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Same-sex marriage: Your legal rights to object

A GUIDE FOR CHURCHES AND CHRISTIAN EMPLOYEES



Marriage (Same Sex Couples) Act 2013



Same-sex marriage: Your legal rights to object

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This guide cannot be a definitive statement on the law and specific advice should always be sought on individual circumstances.

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Introduction

Same-sex marriage in England and Wales was introduced by the Marriage (Same Sex Couples) Act. The first same-sex marriages took place on 29 March 2014.

For the first time in our nation's history there is a legal understanding of marriage which is fundamentally contrary to the Bible. Christians holding to the truth of God's Word define marriage as the lifelong exclusive union of a man and a woman (Genesis 2:24; Mark 10:6-9).

The Marriage (Same Sex Couples) Act introduced same-sex marriage in civil settings, and also in religious settings where the religious body wishes to participate. However, the Act recognises that people disagree with same-sex marriage in that it does not compel any religious body to perform same-sex weddings.

The law effectively recognises that some people believe that same-sex marriage is right, while other people do not.

Many churches ask about their rights under the law. This guide seeks to answer common questions about the changed legal landscape.

We recommend separate guidance for schools and teachers produced by the Coalition for Marriage: Respecting beliefs about marriage. Please visit their website www.c4m.org.uk or email them at admin@c4m.org.uk for further information.

Unless otherwise stated, references to “the Act” or “the 2013 Act” are to the Marriage (Same Sex Couples) Act 2013.

The term “non-Anglican” is used to refer to churches outside the Church of England or Church in Wales.

Church provision of marriage services

Do churches have to conduct same-sex weddings?

No. The legislation to create same-sex marriage was explicitly drafted so that no church or church minister can be compelled “by any means” to carry out a same-sex wedding.

The Marriage (Same Sex Couples) Act contains the Government’s ‘quad lock’, a set of four safeguards for churches and ministers who disagree with same-sex marriage:

1. The legislation states that no religious organisation or minister can be compelled by any means to marry same-sex couples or permit same-sex marriages on their premises;
2. The Equality Act 2010 has been amended so that no discrimination claims can be successfully brought against religious organisations or ministers for refusing to marry a same-sex couple;
3. There is an ‘opt-in’ system for those who want to carry out same-sex marriages, so that they can only take place where both the church’s governing body and the trustees of the particular church building have opted in;
4. The Church of England cannot opt in under the terms of the 2013 Act.

NB: The ‘governing body’ in 3 above will vary depending on the constitution of the church. For example, for an independent church it is likely to be the elders or the church meeting; for churches in denominations it is likely to be the General Assembly or equivalent body.

Should churches stop conducting legally recognised marriages altogether?

Some churches have been asking whether, if they refuse to conduct same-sex weddings, it will be legally safe for them to continue to conduct heterosexual weddings. Would it be better to stop performing legally recognised marriages altogether?

Given the increasing marginalisation of Christians in Britain, with a succession of well-known court cases, this is a reasonable question. But there is no need to resort to this at present, and we hope we will never see such a time. *We are not aware of any legal case anywhere in the world which has compelled a church minister to conduct a same-sex marriage.* As long as the ‘quad lock’ remains in place and functions properly, there is no reason to believe churches will be in legal difficulty.

The ‘quad lock’ included in the Act makes it clear that a church which only solemnises traditional marriage can continue to do so. For example, the new Act amends the Equality Act 2010 to expressly say that refusing to be involved in same-sex marriages is not unlawful discrimination on any ground (whether sex or sexual orientation).¹

What legal protections exist for non-Anglican churches?

As part of our longstanding religious liberty, non-conformist churches have been able to carry out legally recognised marriages on their premises since the first half of the nineteenth century. The 2013 Act creates a parallel legal scheme to allow those churches (and other religious groups) that wish to do so to conduct same-sex weddings.

Appendix 1 provides more information on the legal background. In summary, there are four important points arising from the Act:

1. The legal procedure for registering church premises to conduct same-sex marriages is completely separate from the pre-existing procedure for registering to conduct opposite-sex marriages;
2. The new law provides an ‘opt-in’ system for registering for same-sex weddings. Churches that want to carry out such weddings must actively register to do so;
3. The opt-in system requires the consent of both the trustees of the individual church premises and the governing body of the congregation (or of the over-arching denomination if there is one);
4. If a church has not opted in, then it cannot lawfully carry out same-sex weddings on its premises.

Most churches will not want to participate in same-sex weddings. The Act explicitly protects them from any manipulation or mistreatment if they refuse to opt in. The Government tightened up its original legislation by providing that no person (covering church trustees and governing bodies) can be compelled “by any means (including by the enforcement of a contract or a statutory or other legal requirement)” to undertake an opt-in activity² or to be involved in the following activities:

- conducting a same-sex marriage;
- being present at, carry out, or participate in a same-sex marriage;
- consenting to a same-sex marriage being conducted.³

Any person who might be involved in providing or facilitating a wedding service for a church is given this absolute protection from any other laws being used against them if they decline to opt in to or be involved in same-sex marriages. This would protect a church minister or a church’s ‘authorised person’, any church officers, an organist, or indeed anyone who might be involved in a decision not to register a church building for same-sex marriage in the first place. There is also protection from discrimination claims under the Equality Act 2010, as explained under the previous question.⁴

Taken together, these protections appear legally sound and secure. While it is impossible to predict future changes in the law, whether by Parliament or by the European Court of Human Rights, the protections in the Act should give confidence to churches to carry on as they always have. Churches should maintain their doctrinal beliefs about marriage and need not feel any pressure to compromise.

What legal protections exist for the Church of England?

The 2013 Act specifically excludes marriages within the Church of England.⁵ Therefore there is no legal basis to enable same-sex marriages within the CofE. Its weddings will continue to take place under the biblical definition of marriage in the Church's canon law:

“*The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side...*”⁶

As an established church, the Church of England's governing canon law forms part of the laws of England and this is left untouched by the new Act.⁷ The result is that a legal definition of marriage as a man-woman union will continue in the Church of England.

CHURCH IN WALES

The Church in Wales is not an established church.⁸ If the governing body of the Church in Wales resolved in the future to allow same-sex marriage it would be for the Lord Chancellor, having regard to that resolution, to bring forward legislation to make it lawful.⁹ The Lord Chancellor has no power to do so without such a resolution from the Church's governing body.

If in the future the Church in Wales does decide to conduct same-sex weddings, its churches and clergy would still have the same protection from discrimination claims as all other churches.

LEGAL DUTY TO MARRY PARISHIONERS

The Church of England is under a common law duty to marry anyone in their parishes who is legally eligible to be married. Although disestablished, the Church in Wales remains under that same duty.¹⁰ The 2013 Act makes it clear that the common law duty of Anglican clergy to solemnise the marriage of those in their parishes is not extended to marrying same-sex couples.¹¹

FUTURE LEGAL CHALLENGES

However, the 2013 Act has created instability in the law and this may be exposed in future court cases or exploited by politicians seeking to amend the law in the future. Within weeks of same-sex marriage becoming law, a homosexual couple declared their intention to challenge the Government over the position of the Church of England.¹² Such a case could end up before the European Court of Human Rights in Strasbourg, with unpredictable consequences. The basis of the challenge is likely to be that the Government is restricting the religious rights of homosexual Anglicans who wish to be married in their own church according to its rites.

An answer to any successful legal challenge might well be for the Church of England (and for the Church in Wales) to give up its common law duty to marry all residents in its parishes rather than default to marrying same-sex couples against its teaching.

Denmark provides a salutary warning for the Church of England. In Denmark the established church has a duty to provide same-sex marriages in all parishes, although no church leader is compelled to conduct one in his own church. The bishop, whatever his beliefs, is under a legal duty to ensure there are clergy to perform all same-sex marriages in his diocese.¹³

What is the impact on individual churches which share the same premises?

Special legal arrangements have been adopted as a result of the 2013 Act for churches which share premises together. Both churches must agree in order for same-sex marriages to take place on the premises. As the Equality and Human Rights Commission explains:

““ Special rules have been formulated to ensure that in shared premises, marriages of same sex couples can only take place where agreement has been obtained from the governing authorities of all the religious organisations that share the premises...

A sharing organisation can agree to another organisation marrying same sex couples in the building, without opting in itself to marrying same sex couples according to its rites or marriage procedures. If a chapel shared by the Church of England (or Church in Wales) were to be registered for the marriage of same sex couples, it would still not be legally possible for persons of the same sex to marry according to the rites of the Church of England (or Church in Wales) in that chapel.”¹⁴

If a church is concerned about performing marriages using the state's new legal definition of marriage, what are the options?

Some non-Anglican churches and ministers may be concerned about continuing to solemnise marriages between opposite-sex couples because they believe that to do so buys into a new and false definition of marriage. There are perhaps three options open to them:

- Stop solemnising marriages recognised under the Marriage Act 1949. Instead the church might provide a religious service of marriage with the man and woman having their legal marriage in a separate civil ceremony, as is the case in some continental European countries. Obviously, this is a drastic step to take.
- Marry under Church of England canon law, where the legal definition of marriage remains unchanged. This may involve Christian couples exercising their effective right to marry in their local parish church. Alternatively, it could involve a non-Anglican church coming to an agreement with an Anglican church to conduct wedding ceremonies on their behalf in the parish church. This would of course be an Anglican wedding and there would have to be agreement with the incumbent Anglican minister to enable any involvement by the non-Anglican church or its minister in the service, e.g. to preach the sermon.

- Continue to provide marriage services just to heterosexual couples. A church may in good conscience come to the view that it is not in fact buying into a new definition of marriage because the distinctive elements of heterosexual marriage, which actually reflect biblical teaching, remain recognised in law (see Appendix 2). And the fact that their church does not solemnise same-sex marriage is in itself an unequivocal rejection of the state's redefinition of the word 'marriage'.

Some people are saying that since marriage has been redefined Christian couples should no longer have state-recognised marriages at all but simply have a religious service recognised by their church. What is the response?

Clearly a Christian couple will want a marriage service that explicitly calls God as witness to their vows and this is right. The Bible teaches that marriage, as the union of a man and a woman, was created by God and not by the state.

A theological answer to this question would have to address the biblical requirement for a true marriage to be witnessed publicly by others. Though marriage in the sight of God is of first importance, there are also very strong moral and legal arguments in favour of a Christian couple obtaining a state-recognised marriage:

- Without a legally recognised marriage the couple would give the appearance of living as unmarried in the eyes of wider society. It is doubtful this would obey the Bible's command to: "Abstain from all appearance of evil" (1 Thessalonians 5:22 [KJV]).
- If two people are not legally married they will not have joint legal ownership of one another's possessions. The man will not in reality be saying to the woman, "with all my worldly goods I thee endow" (1662 Book of Common Prayer service).

- ‘Common law marriage’ does not exist in English law; couples do not obtain the rights of marriage simply because they live together. Individuals who in the eyes of the law cohabit and then split up can face many legal hardships.
- Although theoretically a legal contract could be drawn up in advance with a view to covering many practical areas, it would not offer the same level of legal security for any children born to the couple.
- Historically, Christians have still entered lawful marriages despite knowing that there may be some people with state-recognised marriages who are not married in God’s sight, such as those who were unfaithful at the point of marriage and continued to be so throughout their marriage.
- The new law distinguishes between heterosexual and homosexual marriage in key respects, including retaining the concepts of adultery and consummation for heterosexual marriage only (see Appendix 2). The new law does not in fact see both types of legal marriage as being the same.

Can churches refuse to provide a religious blessing for the civil marriage of a same-sex couple?

Yes. The 2013 Act is clear that a person cannot be compelled by any means to conduct any ceremony forming part of, or connected with, the solemnisation of a same-sex marriage.¹⁵ This protects any church which is approached by a same-sex couple asking for a religious blessing for their marriage.

A church also has exceptions in the Equality Act 2010, which give protection from discrimination claims. These exceptions would similarly protect a church which was asked to provide a blessing service for an unmarried homosexual couple or a couple in a civil partnership.

Do churches need to change the way they conduct heterosexual weddings?

No. Many non-Anglican church ministers may be concerned about whether they are still permitted to state the Christian view of marriage in a wedding service.

Ministers remain perfectly free to say that the state's understanding of marriage is unbiblical. The only compulsory vows are very brief statements: each party makes a declaration that they know of no legal reason why they cannot marry the other,¹⁶ and a contractual statement that they take the other as their wedded wife/husband.¹⁷ Any additional parts of the wedding service normally used in non-Anglican churches are not required by law. (There was no reason for the legal vows to change under the new law as the vows a person makes are in any event tailored to the sex of the person they are marrying, through the use of the word 'husband' or 'wife').

Those performing weddings in non-Anglican churches may be concerned if they have always stated in the preface to the service that marriage is the union of one man and one woman according to *both* the Word of God and the law of the land. However, given that the distinctive understanding of heterosexual marriage remains within the law (see Appendix 2), we suggest that ministers or authorised persons who wish to mention the law of the land could, for example, say: "*Marriage, according to the Word of God, is the union of one man with one woman, voluntarily entered into for life, to the exclusion of all others. As such, it is a state which was ordained by God at creation, was adorned and beautified by our Lord with his presence in Cana of Galilee, and is distinctively recognised within the law of this country*".

Church teaching and
pastoral support

Can Christians still preach publicly against same-sex marriage?

Yes. Christians are free to express the belief that same-sex marriage is not real marriage and is a sinful union. Furthermore, since Christ's love for the Church is reflected in marriage (Ephesians 5:22-33), same-sex marriage is a blasphemous union.

Case law recognises that the orthodox religious belief that marriage should only be between one man and one woman is worthy of respect in a democratic society and one which falls within the ambit of Articles 9 and 14 of the European Convention on Human Rights.¹⁸ Government ministers were at pains to affirm this during the parliamentary course of the Marriage (Same Sex Couples) Bill. Baroness Stowell of Beeston, the Government spokesman on equalities in the House of Lords, said “*a belief that marriage should be between a man and a woman is undoubtedly worthy of respect in a democratic society*”.¹⁹ And the then Secretary of State for Culture, Media and Sport acknowledged that the legitimacy of the belief in traditional marriage “*is explicitly recognised as such*” by the religious protections enshrined in the new law.²⁰

Public order legislation governs situations where there could be public disorder. This is of relevance to street preaching where hecklers are present. Helpfully, the Act explicitly amends the Public Order Act 1986 so that it provides 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*” [emphasis added].²¹ A similar provision already existed in the Public Order Act in relation to the discussion or criticism of sexual conduct.

Although the amendment to the Public Order Act relates to the specific offence of stirring up hatred on grounds of sexual orientation, it may assist in interpreting other parts of public order legislation which deal with speech in public places.²² This is because the new free speech provision has a positive effect on how courts will apply Article 9 and 10 rights under the Human Rights Act 1998.²³

Obviously, the *manner* in which any view is expressed could be unlawful if expressed in a threatening or abusive manner, but the amendment to the Public Order Act ensures that the mere expression of the belief in man-woman marriage, or criticism of same-sex marriage, is not unlawful.

The High Court has already held that freedom of expression includes:

“ *not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.* ”²⁴

This clearly establishes that free speech should only be restricted by law once a high threshold is reached. In any event, the right of churches to manifest and express their religious beliefs is explicitly set out in human rights legislation. The Human Rights Act 1998 expressly states that, in cases involving a religious organisation’s right to freedom of thought, conscience and religion, courts “*must have particular regard to the importance of that right*”.²⁵ Although this right also attaches to individual Christians, *particular* regard is given to the right of churches and their members acting collectively.

Churches are free to teach and preach the biblical position on sex and marriage without fear of being held to have broken the law.

Do churches have to offer marriage preparation or counselling to same-sex couples?

No. Church ministers will routinely provide marriage preparation classes to couples getting married in their church. Some churches only provide such classes to those marrying at that church; other churches also offer marriage preparation and counselling to the wider public. They may view this as a means of gospel outreach and of seeking to strengthen marriage within wider society.

Depending on how the service is provided, even where a church offers a marriage preparation course or counselling to the wider public, it should be possible under exceptions within equality law to restrict access to the services to opposite-sex couples.²⁶ This was confirmed by Government ministers in Parliament.²⁷

The exceptions in equality law for religious bodies enable them to discriminate lawfully on the grounds of religion or belief or sexual orientation, provided their sole or main purpose is not commercial and (in relation to discriminating on the grounds of sexual orientation) they are not providing services on behalf of, and under the terms of a contract with, a public authority.²⁸ Churches are allowed these protections in order to comply with their doctrine or to avoid conflict with the strongly-held convictions of a significant number of their followers.

The exceptions also apply to the provision of other facilities and services offered by churches, including the hiring out of church premises.²⁹ These laws are unchanged by the passing of the 2013 Act.

Are there restrictions on what churches can say in pastoral situations?

No. Churches need not be concerned that expressing an orthodox position on same-sex marriage or homosexuality, whether in the pulpit or a pastoral situation, will fall foul of the law, given that the 2013 Act explicitly excludes churches from same-sex marriage and makes clear that the criticism of same-sex marriage is not a hate crime.

Equality law is also clear that churches can, provided they do so to comply with their doctrinal beliefs, restrict membership and participation in their activities on the basis of a person's sexual conduct or beliefs.³⁰

Church policy and administration

Should churches have written policies which explain their biblical beliefs about marriage?

Yes. It is important that churches have clear written statements of their doctrinal beliefs on marriage and same-sex relationships. Churches should not simply rely on saying that they hold to the authority and sufficiency of Scripture, because some practising homosexuals claim to do the same.

Churches should ensure that they are transparent in their teaching on marriage and sexual relationships, and act consistently with that teaching, in order to ensure that they can rely on the various exceptions within the Equality Act. Those exceptions rely on churches showing that restrictions are *necessary* to enable the church to comply with its doctrine. There has already been an Employment Tribunal case examining whether a church's statement of doctrinal belief in relation to sexual practice was sufficient to enable the church to rely on the exception.³¹ Best practice would be to incorporate that teaching into the church's constitution or trust deed. At the very least, a written statement or policy, approved by the trustees and governing body of the church (whether denominationally or locally) would be an important safeguard.

Unlike the church protections in relation to employment and providing facilities and services, the protections for churches and ministers contained in the Marriage (Same Sex Couples) Act 2013, do *not* require evidence of their doctrinal beliefs. Churches have an unqualified right to fall within those exceptions to enable them to refrain from any involvement in same-sex marriages. However, there may still be good reasons why a church (or at least a non-Anglican church) should incorporate its doctrine on marriage into its trust deed or constitution.

Many churches and chapels already have good statements, particularly those which subscribe to, or have trust deeds incorporating, one of the historic confessions of faith.³² Although those confessions may not explicitly deal with same-sex unions, their clear statements taken together with the relevant scriptural texts allow no sexual relationships outside of monogamous, lifelong and heterosexual marriage.

Even for churches which adhere to an historic confession, there may be room for them to amend governing documents and policy statements to explicitly exclude the validity of same-sex marriage. And there will of course be many cases of churches which lack any doctrinal statement at all regarding their beliefs on marriage and relationships.

It is essential that doctrine in the matter of marriage and sexual ethics is taught and applied by churches. This could include, for example, ensuring that church office bearers and trustees are required to subscribe to all confessional and belief statements, and that such statements are easily accessible and consistently applied across church life. Some liberal denominations have orthodox confessional standards but it would be unwise for genuinely orthodox congregations within them to rely upon that.

Can the law require churches to rent out their facilities for celebrations of same-sex weddings?

No. Churches have the freedom to refuse to allow their premises to be hired out by a same-sex couple for a wedding reception or similar celebration. This is because there are general exceptions in the Equality Act 2010 which enable churches and ministers to discriminate lawfully on the grounds of sexual orientation. These exceptions apply to the use of church premises and any participation in a church's services and activities, provided that the discrimination is necessary in order for the church to comply with its doctrinal beliefs.

It is important for churches to have already written down their Christian beliefs about marriage. (See previous question: *Should churches have written policies which explain their biblical beliefs about marriage?*) It is also important for churches to act in a consistent manner, not renting out their facilities for any activities which are contrary to their doctrinal beliefs.

Can churches decline to employ a person in a same-sex marriage?

Yes. The particular rights for churches and religious bodies which are enshrined in human rights law mean that churches have much more freedom in their employment practices than is the case for non-religious employers. Under equality law, churches are allowed these protections in order to comply with their doctrine or to avoid conflict with the strongly-held convictions of a significant number of their followers.³³

General equality law makes it unlawful to discriminate on protected grounds in the appointment and promotion of staff. But *religious* bodies are permitted to discriminate on several protected grounds provided they satisfy the conditions within legislation. These grounds include sex, sexual orientation, marital status and religion or belief.³⁴

Helpfully, case law has applied these protections beyond frontline positions such as leadership or teaching to other areas, including finance posts. Churches with a clear Christian ethos, where every member of staff is involved with prayer, worship, the ministry of the church to members or its witness to outsiders, should have no difficulty at all requiring staff to be believers who abide by a biblical code of personal conduct.³⁵

Could the new law affect churches' ability to rent facilities from a private or public sector body, e.g. local councils?

Guidance from the Equality and Human Rights Commission provides clear answers to questions on this issue:

“ 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. ”³⁶

“ 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. ”³⁷

Some church/charity trust deeds refer to marriage: will the law now interpret these trust deeds to include same-sex marriages?

Under the 2013 Act, the meaning of marriage in any pre-existing trust deed is preserved.³⁸ Where any trust deed made before 13 March 2014³⁹ includes reference to “marriage” this continues to be read legally as man-woman marriage only. Any such mention of marriage is not deemed to include same-sex marriage. In any event, many church and chapel trust deeds have, for centuries, explicitly defined marriage as the union of a man and a woman (see page 28: *Should churches have written policies which explain their biblical beliefs about marriage?*).

Churches that offer marriage preparation and counselling do so as part of their ministry and so are covered by the exceptions in equality law. Charities which promote (heterosexual) marriage can continue to do so as they offer an educational service to all. However, non-religious charities which offer marriage counselling to members of the public should be mindful of the provisions of equality law (see page 24: *Do churches have to offer marriage preparation or counselling to same-sex couples?*).

Christians in the workplace

Can Christians continue to express their opposition to same-sex marriage at work?

Yes, provided this is done in a reasonable way. Those working in secular jobs have a right not to be discriminated against on the grounds of their religion or belief. As has been stated, belief in traditional marriage is viewed by the courts as a belief worthy of respect in a democratic society and is protected under the law.

Although this does not mean that the law is on the side of the Christian in every case,⁴⁰ as a general rule employers cannot simply expect employees to act against their core religious beliefs, or discipline them for refusing to endorse same-sex marriage or for expressing the belief that marriage is the union of a man and a woman.

In one case, the High Court upheld the rights of a Christian working for a housing trust after he made a comment on his personal Facebook account, viewed by forty or so of his colleagues, that gay marriage in churches was “*an equality too far*”.⁴¹ The High Court held that the comment had not breached the Trust’s code of conduct or equality and diversity policies.

We would commend to you a separate guide for schools and teachers produced by the Coalition for Marriage: *Respecting beliefs about marriage*.

Can chaplains employed in the public sector refuse to endorse same-sex marriage?

Some church ministers also act as paid chaplains in hospitals, prisons or schools. Under the Act, chaplains cannot be required to have any involvement in same-sex marriages in the course of their employment as chaplains.⁴²

The Equality and Human Rights Commission has also confirmed: “Chaplains have the same rights to free expression and religious freedom as everyone else”.⁴³ The Commission goes on to make clear:

“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.”⁴⁴

During the passage of the Marriage (Same Sex Couples) Bill, the Government stressed that:

“...the Equality Act 2010 makes it unlawful for an employer to discriminate against somebody because of their religion or belief. If a chaplain was punished or treated less favourably than another employee because of his or her particular belief about the nature of marriage, that would be unlawful discrimination because of religion or belief under the Equality Act, and he or she would be able to bring proceedings against his or her employer”⁴⁵

APPENDIX 1

Marriages in non-Anglican churches: separate legal schemes for homosexual and heterosexual weddings

Non-Anglican churches must register their premises in order to conduct legal marriage ceremonies in them. They can then ask a registrar to attend the premises to conduct the legal formalities alongside the religious service or they can appoint an ‘authorised person’ (usually the minister) to conduct the legal function on behalf of the state. The trustees of church premises can simply make an application to the superintendent registrar in their district for a licence to conduct opposite-sex marriages.⁴⁶

The 2013 Act permits non-Anglican churches to solemnise same-sex marriage on their premises if they wish to do so. It does this by effectively creating two parallel systems of marriage licensing for places of worship. Applications for licences to conduct same-sex marriages are dealt with under a different procedure to opposite-sex marriages.⁴⁷

This means that those applying for a licence to marry opposite-sex couples on particular church premises would not in fact be granted a licence to marry same-sex couples. Churches that wish only to marry opposite-sex couples can therefore register just to do that.

Under the 2013 Act, a church wishing to conduct same-sex marriages must actively ‘opt in’ to the system of same-sex marriage registration. The trustees or proprietors of church premises may not make an application to register their building for same-sex

marriages unless the church's governing body has given written consent to marriages of same-sex couples.⁴⁸ This will be the church meeting or church officers in an independent church, depending on the church's constitution. In the case of the Methodist Church and United Reformed Church, the Methodist Conference and URC General Assembly would need to give consent.

But even if a governing body consents, a church cannot conduct same-sex marriages unless the proprietors or trustees of a particular church building consent to its use for same-sex marriages and make an application for registration.⁴⁹

If a church does not opt in and obtain a same-sex marriage licence, it will in fact be unlawful for them to solemnise same-sex marriages on their premises. This is important because it cannot be unlawful to *refuse to conduct* a marriage for a same-sex couple if it is unlawful for that church to conduct such services in the first place.

APPENDIX 2

How the new law distinguishes between heterosexual and homosexual marriage

The Marriage (Same Sex Couples) Act makes the marriage of same-sex couples lawful. It can therefore be said that the state has adopted a new ‘genderless’ definition of marriage.

However, the provisions of the Act retain all the distinctive elements of heterosexual marriage where the union is between a man and a woman: a man-woman marriage can be annulled if it is not consummated;⁵⁰ there is a clear common law presumption that any child born to the wife is the child of her husband; and the marriage can be dissolved on the fault basis that either party commits adultery.⁵¹ Those legal elements are consistent with a main strand of Christian teaching and point to the procreation of children and the requirement for sexual fidelity within marriage.

Conversely, the new law relating to same-sex marriage does not contain any of these distinctive elements: consummation for a same-sex couple is not defined, let alone required;⁵² children born within a same-sex marriage are not presumed to be children of the marriage;⁵³ and there is no realistic option of dissolution on the basis of adultery.⁵⁴

The legal redefinition of the *word* marriage to describe a same-sex union is certainly a denial of real marriage. Yet Parliament has sought neither to apply the conventional understanding of marriage to homosexual couples nor to redefine *heterosexual* marriage within its own terms.

References

- ¹ Equality Act 2010, Schedule 3, paragraph 25A, as inserted by the Marriage (Same Sex Couples) Act 2013, Section 2(6)
- ² Marriage (Same Sex Couples) Act 2013, Section 2(1)
- ³ *Ibid*, Section 2(2)
- ⁴ In addition, the general religious exemptions in Schedule 23 of the Equality Act 2010 also provide further protection to churches, ministers and trustees of church buildings. The Government moved to assure church trustees during the passage of the Marriage (Same Sex Couples) Bill that: “*A person who was a trustee of a trust for the advancement of religion, and who refused to consent to the use of a building owned or controlled by that trust for the marriage of same-sex couples, would already fall squarely within an existing exemption in paragraph 2 of schedule 23 to the Equality Act. There is no doubt about that at all.*” House of Commons, Public Bill Committee, Hansard, 5 March 2013, col. 345
- ⁵ Marriage (Same Sex Couples) Act 2013, Section 1(3)-(5); Section 11(6)
- ⁶ The Canons of the Church of England, Canon B30
- ⁷ In fact, the Act expressly makes constitutional provision for the canons of the established church to be contrary to the wider civil laws of England in terms of the definition of marriage.
- ⁸ Welsh Church Act 1914, Section 1(1) states: “... *the Church of England, so far as it extends to and exists in Wales and Monmouthshire (in this Act referred to as the Church in Wales), shall cease to be established by law...*” And Section 3(1) provides that: “*As from the date of disestablishment ecclesiastical courts and persons in Wales and Monmouthshire shall cease to exercise any jurisdiction, and the ecclesiastical law of the Church in Wales shall cease to exist as law*” [emphasis added].
- ⁹ Marriage (Same Sex Couples) Act 2013, Section 8
- ¹⁰ The Welsh Church (Temporalities) Act 1919, Section 6 preserves the common law of marriage in Wales by stating that: “*Nothing in this Act or in the Welsh Church Act 1914 shall affect (a) the law with respect to marriages in Wales or Monmouthshire*”.
- ¹¹ Marriage (Same Sex Couples) Act 2013, Section 1(4)
- ¹² *The Daily Telegraph*, 3 August 2013
- ¹³ *The Telegraph Online*, ‘Gay Danish couples win right to marry in church’, 7

June 2012, see <http://www.telegraph.co.uk/news/worldnews/europe/denmark/9317447/Gay-Danish-couples-win-right-to-marry-in-church.html> as at 1 April 2014

¹⁴ *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Religious Organisations*, Equality and Human Rights Commission, March 2014, page 9

¹⁵ Marriage (Same Sex Couples) Act 2013, Section 2(2), (4)-(6)

¹⁶ Marriage Act 1949, Section 44(3), (3A): Either “I do solemnly declare that I know not of any lawful impediment why I, AB, may not be joined in matrimony to CD” OR “I declare that I know of no legal reason why I (name) may not be joined in marriage to (name)” OR by replying “I am” to the question put to them successively: “Are you (name) free lawfully to marry (name)?”

¹⁷ Marriage Act 1949, Section 44(3), (3A): Either “I call upon these persons here present to witness that I, AB, do take thee, CD, to be my lawful wedded wife (or husband)” OR “I (name) take you (or thee) (name) to be my wedded wife (or husband)”.

¹⁸ See for example, *Eweida and Others v The United Kingdom* [2013] ECHR 37, where it was said of the third applicant Lillian Ladele, a registrar who refused to conduct same-sex civil partnerships because of her belief in traditional marriage: “*The majority decision does not dispute this - indeed, by acknowledging that, [t]he events in question fall within the ambit of Article 9 and Article 14 is applicable’ (see § 103), the majority decision implicitly acknowledges that the third applicant’s conscientious objection attained a level of cogency, seriousness, cohesion and importance (see § 81) worthy of protection*” (joint partly dissenting opinion of Judges Vučinić and De Gaetano).

¹⁹ House of Lords, Hansard, 17 June 2013, col. 75

²⁰ House of Commons, Hansard, 16 July 2013, col. 1027

²¹ Public Order Act 1986, Section 29JA, as amended by the Marriage (Same Sex Couples) Act 2013, Schedule 7, para. 28

²² For example, Public Order Act 1986, Section 4A which, amongst other things, criminalises threatening, abusive or insulting words with intention to cause harassment, alarm or distress, and Public Order Act 1986, Section 5 as amended, which criminalises threatening or abusive words where there is no intention of causing harassment, alarm or distress.

²³ Explanatory notes on Lords amendments to the Marriage (Same Sex Couples) Bill, 16 July 2013, page 9 stated: “*To the extent that this provision removes any discouragement to discourse about marriage which relates to the sex of parties to marriages (where that discourse is not threatening and intended to stir up hatred), it could be argued that it has a positive effect on the Article 9 and 10 rights of those wishing to engage in this discourse.*”

²⁴ *Redmond-Bate v Director Of Public Prosecutions* [1999] EWHC Admin 733 at para. 20

²⁵ Human Rights Act 1998, Section 13

²⁶ Equality Act 2010, Schedule 23, para. 2

²⁷ House of Commons, Public Bill Committee, Hansard, 5 March 2013, col. 323

²⁸ Equality Act 2010, Schedule 23, para. 2

²⁹ *Loc cit*

³⁰ Equality Act 2010, Schedule 23, para. 2(3) (a), (b). Harassment law does not apply to the provision of goods, facilities and services in relation to the protected characteristics of sexual orientation and religion or belief: Equality Act 2010, Section 29(8)

- ³¹ See *Mr John George Reaney v Hereford Diocesan Board of Finance*, Employment Tribunal, 1602844/2006
- ³² For example, Chapter XXIV of the Westminster Confession of Faith, which states: “*Marriage is to be between one man and one woman: neither is it lawful for any man to have more than one wife, nor for any woman to have more than one husband, at the same time*” and which through its other statements and scriptural proof texts explicitly exclude sexual relationships outside of the one man and one woman marital relationship; chapter 25 of The Baptist Confession of Faith (1689) adopts similar statements to the Westminster Confession of Faith, as does chapter 25 of the Savoy Declaration (1658).
- ³³ Equality Act 2010, Schedule 9, para. 2(1)(b) taken with para. 2(5)-(6)
- ³⁴ Equality Act 2010, Schedule 9, para. 3 says that, “*a person with an ethos based on religion or belief*” may lawfully discriminate on the basis of a particular religion or belief if, having regard to the employer’s ethos and to the nature or context of the work it is an occupational requirement and it is proportionate to discriminate in order to meet a legitimate aim. Under the Equality Act 2010, Schedule 9, paragraph 2, an employer where the employment is for “*the purposes of an organised religion*” can lawfully discriminate on the grounds of, amongst others, sex, sexual orientation and marital status provided such requirements are made to enable the employer to comply with the doctrines of the religion in question or to avoid conflicting with the strongly held religion convictions of the religion’s followers.
- ³⁵ e.g. In *Mr H Muhammed v The Leprosy Mission International* (2009), an Employment Tribunal held that the stipulation by the Defendant that a Finance Administrator be a Christian was lawful because of the role of prayer within the life and work of the organisation and its employees.
- ³⁶ *A Quick Guide to the Marriage (Same Sex Couples) Act 2013*, Equality and Human Rights Commission, March 2014, page 9
- ³⁷ *Ibid*, page 10
- ³⁸ Marriage (Same Sex Couples) Act 2013, Schedule 4, para. 1
- ³⁹ Under The Marriage (Same Sex Couples) Act 2013 (Commencement No.2 and Transitional Provision) Order 2014, Article 3, the relevant parts of Section 11 and Schedule 4 to the 2013 Act come into force on 13 March 2014.
- ⁴⁰ See *Ladele v London Borough of Islington* [2009] EWCA Civ 1357. In that case, Miss Ladele had been designated a civil partnership registrar and conducting such services was part of her job. As her job essentially involved conducting marriages for opposite-sex couples, the Court of Appeal found that it would breach equality law if she (in carrying out a public function) were to be exempted from conducting same-sex civil partnerships, since both marriage and civil partnership are treated equally under discrimination law. See also, *Bull and another v Hall and another* [2013] UKSC 73 where the case of B&B owners Peter and Hazelmary Bull did not concern the position of employees under employment law, but rather the impact of ‘goods and services’ discrimination law on the position of business proprietors.
- ⁴¹ *Smith v Trafford Housing Trust* [2012] EWHC 3221 (Ch), [2013] IRLR 86
- ⁴² Marriage (Same Sex Couples) Act 2013, Section 2(5)
- ⁴³ *A Quick Guide to the Marriage (Same Sex Couples) Act 2013*, Equality and Human Rights Commission, March 2014, page 10
- ⁴⁴ *Loc cit*
- ⁴⁵ House of Commons, Public Bill Committee, Hansard, 12 March 2013, col. 495

- ⁴⁶ Marriage Act 1949, Section 41
- ⁴⁷ Same-sex marriage licence applications are made under section 43(A) of the Marriage Act 1949 (inserted by Schedule 1, para. 2 of the Marriage (Same Sex Couples) Act 2013). Opposite-sex marriage applications are made under section 41 of the Marriage Act 1949.
- ⁴⁸ Marriage Act 1949, Sections 26A(3) and 43A as inserted by the Marriage (Same Sex Couples) Act 2013
- ⁴⁹ Marriage Act 1949, Section 43A(2)
- ⁵⁰ That is, the marriage is voidable, which means that it subsists unless and until either party choose to void it. See the Matrimonial Causes Act 1973, Section 12(1)(b)
- ⁵¹ Matrimonial Causes Act 1973, Section 1(2)(a)
- ⁵² Under the Matrimonial Causes Act 1973, Section 12(2), as inserted by the Marriage (Same Sex Couples) Act 2013, Schedule 4, para. 4, non consummation of a same-sex marriage is not a ground on which the marriage is voidable.
- ⁵³ Marriage (Same Sex Couples) Act 2013, Schedule 4, para. 2
- ⁵⁴ Adultery is defined by the law only in terms of heterosexual intercourse. See Matrimonial Causes Act 1973, Section 1(6), as inserted by the Marriage (Same Sex Couples) Act 2013, Schedule 4, para. 3

Marriage (Same Sex Couples) Act 2013

Same-sex marriage: Your legal rights to object

A GUIDE FOR CHURCHES AND CHRISTIAN EMPLOYEES

Under the Marriage (Same Sex Couples) Act, same-sex marriage has been lawful in England and Wales since 2014.

For the first time in our nation's history there is a legal understanding of marriage which is fundamentally contrary to the Bible. This has left many churches and individual believers asking about their rights under the law:

Do churches have to conduct same-sex weddings?

Can churches refuse to provide a religious blessing for the civil marriage of a same-sex couple?

Do churches need to change the way they conduct heterosexual weddings?

Should churches stop conducting legally recognised marriages altogether?

Can Christians still preach publicly against same-sex marriage?

Can Christians continue to express their opposition to same-sex marriage at work?

This guide clearly answers all of these and many other common questions about the new legal landscape. Christians have every reason to be confident and bold in upholding the truth about marriage.



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