

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1 – Marriage of same sex couples in England and Wales

Extension of marriage

Section 1 – Extension of marriage to same sex couples

24. **Section 1** makes marriage of same sex couples lawful in England and Wales and sets out the legislative provisions under which same sex couples may marry. It ensures there is no obligation on the clergy of the Church of England and the Church in Wales to marry same sex couples and makes particular provision to avoid conflict with the Canons of the Church of England.
25. Under subsection (2) marriages of same sex couples may be solemnized in accordance with:
 - Part 3 of the Marriage Act, which provides for civil marriage ceremonies in register offices or approved premises such as hotels; and, if the relevant religious organisation has opted in to marry same sex couples, marriages in religious buildings (other than those of the Church of England or Church in Wales), or according to the usages of the Jewish religion or Quakers (Society of Friends) and for certain marriages for detained or house-bound persons;
 - Part 5 of the Marriage Act, which provides for marriages in naval, military and air force chapels (but not according to the rites of the Church of England or Church in Wales);
 - the Marriage (Registrar General’s Licence) Act 1970, which provides for “deathbed” marriages outside registered premises; or
 - an Order in Council made under Part 1 or 3 of Schedule 6 to the Act, which may provide for marriages overseas in the presence of a consular officer or for marriage overseas on armed forces bases.
26. The effect of subsection (3) is to preserve the integrity of the Canon law of the Church of England in relation to marriage. Under the Submission of the Clergy Act 1533, Canon law cannot be contrary to general law. In particular, Canon B30 (paragraph 1) states that “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...”.
27. Subsection (3) therefore provides that the maintenance of Canon B30 in particular by the Church of England is not contrary to the general law which enables same sex couples to marry.
28. Subsections (4) and (5) provide that any duty of a member of the clergy of the Church of England or the Church in Wales to solemnize a marriage does not extend to same

sex couples. In addition, any corresponding right of parishioners to be married by such clergy does not extend to same sex couples. The effect of this is that the common law duty on the clergy of the Church of England and the Church in Wales to marry parishioners is not extended to same sex couples.

Examples

- An Anglican vicar preaches in his church that marriage according to the Church of England is only between one man and one woman. This is a lawful explanation of Canon law.
- A man lives next door to a Church of England parish church and wishes to get married there. He is getting married to a woman. Neither of them has ever attended services at the church or professes to be Christian. He speaks to the vicar who agrees to marry the couple, given his legal duty to marry parishioners.
- A man who lives next door to a Church of England parish church wishes to get married there. He is getting married to a man. Both of them regularly attend services at the church and are committed Christians. He speaks to the vicar who has to refuse to marry the couple, since it would not be lawful for him to do so and the legal duty to marry parishioners does not extend to same sex couples.

Religious protection

Section 2 – Marriage according to religious rites: no compulsion to solemnize etc

29. **Section 2** protects individuals and religious organisations who do not wish to conduct or participate in a religious marriage ceremony on the ground that it is a marriage of a same sex couple.
30. Subsection (1) states that individuals and religious organisations may not be compelled by any means to carry out an “opt-in activity”, which is defined in subsection (3) to mean the various types of activity relating to the decision of a religious organisation to opt in to solemnizing marriages of same sex couples. Subsection (1) also states that they cannot be compelled to refrain from carrying out an “opt-out activity”, defined to mean an activity which reverses or modifies the effect of an opt-in activity.
31. Subsection (2) makes clear that individuals may not be compelled by any means to carry out, attend or take part in a religious marriage ceremony of a same sex couple. It also makes clear that individuals and religious organisations may not be compelled to consent to religious marriage ceremonies of same sex couples being conducted. In each case this must be where the individuals or religious organisations do not wish to carry out the specified conduct because it concerns the marriage of a same sex couple.
32. The concept of “compulsion” is a broad one, which would include, but not be limited to, attempts to use criminal or civil law, contractual clauses, or the imposition of any detriment to force a person to carry out such an activity. The section provides no specific remedy, but makes clear that no attempt at such compulsion will be upheld. The remedy for any action taken to compel someone would depend on the nature of the action taken.
33. Subsection (3) contains the definitions of “opt-in” activity and “opt-out activity”, and subsection (4) defines various other terms used in the section. It also makes clear that the conduct of a marriage registrar, superintendent registrar or the Registrar General is not included in the protection provided by this section.
34. Subsection (5) inserts new subsections (5A) and (5B) into section 110 of the Equality Act 2010. Section 110(1) of the Equality Act 2010 makes an employee, or an agent for a principal, personally liable for unlawful acts they commit in the course of their employment, or under the authority of a principal, for which their employer or principal could also be held liable. New subsections (5A) and (5B) provide that an individual cannot be held personally liable under the Equality Act 2010 for a refusal to carry out the

*These notes refer to the Marriage (Same Sex Couples) Act
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conduct specified in subsection (2) of this section where the reason is that the marriage is the marriage of a same sex couple.

35. Subsection (6) inserts a new Part 6A (Marriage of same sex couples in England and Wales) and paragraph 25A (Marriage according to religious rites: no compulsion to solemnize etc) into Schedule 3 to the Equality Act 2010. Schedule 3 deals with exceptions from the prohibition on discrimination in the provision of services and the exercise of public functions. New paragraph 25A provides that it is not unlawful discrimination under that Act for an individual or religious organisation not to carry out the conduct specified in subsection (2) where the reason is that the marriage is the marriage of a same sex couple.

Examples

- The governing body of a religious organisation meets to consider whether to opt in to conducting marriage of same sex couples according to its rites. It decides not to. This would be lawful and no member of the governing body, nor the organisation itself, could be forced, by legal action or otherwise, to change its decision.
- A religious organisation opts in to conducting marriage of same sex couples. However, one of the organisation's ministers does not approve of such marriage and does not wish to solemnize such a marriage. This would be lawful. The religious organisation arranges for an alternative minister to conduct the marriage ceremony for the same sex couple.
- A person who acts as an authorised person at marriages in her local church does not wish to do so in relation to same sex marriage ceremonies, even though the church has opted in to marriage of same sex couples. It would be lawful for her to refuse. A marriage registrar is asked to step in to cover that role, but does not wish to do so because he does not approve of marriage of same sex couples. It would be unlawful discrimination for him to refuse.
- An organist who usually plays at wedding services at a church does not wish to play at a wedding service of a same sex couple. This would be lawful because he is involved in the religious act of worship i.e. the religious ritual of the wedding service. This is the case whether he is a volunteer or employed by the church.
- A commercial photographer is asked to photograph a wedding of a same sex couple. It would be unlawful sexual orientation discrimination for her to refuse because she does not approve of marriage of same sex couples. This is because her role is not part of the religious marriage service.
- A volunteer flower arranger who usually decorates the place of worship for wedding services refuses to do so for a wedding of a same sex couple because she does not approve of such marriages. Her role is not part of the religious marriage service, but her refusal would nonetheless be lawful because the service she offers is to the church rather than to the public or a section of the public, so it is not covered by the Equality Act 2010. If a commercial flower arranger asked by a same sex couple to decorate their wedding venue refused to do so because he does not approve of marriage of same sex couples, this would be unlawful sexual orientation discrimination. This is because his role is not part of the religious marriage service and the service he provides is to the public and so is covered by the Equality Act 2010.
- A chaplain employed by a university is asked to solemnize the marriage of an employee of the university with a person of the same sex. Although his religious organisation has opted in to marriage of same sex couples, he refuses because he does not wish to marry a same sex couple. This is lawful. The university makes alternative arrangements by finding an alternative chaplain to conduct the ceremony.