

The Marriage and Civil Partnership (Scotland) Act 2014: the equality and human rights implications for the provision of school education

Introduction

The Marriage and Civil Partnership (Scotland) Act 2014 (the Act) extends marriage to same sex couples in Scotland. This guide explains how the Act affects teaching about marriage in schools and the implications of equality and human rights law in an education context. This document is useful for schools, education authorities, parents, teachers, and non-teaching staff employed by schools. The term “school” in this guidance is used to include education authorities as well as grant aided and special schools and independent schools.

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

Key points

- Teaching about marriage must be done in a reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies and anti-discrimination duties towards colleagues and pupils.
- **No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples or any particular form of relationship.** However,

discussions about relationships should acknowledge that same sex couples can now marry as a result of the Act. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships. Teachers must have regard to statutory guidance on relationships sexual health and parenthood (RSHP) education, and must meet duties under equality and human rights law.

- The Act does not affect the rights of denominational schools to continue to teach about marriage according to their religious doctrines or ethos. Any views expressed about marriage of same sex couples by teachers, other school staff, parents and pupils, may reflect the religious ethos of the school.
- Teachers and non-teaching staff in schools, parents and pupils, are free to hold their own religious or philosophical beliefs about marriage of same sex couples. These rights are not limited by anything in the Act, education law, or equality and human rights law.

Teaching about marriage

Relationship, Sexual Health and Parenthood education

Conduct of Relationships, Sexual Health and Parenthood Education in Schools 2014 <http://www.scotland.gov.uk/Resource/0046/00465948.pdf> sets out that, in providing RSHP education, local authorities should take account of Section 35 of the Ethical Standards in Public Life etc (Scotland) Act 2000. This creates a duty for councils to consider the value of a stable family life in a child's development and the need to ensure education is provided in a way that is appropriate to a child's age, understanding and development.

RSHP education also needs to reflect the principles set out in Getting it Right for Every Child (GIFREC). These include putting children and young people at the centre of what you do so that they have their views listened to and are involved in

decisions that affect them; and promoting opportunities so that children and young people feel valued and opportunities to celebrate diversity are created.

Statutory Guidance

Conduct of Relationships, Sexual Health and Parenthood Education in Schools 2014 <http://www.scotland.gov.uk/Resource/0046/00465948.pdf> sets out schools' responsibilities in providing a program of RSHP education. Schools may also cover marriage in lessons concerning religious and moral education (RME), and potentially other subjects such as history, politics or the law.

The guidance sets out that the purpose of RSHP education is to help children develop an understanding of safe and loving relationships, and sexual and emotional health and wellbeing. The guidance highlights the importance of RSHP education including issues of diversity.

When discussing these issues, teachers must avoid causing hurt and offence to children from a variety of family circumstances. The guidance sets out that where a teacher has a fundamental objection to an aspect of RSHP education, they should raise this with the school or local authority. Part 5 of the General Teaching Council Scotland Code of Practice <http://www.gtcs.org.uk/standards/copac.aspx> will be particularly relevant.

The guidance recognises the role of parents and carers in the education of their children and creates an expectation that they will be consulted on key aspects of the curriculum, including RSHP education. Schools need to be aware of a range of cultural views, religious beliefs and family circumstances.

The views of children and young people themselves are also key to the design and delivery of RSHP education. Schools should consider how to involve their pupils in shaping RSHP education so that it meets their diverse needs and expectations.

Religious and moral education

Teaching about marriage may take place in RME lessons, for example, through discussion about rites of passage in different religions. When discussing marriage in RME classes, as elsewhere, teachers must adopt an informed, objective, respectful, and balanced approach. In denominational schools, RME is taught in accordance with the religious ethos of the school.

Removal of children from lessons

Parents and carers may wish to remove their children from some or all of a planned sexual health education programme within a RSHP programme of lessons. This should be discussed with the school. A child or young person may also have their own view on attending or withdrawing from such lessons. Where a child or young person has sufficient capacity, their decision should be respected. Children and young people cannot withdraw or be withdrawn from other lessons across the curriculum. The Act does not change this position.

Parents and carers also have the right to remove their children from RME classes if these do not reflect their religious or philosophical beliefs. The Act does not alter this right.

Freedom of expression and freedom of thought conscience and religion

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

Teachers and other school staff, parents and pupils are all free to hold personal opinions on the marriage of same sex couples, including a view that marriage should only be between a man and a woman. The Scottish Government considers the belief

that marriage can only be between a man and a woman is a belief worthy of respect in a democratic society, as is the belief that marriage includes same sex marriage

Individuals are free to express positive or negative views about 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. Individuals who express support for, or opposition to, marriage of same sex couples, in public or at work, should do so in reasonable and moderate terms, to ensure they are mindful of and do not breach the rights and freedoms of others.

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

Denominational schools may continue to teach the position of their particular faith on marriage and same sex relationships, provided this is done in an appropriate, reasonable and professional way (and provided they also teach the facts, where relevant, about the law concerning marriage in Scotland).

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

The Lord Advocate has also published prosecutorial guidance in relation to public order offences which can be found here www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/PROSECUTION%20GUIDANCE%20IN%20RELATION%20TO%20SAME%20SEX%20MARRIAGE.pdf. This recognises the importance of being able to hold and impart views, including opposition to marriage of same sex couples. Where

comments or behaviour do not incite hatred and are not intended to cause public disorder they will not be subject to criminal prosecution.

Impact of equality law

The anti-discrimination duties

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

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

In addition, the admission of pupils and the provision of education and related services to pupils in schools must be provided without unlawful discrimination, harassment or victimisation. The harassment provisions of the Equality Act 2010 (the Equality Act) do not protect pupils from harassment by other pupils, as the Act only provides protection from harassment by education providers. However, the provisions on discrimination mean that schools have an obligation to ensure that bullying by pupils related to a protected characteristic is treated with the same level of seriousness as any other form of bullying. Education authorities also have positive obligations under the public sector equality duty (section 149 Equality Act). For further information see the section on the equality duty below.

Exceptions from equality law

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

The Equality Act and the Education (Scotland) Act 1980 allow denominational schools to impose requirements related to religion or belief when, for example, recruiting, promoting or dismissing staff in certain circumstances. These provisions are unaffected by the Act.

Schools' anti-discrimination duties relating to the protected characteristic of religion or belief (section 85(2) of the Equality Act) do not apply to acts of worship and religious observance in schools, whether or not they form part of the curriculum. However, schools are permitted to include a full range of issues and subjects in their teaching curriculum.

The equality duty

Education authorities, grant aided schools and special schools also have positive obligations under the public sector equality duty (section 149 of the Equality Act), also known as the equality duty.

The equality duty places a general duty on public authorities and those exercising public functions to have 'due regard' when exercising their functions to three needs; (a) eliminating conduct (such as discrimination, harassment and victimisation) that is prohibited by the Act, (b) advancing equality of opportunity between people who share a protected characteristic and those who do not, and (c) fostering good relations between people who share a protected characteristic and those who do not. The second two matters apply to the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not apply to the protected characteristic of marriage and civil partnership.

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

The EHRC's Scottish Technical Guidance on the equality duty provides more guidance on how this aspect of equality law operates, including further details about the meaning of each protected characteristic and the contexts in which they do or do not apply.

The right to education

Article 2 of Protocol 1 to the European Convention on Human Rights provides parents with the right to select education for their children that reflects their particular religious or philosophical convictions. In the United Kingdom, this right applies only in so far as it is consistent with the provision of efficient education and avoids unreasonable public expenditure. In addition, case law has established that the State is not required to provide education of a particular kind or quality. This right will not be breached provided that religious and philosophical knowledge (and RSHP education) is imparted within the education system in an objective way that reflects diversity and is subject to critical analysis and scrutiny.

Further information

The EHRC has published a series of complementary guidance documents:

[*The Marriage and Civil Partnership \(Scotland\) Act 2014: the equality and human rights implications for public authorities*](#)

[The Marriage and Civil Partnership \(Scotland\) Act 2014: the equality and human rights implications for religious organisations](#)

[The Marriage and Civil Partnership \(Scotland\) Act 2014: the equality and human rights implications for the workplace and service delivery](#)

[The Marriage and Civil Partnership \(Scotland\) Act 2014: the equality and human rights implications for marriage and the law in Scotland](#)

See also the following EHRC guidance documents:

Equality Act 2010 Code of Practice - Employment Statutory Code of Practice
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employment_code.doc

Equality Act 2010 Code of Practice - Services, Public Functions and Associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/services_code.doc

Technical guidance for schools in Scotland
http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Old_Guidance/PDFS/Educ_Provider/7_ehrc263_code_scotland_v3.pdf

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