the public sector equality duty (section 149 Equality Act 2010) require a public authority to refuse to work with those opposed to marriage of same sex couples?

It depends on the relevance of the duty to the particular context. A public authority will be acting unlawfully if it tries to rely on the equality duty to treat an organisation unfavourably simply because of its belief about marriage of same sex couples, where that is not a relevant consideration. It cannot, for example, use the duty to refuse to engage with an organisation simply because it supports, or is opposed to, marriage of same sex couples.

The duty requires public authorities (including schools) to have 'due regard' to three matters in relation to eight protected characteristics (including sexual

orientation, religion or belief and gender reassignment) when exercising public functions. The duty must be considered with sufficient rigour in advance of the decision-making process. However, the equality duty does not prescribe particular outcomes; nor does it justify taking decisions or actions that would be unlawful – see, for example, the answer to question 20. Our guidance on marriage and the law and our codes of practice on the equality duty explain this in more detail.

Impact on employers and employees

24. As an employee, can I express my belief or opinion about marriage of same sex couples, either for or against, at work or outside of work without risk of being disciplined by my employer?

Yes. People are free to express personal views on the 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. Workplace rules and policies will be relevant, as well as other institutional and professional requirements. 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. The belief that marriage can only be between a man and a woman is a belief worthy of respect in a democratic society.

25. Can rights to free expression be limited at work?

Yes, free expression rights can be limited where appropriate and necessary to protect the rights and freedoms of others. Individuals who publicly express support for, or opposition to, marriage of same sex couples must avoid abusive or threatening behaviour which is illegal. Conduct during employment or service provision should not breach laws on discrimination and harassment on the grounds of gender reassignment, sexual orientation or religion and belief (and, where relevant, other protected characteristics under the Equality Act).

At work, employers expect employees to follow their dignity at work and/or equality and diversity policies. Those policies should reflect, and be applied in

accordance with, individual rights to free expression and the freedom to express religious and other beliefs.

Religious organisations expect their officials to comply with religious doctrines (see also the answer to question 10). At school, teachers must follow rules about the education curriculum and the religious ethos of the school. These are explained in our guidance for schools.

26. Are there circumstances in which an employer must adapt an employee's work duties to allow the employee to follow their belief that marriage should be between a man and a woman?

There is no legal requirement for employers to do so. Employees must carry out work duties in accordance with equality law and in accordance with their employer's workplace policies, including policies about dignity at work and equality and diversity. Unlawful discrimination or harassment should not occur against other employees or service users based on protected characteristics covered by the Equality Act. Both employers and employees could be liable for breaking the law if this occurs.

If you work for a commercial florist, you cannot refuse to sell flowers to a same sex couple who are getting married because you object to the law of England and Wales extending civil marriage to same sex couples. If you are a marriage registrar, you cannot refuse to perform marriages of same sex couples because you believe the law should only recognise marriages between opposite sex couples.

Special rules apply to religious organisations and their officials, and those who work for both religious organisations and in non-religious settings (such as prisons, hospitals and education establishments). Religious organisations have been provided with specific exemptions in relation to employment and service delivery – see our guidance on marriage and the law for further details. Subject to the requirements of equality law, allowances should be made for what is said in a religious as opposed to a non-religious context for people, such as chaplains, who work for both religious organisations and in non-religious settings.

See also our answers to questions 18 and 19 above on the employment position of marriage registrars and chaplains.

Impact on schools

27. How is teaching the education curriculum affected by the Act?

Schools obliged to teach the national curriculum will be expected to follow statutory guidance that requires them to teach the facts about marriage, during relevant lessons. If teachers teach about marriage, they should ensure that their teaching reflects the fact that marriage of same sex couples in England and Wales is now recognised in law. But they are not required to say anything about marriage of same sex couples if they do not teach about marriage. Our guidance for schools explains this in greater detail.

28. Can schools with a religious character teach about marriage following the school's religious ethos?

Yes. Teaching the facts about marriage (including, where relevant, the fact that it now extends to same sex couples) in a balanced, reasonable and sensitive way does not mean that a school with a religious character is required to teach about marriage of same sex couples contrary to its religious tenets. It is still permitted to teach its particular religious view on marriage.

29. Can schools with a religious character still recruit staff and apply rules of conduct for staff based on the school's religious ethos?

Yes, where permitted to do so under the law. The Act does not affect the ability of a school with a religious character to be in line with their religious ethos during recruitment and employment of staff in accordance with the relevant requirements of the School Standards and Framework Act 1998 and the Equality Act.

30. How does the right to freedom of expression, including the expression of religious and other beliefs apply when teaching?

Although teachers have the right to hold and express personal beliefs relating to the marriage of same sex couples, when teaching they must also adhere to school rules and policies, professional standards, rules about the national education curriculum (where they apply) and the religious ethos requirements

of the school. Our guidance for schools further explains how freedom of expression rights work in this context.

31. What impact does the Act have on schools' duties towards their pupils?

The Act does not change a school's duties to its pupils. The anti-discrimination duties of schools under the Equality Act, which include discrimination based on religion or belief and sexual orientation, remain the same. The duties of a school towards pupils and in relation to their care and safety (e.g. anti-bullying) also remain the same. Schools are entitled to discipline pupils who express views about marriage of same sex couples in bullying ways.

32. How does the Act affect the responsibilities of Governors?

Governors of schools will be expected, where required, to help to devise appropriate school policies in respect of teaching about marriage which comply with teaching requirements in light of the extended definition of marriage. Governors may consult and engage parents of pupils to improve parents' understanding about what will be taught, address any concerns and prevent or minimise the need for parents to exercise the right to remove children from lessons, where this applies (see also the response to question 34 below).

33. Can schools refuse to hire out rooms and facilities to individuals and organisations who support or oppose the marriage of same sex couples?

No. Under the Equality Act, it will be unlawful discrimination based on religion or belief, or sexual orientation, to refuse to provide goods, services or facilities which are available to the public simply because an individual or organisation supports or opposes marriage of same sex couples.

34. Can parents withdraw their children from teaching about marriage of same sex couples?

Yes, if the teaching is part of sex education or religious education lessons, but they cannot withdraw their children from science lessons on human reproduction. Pre-existing parental rights to withdraw children from lessons have not been changed as a result of the Act.

35. Do I have a right to complain if my child is mocked in the classroom because of expressing support for, or opposition to, marriage of same sex couples?

Yes, as a parent, you have the right to ask a school to investigate and address any issue where your child feels that they have been adversely treated for that reason. Appropriate action should be taken by the school, where required, depending on the precise circumstances of each incident after establishing the facts. Anti-bullying policies and equality and diversity policies should reflect the need to address such behaviour.

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 Provision Of School Education*
- *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for the Workplace and Service Delivery*

See also the following statutory codes of practice:

- *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* [Statutory Code of Practice](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/services_code.doc)

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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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