

Marriage FAQs

Guidance for Churches and Christians following the introduction of the new Marriage (Same-Sex Couples) Act 2013

Introduction

The Evangelical Alliance is committed to uniting evangelicals to make a difference in our society. A key element of this is providing an evangelical voice to government and culture, and in doing so we have worked hard to oppose the government's plans to redefine marriage. A range of statements and resources can be found here:

<http://www.eauk.org/current-affairs/politics/marriage-and-family.cfm>

As this legislation has now been passed by parliament, it is important to face the reality that the state's definition of marriage will now be different from the historical and biblical definition.

However, it is also important for Christians to understand that, although we need to acknowledge the new definition of marriage, we do not need to approve of it or accept the premise on which it is based. In this context, it is vital that we are well informed of our rights and the limits of the law, and also that we speak the truth with grace and love.

It is essential for Christians to continue to defend and promote marriage as being exclusively between a man and a woman, but this does not mean that they should provoke accusations of homophobia. Indeed, it is worth remembering that many people from the gay community also opposed David Cameron's plans.

There are many concerns about what the effect of the new law will be for churches and for individual Christians. The Evangelical Alliance offers the following FAQs as guidance for its members following the introduction of the new Marriage (Same-Sex Couples) Act 2013 which redefines marriage in England and Wales.

Please note that the FAQs represent advisory guidance and should not be regarded as legal advice. Many aspects of the law relating to the redefinition of marriage are complex, fluid and open to interpretation. Also, government assumptions about the robustness of protections for third parties are likely to be challenged by case law. Although the guidance is as comprehensive as possible, it is not exhaustive and may be supplemented or amended from time to time in the light of experience. Consequently the Evangelical Alliance accepts no legal responsibility for the accuracy or otherwise of the FAQs. In cases of doubt consultation with appropriate legal experts is recommended.

It should also be noted that because of its established status, which includes a public duty to conduct marriages, certain different rules apply to the Church of England as to nonconformist churches and other religious groups. The new legislation makes it illegal for the Church of England to conduct same-sex marriages.

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Church Questions

- 1 Which churches have agreed to perform same-sex weddings and which haven't?

The only denominations/religious groups that have formally opted in to celebrate same-sex marriages in the UK are the Quakers, the Unitarians, the Metropolitan Community Church and Liberal Judaism. No religious organisation can be compelled to opt in to celebrate same-sex marriage. No individual can be compelled by their religious organisation to personally opt in, attend or take part in a religious same-sex marriage ceremony.

- 2 What if a same-sex couple approach my church and ask to use our building for their wedding?

A certified place of worship has to register to solemnise same-sex marriages. It may only be registered where the governing body of the associated church has officially and formally decided to opt in to conducting same-sex marriages. No religious organisation can be forced by legal action or otherwise to change its decision. If a same-sex couple wish to use an unregistered building they will be unable to do so, even though the building may be registered for opposite-sex marriages.

- 3 What if it's a shared building?

If there is a formal sharing arrangement (usually involving a legal contract) the relevant governing authorities of each of the sharing churches must give separate written consent to the use of the shared building for the solemnization of marriages of same sex couples. Accordingly, if one partner church refuses to give consent registration cannot take place. If the sharing arrangements are informal or ad hoc there are slightly different and more complex legal procedures laid out by the Ministry of Justice.

For details see the Alliance summary at <http://www.eauk.org/religious-buildings>

4 What if a same-sex couple specifically ask my church or me as the minister to conduct a same-sex wedding?

If my church has not opted in to conduct same-sex marriages then I cannot legally conduct the wedding even if I may wish to. If my church has opted in and I do not wish to conduct the ceremony then it is lawful for me to refuse. Either another authorised minister or a civil registrar would be required to step in to cover the role.

5 What should we be putting in place as a church to protect ourselves against problems?

The best thing that churches can do by way of protection is to familiarise themselves with the new legislation and ensure that officials of the church, together with its members, understand the implications of the legal changes and appreciate their rights under the law. It would also be sensible to guard against unwise or uninformed public comment (see 6 below). Some places of worship, religious groups and authorised registrars are deciding to relinquish their registrar status (see 14 below) because they believe it will reduce the risks of future legal challenges. Many churches are deciding to insert clear statements in their governing documents relating to the church's position on same-sex marriage and homosexuality, based for example on the Evangelical Alliance publication 'Resources for Church leaders: Biblical and pastoral responses to homosexuality'.^(a) These should be accepted by the Charity Commission and could be useful when churches face internal or external pressure regarding their position.

(a) See <http://www.eauk.org/church/resources/theological-articles/resources-for-church-leaders-biblical-and-pastoral-responses-to-homosexuality.cfm>

6 If the media ask us about our policy, how should we reply?

If the church has not opted in to conduct same-sex marriages you could simply reply that the church, like the overwhelming majority of UK churches, is not authorised to conduct same-sex marriages. It would be sensible for church leaders to ensure that only authorised officials speak to the press on the church's behalf and that they are competent to articulate their beliefs about the church's understanding of the nature of marriage.^(b) It is important to respect people of all sexual orientations at all times and seek to express views and biblical truth in a gracious manner avoiding language that could, for example, be seen as insensitive or offensive.

(b) See, for example, the Evangelical Alliance submission to the Government on marriage at <http://www.eauk.org/current-affairs/news/upload/Equal-Civil-Marriage-Consultation-Evangelical-Alliance-Response-3.pdf>

7 Could I be sued for preaching that marriage is only between one man and one woman?

Preaching that marriage can only be between one man and one woman in line with the church's teaching is perfectly legal.

8 I am an Anglican vicar. Do I have to marry everyone in my parish who requests a same-sex wedding?

Although Church of England and Church in Wales clergy have a specific legal duty to marry anyone who can show a qualifying connection, the new legislation makes it clear that this duty is not extended to same-sex couples. The ability to opt in to conduct same-sex marriages does not apply to the Church of England or the Church in Wales. No vicar will therefore be allowed to conduct same-sex marriages, in fact it would be illegal to do so.

9 I am an independent nonconformist minister. Do I have to perform same-sex marriages?

No minister who refuses to conduct same-sex marriages can be forced by law to do so.

10 What happens if a church member wants to have their same-sex marriage in what has been their church since childhood?

The church should develop a policy for dealing pastorally with internal disagreement in line with the church's official policy on same-sex marriage. Where close family relationships are involved these may present especially sensitive issues to resolve. However, unless the church changes its policy and opts in to the official register of churches authorised to conduct same-sex marriages it will legally be unable to do so.

11 Do we need to re-write our wedding service?

No. However churches that are authorised to conduct marriages know that wedding services must include officially approved declaratory and contracting words to make the marriage legal. These words have now become problematic under the new legislation, for example, where the previously settled terms 'husband' and 'wife' can now legally apply by extension to include the 'husband' of a man or the 'wife' of a woman. Consequently, in order to affirm Christian distinctiveness, many churches have indicated that they are likely to make a clear declaration during the wedding service of their position on marriage as being exclusively between a man and woman. This is perfectly legal, whether or not a church has its own functioning registrar or whether a civil registrar is legally required to attend the wedding service.

12 Local authorities use church facilities. Other churches make use of local authority facilities. How will such authorities respond when they hear of the churches' position on same-sex marriage?

Their response should be completely impartial. Some lawyers have argued that certain local authorities with ideological prejudices may attempt to use their public sector equality duty under the Equality Act 2010 to disadvantage churches that refuse to marry same-sex couples, for example, by refusing to let them use publicly-owned buildings. However, the government insists that for them to do so would itself constitute direct or indirect discrimination and therefore be illegal.

13 Could our church be refused registration of our place of worship to conduct weddings because of our opposition to same-sex marriage?

No. Although the Registrar General is subject to a public sector equality duty under the 2010 Equality Act to prevent discrimination, the government insists that this duty would not override their statutory responsibility to register a properly authorised application for a building as long as it meets the usual statutory criteria for the solemnization of marriages.

14 Can we decide not to continue our registrar function?

Yes. Many churches and some religious groups are considering terminating all civil marriage elements of weddings at their places of worship. This is partly because they wish to dissociate themselves from the state's new definition of marriage, and partly because they believe that it will reduce the possibility of future legal challenges. Fears have been expressed, for example, that such challenges could result from a future change in the law emanating from the European Court of Human Rights, though the Government dismisses such a possibility. Churches that take this step would effectively be leaving the officially authorised legal element of marriage to couples to organise for themselves at a registry office or other approved venue. Such churches might adopt a view, for example, that true marriage only takes place under church auspices as a covenant before God. However, churches are advised to ensure that couples understand that such a religious marriage ceremony would of itself have no legal effect.

15 If we continue to exercise a registrar function is there anything we can do to dissociate our church from the new state view of marriage?

See the reply to Question 11 above.

16 If we continue our registrar function could we be sued if we refuse to marry someone?

Although it is not possible to prevent someone from taking legal action if they wish to do so, it is perfectly legal for a person who acts as an authorised person at marriages in their local church to refuse to conduct same-sex marriages.

17 What if I am authorised to act as a registrar of marriages and I do not wish to conduct same-sex ceremonies, but my church has opted in to conduct them. Can I refuse?

It is perfectly legal for a person who acts as an authorised person at marriages in their local church to refuse to conduct same-sex marriages even if the church itself has opted in to same-sex marriage. A person who acts as an authorised person is not authorised to conduct same-sex marriages without additional separate authorisation.

18 Has adultery been removed as a ground for divorce?

No. Sexual intercourse with someone of the opposite sex other than one's spouse remains a ground for divorce. It remains the case legally that sexual conduct with someone else of the same sex is not adultery but could be considered a ground for divorce on grounds of 'unreasonable behaviour'.

19 Has non-consummation been removed as a ground for annulment?

Not for marriage between two people of the opposite sex. Consummation has been removed by the redefinition of marriage – but only for same-sex couples.

20 Our church offers marriage guidance and counselling. Will we have to offer this service to same-sex couples?

Equalities legislation makes it clear that the public has a right to expect that services generally available to the public are provided on a non-discriminatory basis. For a church offering a marriage preparation course or counselling service, the government insists that exemptions in the Equality Act 2010 permit it to restrict those services to opposite-sex couples.^(c) However, it should be noted that exemptions do not apply to an organisation whose sole or main purpose is commercial.

(c) Firstly, under paragraph 30 of Schedule 3, if the service is generally provided only for people who share a particular protected characteristic, for example heterosexual people, the service provider is permitted to continue to provide that service in that way if it would be impracticable to provide the service to people who do not share that protected characteristic. Secondly, paragraph 2 of Schedule 23 enables a religious organisation to restrict access to services because of religion, belief or sexual orientation, either because that is necessary to comply with the organisation's doctrine, or to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers.

For charities, paragraph 1 of Schedule 4 to the Marriage (Same-Sex Couples) Act provides that the introduction of same-sex marriage will not affect the meaning of private legal documents drawn up prior to the Bill coming into force. The government insists that means that instruments that govern charities and contain a reference to marriage would not be altered in their meaning in any way. Marriage would continue to mean what it was held to mean in law when the instrument was made. Furthermore, the 2010 Equality Act (paragraph 193) contains a particular exemption for charities, which permits them to provide benefits only to people who share the same protected characteristics, such as sexual orientation or religion or belief, if that is in line with their charitable instrument.

Commercial organisations will not be able to deny a same sex couple the ability to attend a course offered to opposite sex couples, but this does not necessarily mean that they will have to offer a service dedicated to same sex couples that they do not currently provide or change the emphasis of any course. Legal advice should be sought.

21 Do the existing kinship rules regarding the marriage of close relatives apply to same-sex marriages?

Yes.

22 Will membership of the Evangelical Alliance provide our church with any protections?

The Evangelical Alliance offers advice to members and represents evangelical concerns to government. It can be helpful for a church to make its position on controversial issues clear by reference to its Alliance membership, for example through adherence to its statement of faith and stated commitment to positions based on publications such as 'Resources for Church leaders: biblical and pastoral responses to homosexuality'.^(d)

(d) See <http://www.eauk.org/church/resources/theological-articles/resources-for-church-leaders-biblical-and-pastoral-responses-to-homosexuality.cfm>

Questions for Christians

1 In public or at work, can I express the view that marriage is exclusively between a man and a woman?

Yes. The view that marriage should only be between a man and a woman is historic, mainstream and entirely lawful. Protection for speech in public spaces is afforded by an amendment in the Marriage (Same-Sex Couples) Act to Section 29JA of the Public Order Act 1986. However, this covers only hate speech and criminal law and the language used must not be 'threatening or intended to stir up hatred' which in practice could be interpreted very subjectively. There is no specific protection in civil law covering, for example, conversation in the workplace. The government insists that articulating the view that marriage can only be between a man and a woman is a perfectly valid mainstream belief worthy of respect in society and of protection in law. However, it considers that sufficient protection against possible challenge by e.g. work colleagues or employers is afforded already by the Equality Act 2010. Some lawyers have expressed doubt regarding how robust such protection will prove to be in practice. It is therefore advisable to be cautious, sensitive and respectful in any use of language where perceived offence is likely. On the other hand, the more people are used to hearing this mainstream view being expressed, the less likely they are to convince themselves that they should be offended by it.

2 As a teacher can I refuse to teach about same-sex marriage?

As with any area of the curriculum, teachers will be expected to teach the factual position that under the law marriage can now be between opposite-sex and same-sex couples and lessons should be taught 'in a balanced way'. The government insists that no teacher can be compelled to teach, promote or endorse views or literature which go against their beliefs, and schools will not acquire powers to dismiss teachers who refuse to teach views about same-sex marriage which are against their conscience. Teachers will continue to have a clear right to express their own beliefs about marriage. However, it is advisable to be sensitive and professional in the way this is done. Some lawyers have expressed serious doubts regarding the protection teachers will actually have in practice in this area.

3 As a civil registrar will I have to perform same-sex weddings?

Yes. It would be unlawful sexual orientation discrimination for a civil registrar to refuse if their employer is unwilling to grant them an exemption from conducting such ceremonies.

4 Can I exempt my children from lessons that teach same-sex marriage as a norm?

The government insists that all parents have the right to object to the materials used in schools for sex education and also have the right to withdraw their children from any or all parts of sex education, with the exception of the national curriculum for science which covers teaching about the technical biology of reproduction.

5 Are faith schools exempted from teaching same-sex marriage as a norm?

Faith schools will be able to teach their beliefs about marriage in a professional and sensitive way but will be expected to acknowledge the existence of the law as regards same-sex marriage.

6 Will chaplains be protected?

Chaplains in the public sector, such as in hospitals and universities, have a justifiable expectation that they will be allowed to act in accordance with their beliefs and would therefore be perfectly free to express their lawful view about marriage being exclusively between a man and a woman. They would also be protected from dismissal or direct and indirect discrimination because of religion or belief by the Equality Act 2010 which, according to the government, could not be overridden by a public sector employer's equality duty to prevent discrimination. However, some lawyers have questioned how easy it will be to show that this belief falls within the protection of the Equality Act 2010. Clause 2 of the Marriage (Same-Sex Couples) Act separately ensures that a chaplain can legally refuse to conduct a same-sex marriage ceremony.

7 I am an organist who usually plays at wedding services at a church but do not wish to play at a same-sex wedding. Can I refuse?

Yes, because you would be involved with a religious act of worship and it would be lawful to refuse whether you were employed by the church or a volunteer.

8 I am a flower arranger who usually volunteers to decorate a church for wedding services but I do not wish to do so for a same-sex wedding. Can I refuse?

Yes, because the service you offer is not covered by the Equality Act 2010 as it is a service to the church rather than to the couple.

9 I am a commercial flower arranger but do not approve of same-sex marriage. Can I refuse to decorate the wedding venue?

No. To refuse would be unlawful discrimination on grounds of sexual orientation because the service being offered is to the couple and your role is not part of the religious marriage service.

10 I am a commercial photographer but do not approve of same-sex marriage. Can I refuse to photograph a wedding of a same-sex couple?

No. To refuse would be unlawful discrimination on grounds of sexual orientation because the service being offered is to the couple and your role is not part of the religious marriage service.

11 Will we be able to adopt or foster children if we believe that marriage is only between a man and a woman?

The government says that views about marriage of themselves would not justify refusing to allow individuals to act as foster carers or to adopt because they would not impact on how the child is cared for. People have the right to express and live out their religious beliefs and not be discriminated against for doing so. Local authorities and adoption agencies are under a duty of care to place children in the most appropriate placement available and to safeguard and promote their welfare. Considerations of religious and cultural background should be irrelevant in the context of placing children with loving and stable families. Some lawyers have questioned how effective such guidelines will be in practice.

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I think this guidance is really helpful and well thought-out, providing clear and digestible information about key issues and concerns. Kept updated to ensure its accuracy and relevance, I think it will provide a very useful source of information for churches and individuals as the Marriage (Same Sex Couples) Act is implemented.

**Melanie Field, deputy director, Equal Marriage Team,
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