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Independent churches and the Marriage (Same Sex Couples) Act 2013

A Church Growth Trust Practical Guide
(March 2016)

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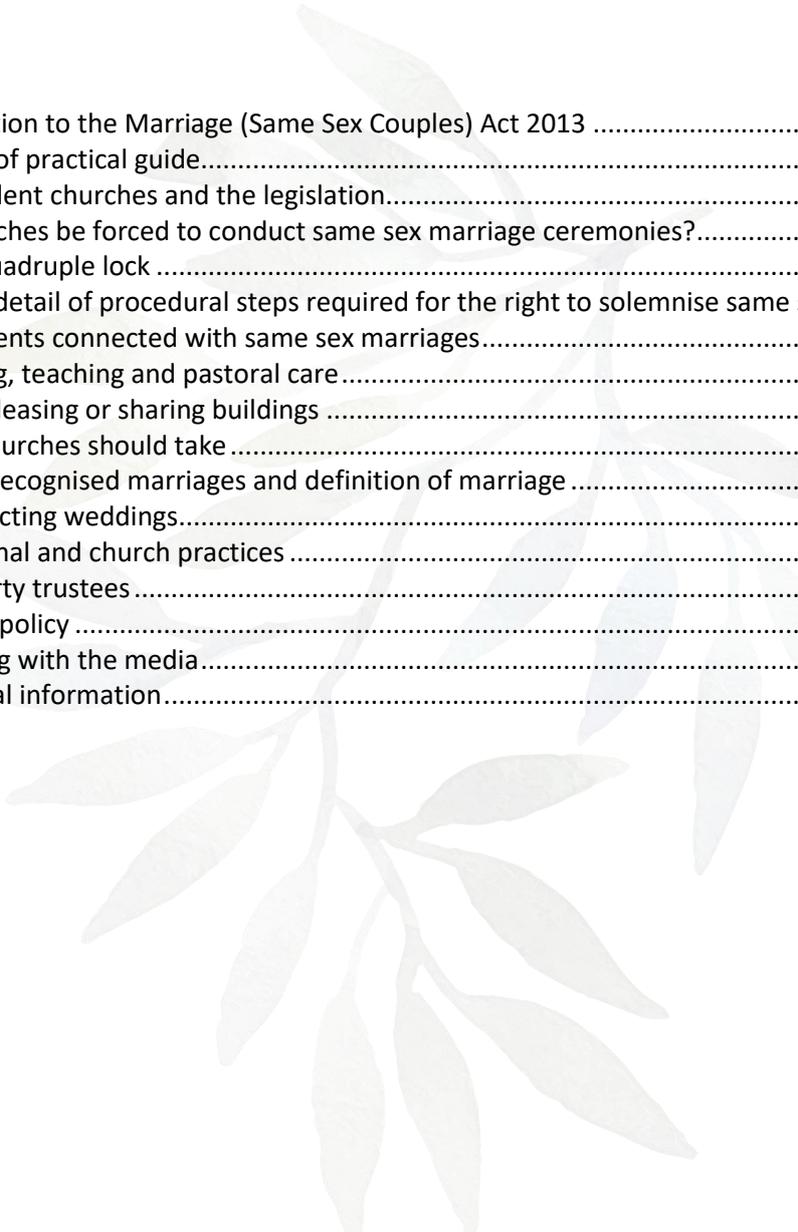
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1.0 Introduction to the Marriage (Same Sex Couples) Act 2013

The Marriage (Same Sex Couples) Act 2013 (“the 2013 Act”) was passed on 17th July 2013. Under the Act same sex marriage is now legal in England and Wales. Christians holding to the truth of God’s word define marriage as the life-long exclusive union of a man and woman (Genesis 2:24 and Mark 10:6-9). Parliament has now however extended the legal definition of marriage, so far as the law of the land is concerned, beyond the traditional biblical view of marriage.

The Civil Partnership Act 2004 brought about legal recognition of same sex relationships through the creation of civil partnerships in the UK. The 2013 Act now extends the possibility of marriage to same sex couples in England and Wales. This is both within civil settings and also within religious settings *where, and only where, the religious body makes a positive decision to opt into the arrangements*. The 2013 Act however recognises that many churches and denominations disagree with same sex marriage and it does not force any churches or religious bodies to perform same sex weddings.

2.0 Purpose of practical guides

The purpose of this practical guide is:

- To inform independent churches of the legislation and how this may impact them.
- To consider whether churches have to provide same sex marriage ceremonies or allow events connected with same sex marriage ceremonies to take place in their buildings.
- To consider what happens when churches own, lease or share the use of church buildings, in relation to the same sex marriage legislation.
- To consider what action should be taken by churches to protect themselves from pressure to provide same sex marriage ceremonies.

Although many points in the paper will be relevant to local churches within denominations, the paper is specifically aimed at independent churches (i.e. churches which are not Church of England nor the Church in Wales nor a small number of denominations which are already opted in to same sex marriage within the express terms of the 2013 Act). It does not cover specific circumstances relating to the Church of England and the Church of Wales. The Church of England’s laws relating to marriage are safeguarded, including marriage being limited to opposite sex couples, and are unchanged by the 2013 Act. The Church in Wales is in a similar position, except that it can request legislation to allow it to conduct same sex marriages if it chooses to do so. The paper does not deal with employment legislation, nor the position on same sex marriage in Northern Ireland and Scotland, which have their own jurisdictions over these matters.

3.0 Independent churches and the legislation

Independent churches, which are not part of a centralised denomination, are in lots of ways different from churches within such denominations, as they do not have their doctrines and practices set out by a central governing body and in most cases decisions on spiritual matters are decided by the local leadership, whether this is through pastors, elders or church meetings. Many small independent churches do not have governing documents setting out their doctrines and practices or procedures for appointing leaders and making decisions on church governance, although the requirement to register as a charity is forcing some to formalise in writing what has been practised in church life.

The lack of formal evidence of doctrines and practices of a church may cause difficulties in responding to the new legislation. Although it is not legally necessary to show why the church may not agree with or wish to participate in same sex marriage activities, it is good practice to do so, as it will make clear why a church does not support same sex marriage and it will also help in connection with satisfying the requirements of the Equality Act 2010, as amended by the 2013 Act.

Often independent churches have properties held under separate Property Trusts and, under the Marriage (Same Sex Couples) legislation, the trustees of the property have a particular role to play in whether they allow same sex marriage ceremonies to take place in the property, quite separate from the role of the church to which they let the building.

If a church legally solemnises any form of marriage, the premises that it uses for that purpose need to be registered as a Place of Worship with the marriage registration authority for the area (see Church Growth Trust's practical guide on Registration of Places of Worship and Solemnization of Marriages).

4.0 Can churches be forced to conduct same sex marriage ceremonies?

4.1 The quadruple lock

While the Marriage (Same Sex Couples) Act 2013 was passing through Parliament it was repeatedly stated that religious organisations would not be compelled to act against their consciences and the legislation included what has become known as a "quadruple lock". This is points 1-4 as follows:

1. A religious marriage ceremony of a same sex couple is only possible if:
 - The governing authority of the religious organisation has "**opted in**" by giving explicit consent to marriages of same sex couples (section 4 of the 2013 Act); and
 - The individual minister is willing to conduct the marriage (section 2 of the 2013 Act); and
 - If the ceremony takes place in a place of worship, those premises have been registered for marriages of same sex couples (section 4 of the 2013 Act).
2. The 2013 Act explicitly states (section 2) that no person or religious organisation can be compelled by any means to consent to or to opt in to marry same sex couples or to permit this to happen on their premises; and no religious organisational representative can be compelled by any means to consent to, conduct or be present at religious ceremonies for same sex couples.
3. The 2013 Act (section 2) amends the Equality Act 2010 to make clear that it is not unlawful discrimination for a religious organisation or representative to refuse to marry a same sex couple, although this protection does not apply if the person is a marriage Registrar.

The Church of England cannot opt in under the terms of the 2013 Act (section 4).

4.2 More detail of procedural steps required for the right to solemnise same sex marriages

In order for same sex marriage ceremonies to take place in a church building, the relevant governing authority will need to agree to this, the individual official conducting the marriage will need to agree to it, and the trustees/proprietors of the place of worship will also need to agree to it. There has to be a positive opting in for each party, rather than an assumption that they are happy for the ceremonies to take place if they do not say otherwise. This would mean that even if the trustees of the property were happy for the ceremony to take place, the church leaders and/or the minister who would normally conduct the wedding can prevent it taking place. Likewise, where a church is happy to conduct same sex marriage ceremonies, the property trustees of a place of worship can prevent this.

The definition of “relevant governing authority”, mentioned in point 1 above, is “the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purpose of this section”. The relevant governing authority will vary depending on the precise terms of the constitution of the church. For most independent churches (not being part of a centralised denomination) this is likely to be the elders or the trustees of the church (as opposed to the trustees of the building in cases where the church building has separate trustees), but in some situations it will be the church meeting. For churches in denominations, it is likely to be the general assembly, or equivalent body, of the denomination. The explanatory notes to the 2013 Act state “this definition leaves it open to religious organisations to define their governing authority as they wish for the purpose of giving consent to religious marriage of same sex couples”. Each church needs to be clear as to what their governing body/authority is for this purpose.

In a case where the constitution or Trust Deed of the church makes a distinction between “spiritual leaders” to have conduct spiritual matters and trustees to be responsible for all other matters, it is generally understood that the trustees would be the “relevant governing authority”, because the decision whether to opt in is part of a legal procedure albeit preceded by spiritual considerations.

For an application to be made for a place of worship to be registered for same sex marriages, the building must already be certified as a Registered Place of Worship (under the Places of Worship Registration Act 1855) on application to the Superintendent Registrar of the district in which the church property is situated. The application to the Superintendent Registrar for registration of the church premises for the solemnisation of same sex marriages (which can be made at the same time as the application for registration as a place of worship under the Places of Worship Registration Act 1855) must be made by the trustees or proprietor (owner) of the property and it must be accompanied by a certificate demonstrating the consent of the relevant governing authority. If the church premises are not already registered under the Marriage Act 1949 (as amended) for the solemnisation of opposite sex marriages, the application must include a certificate by at least 20 householders stating that they use the building as their usual place of public worship (Schedule 1 Para 2 of the 2013 Act).

As the legal procedure for registering church premises to conduct same sex marriages is separate from the existing procedure for solemnising of opposite sex marriages, a separate application would have to be made and a church would have to actively register and “opt in” to achieve this. It would therefore not happen by default. As the application requires the consent of both the owners of the property and the governing authority of the church, the registration would not take place without the church being aware of it. If the church (as distinct from the trustees or proprietor of the property) has not opted in, then it cannot lawfully carry out same sex weddings on the premises.

5.0 Other events connected with same sex marriages

There is concern that, although churches can refuse to conduct same sex marriages, they may be forced to provide a religious blessing for a civil marriage of a same sex couple. The 2013 Act is clear that no one can be compelled by any means to conduct, be present at, participate in or consent to any ceremony forming part of or connected with the solemnisation of a same sex marriage. This protects any church which is approached by a same sex couple asking for a religious blessing for their “marriage”. This protection is expressly given by the 2013 Act (section 2(4)(b)) where a couple have a same sex marriage before a Superintendent Registrar and then request the church to conduct a religious marriage ceremony as an addition to their civil marriage.

A slightly more difficult question relates to a same sex couple asking to hire church premises for a party to celebrate their “marriage”. If the premises are normally let for functions, including parties, meals and conferences (whether a charge is made or not), it may be difficult to decline a booking of this nature. If, however the booking involves some sort of ceremony, blessing or formal recognition of the same sex marriage, the church would be allowed to refuse the event. The difficulty however is knowing what will take place during the event. Many churches only hire out their premises to people directly connected to the church (e.g. birthday parties of church members) and for organisations that are working alongside the church. It is recommended that a clear lettings policy is drawn up by the church to ensure that any request for lettings is judged against this.

6.0 Preaching, teaching and pastoral care

Churches are free to teach and preach the biblical position on sex and marriage without fear of being held to have broken the law and are also free to express their belief that same sex marriage is not real marriage and is a sinful union. During the Parliamentary debates on the Marriage (Same Sex Couples) Bill, there were a number of occasions where it was made clear that the belief of traditional marriage being between a man and a woman is worthy of respect in a democratic society and would therefore be covered by Articles 9, 10 and 14 of the European Convention on Human Rights (see Additional information section below).

This not only relates to preaching in a church meeting, but also to street preaching. The 2013 Act (Schedule 7 Para 28) explicitly amends the Public Order Act 1986 so that it provides that “any discussion or criticism which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred”. A similar provision already exists within the Public Order Act in relation to criticism or discussion of sexual conduct, but care needs to be taken, as these provisions in the amended Public Order Act are not expressly applied to the offences (under section 5 of that Act) of using threatening or abusive words within the hearing or sight of a person likely to be caused harassment, alarm or distress by those words. For this reason, any debate or preaching would need to be carried out carefully in a way that was not threatening or abusive. However, the amendment of the Public Order Act ensures that the mere expression (without treat or abuse) of the belief in man/woman marriage or criticism of same sex marriage is not unlawful.

The Human Rights Act 1998 already makes it clear that everyone, including religious organisations, has a right to freedom of thought, conscience and religion and is therefore able to express their convictions. However, this right is, under Article 10 of the European Convention (see Additional information section below), incorporated into UK law by the Human Rights Act and is subject to various restrictions in the interests of (among other things) public safety for the prevention of disorder or crime, for the protection of the reputation or rights of others. The right to freedom of expression is not therefore an absolute one and there seems to be a fine line between what contravenes the Public Order Act and what is protected by the amendment of it.

Although churches may offer marriage preparation and counselling services, particularly to couples who are intending to marry at the church premises or are connected with the church, there will not be a requirement for the church to offer same sex marriage preparation and, for the church to refuse to do so, will not be considered discrimination on grounds of sexual orientation. This is a protection for churches contained in the Equality Act 2010 (Schedule 23 Para 2) relating to sexual orientation. The exclusion of services on the ground of same sex marriage must, in order to have the protection provided by the Equality Act, be necessary to comply with the doctrines of the church or to avoid conflict with the strongly held convictions of a significant number of the church's members or fellowship.

Churches are allowed to express their biblical position on same sex marriage or homosexuality, whether by preaching or in pastoral situations, as the 2013 Act makes it clear that criticism of same sex marriage is not in itself an offence. A church may also restrict membership and participation in their activities on the basis of a person's sexual conduct or beliefs, providing this is clearly set out in the church's doctrinal beliefs. However, as mentioned above, care needs to be taken in the expression of a church's beliefs concerning marriage in view of section 5 of the Public Order Act.

Churches should always be pastorally sensitive and compassionate in the way they deal with church members and others interested in the Christian faith or that they come into contact with. A link to suggested helpful resources on this from the Evangelical Alliance is shown in the Additional information section below.

7.0 Owing, leasing or sharing buildings

If a church owns its own place of worship, it can decide, as described above, whether it wishes to opt in to allow same sex ceremonies to take place in its building. If there is a Property Trust separate from the Church (congregational) Trust, the trustees of the Property Trust are able to make this decision. In some cases, church properties are owned by a Christian organisation/charity, such as Church Growth Trust. The organisation/charity may have clear doctrinal beliefs, set out in their governing documents and these may justify them not allowing the premises to be used for same sex marriages.

Many churches lease building from commercial or private landlords or local authorities. These landlords may not have charitable objects or views in line with the church's biblical outlook. Where a church leases a building from a landlord that may not be in sympathy with their views on same sex marriage (e.g. the landlord may be happy to opt in to the legislation), the church cannot be forced to use the premises for this purpose. However, if they are only hiring a room or a building for a fixed period during the week and the owner of the building allows it to be used for same sex marriage ceremonies at other times, the church cannot object to this.

There are situations where a church building is used by a number of churches, often with different churches hiring the premises at different times of the week. In some cases, the sharing is through a formal Sharing Agreement (under the Sharing of Church Buildings Act 1969 ("the Sharing Act")). In either case, where there is a shared use of a place of worship by two or more churches covered by the Sharing Act, all the churches would need to agree (opt in) for the premises to be used for same sex marriages. One church that did not wish to participate (opt in) could allow the other church to use the building for this purpose, but if they wish they could also stop them from doing so. As with other situations all parties would need to opt in, so it cannot happen by default or accident. Many independent churches which share premises will not be covered by the Sharing Act and so they need to check whether they are covered if they are relying on the protection of the 2013 Act.

Where churches are applying to hire a room or take a lease on a property, they should note that it is illegal, under the Equality Act 2010, for a private landlord or a public authority to refuse to hire out rooms and facilities or lease properties to individuals and organisations because they support or oppose the marriage of same sex couples. This would apply to churches that held strong convictions on the subject.

8.0 Action churches should take

8.1 State recognised marriages and definition of marriage

There is some concern within churches that, if they continue to solemnise marriages between opposite sex couples, they may be inadvertently accepting the new state-sponsored definition of marriage. Churches can choose not to solemnise marriages at all, expecting couples to obtain a legal marriage certificate through a civil ceremony and then have a church blessing afterwards. However, at present there is no reason why churches cannot provide marriage services just to heterosexual couples, making clear that they are not accepting the new definition of marriage. The biblical definition of marriage is still recognised in law as the 2013 Act still retains all the distinctive elements of heterosexual marriage with union between a man and a woman, including that only a man/woman marriage can be annulled if it is not consummated and that only a man/woman marriage can be dissolved on the fault basis that either party commits adultery (under the 2013 Act these two provisions do not apply to same sex marriages). Some people would believe that by refusing to solemnise same sex marriage, a church is rejecting the state's redefinition of the word "marriage" with respect to same sex marriage.

When weddings take place in church premises, the building has to be a Registered Place of Worship under the Places of Worship Registration Act 1855 and also registered for the solemnisation of marriages. This is a state-recognised marriage, even though the ceremony is carried out by church leaders (provided that a Registrar or an Authorised Person is present to register the marriage). Some churches are concerned that having a state-recognised marriage is somehow accepting the redefinition of marriage. They would therefore promote a religious marriage service recognised by the church, but not the state. However, this will not be a legally recognised contract, and, without a legally recognised marriage, they would appear to those outside the church as being unmarried, and would not be married so far as the law is concerned. In consequence there would also be no joint legal ownership of one another's possessions and common law marriage does not exist in English law, which may cause complications with children, ownership and inheritance.

8.2 Conducting weddings

As stated above there is no problem with stating the traditional Christian view of marriage in a wedding service. There is also a great deal of flexibility on the wording which can be used in a wedding ceremony. There are only two compulsory vows, using the required form of words, that are required by law in any wedding service. The first is a declaration by both parties that they know of no legal reason why they cannot marry the other. The second is a contractual statement that each party takes the other as their wedded wife/husband. There was no reason for the legal vows to change under the new law, as the vows a person makes are tailored to the sex of the person they are marrying, through the use of the word "husband" or "wife".

It is also acceptable for statements to be made during the service about the traditional view of marriage, that it is the union of one man and one woman according to both the Word of God and the law of the land. The Christian Institute have helpfully suggested 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 at a wedding in Cana of Galilee and is distinctly recognised within the law of this country.”

8.3 Doctrinal and church practices

Although at present there is no requirement for churches and ministers within the 2013 Act to give evidence of their doctrinal beliefs in relation to same sex marriage, for them to be able to refuse to allow the building to be used for same sex marriage ceremonies, it is recommended that churches set out clearly in their written doctrinal statement, and teach, what they believe to be the biblical basis for marriage. This is especially important for churches to come within the protection of the 2013 Act. Many churches will already have statements of doctrine, but often these do not contain specific definitions of marriage. Clear definitions should be drawn up and resolutions passed by the church and/or trustees of the charity to set out the biblical definition of marriage. Often the simplest way of dealing with this is to refer to the authority of scripture and clarify the definition of marriage in relation to this. Suggested wording is as follows:

“Having regard to [refer to the church’s doctrines which hopefully acknowledges the divine inspiration of the Bible and its trustworthiness, authority etc in all matters of faith and conduct] the Church’s policy on all matters in relation to marriage which govern the Church’s decisions and conduct is that, in accordance with the Biblical injunction and model for marriage, it is a relationship given by God reflecting the relationship between Jesus Christ and His Church for the good of mankind, as laid down in Genesis 2:24, Mark 10:6-9, Ephesians 5:22-33, 1 Timothy 3:2 and elsewhere in the Bible, and it is restricted to the union of one man and one woman, who commit in love to one another [for life] to the exclusion of all others.”

Further biblical references can be found in the Additional information section below.

For those churches that do not have written doctrines, it is recommended that such documents are drawn up and adopted by the church. They should include a clear biblical and unambiguous statement as to its definition of marriage. The church doctrines should be easily accessible for members of the church, as well as the public or anyone who wishes to know. This can be achieved by displaying them at the premises and showing them on the church’s website. The doctrines should be consistently taught within the church and applied across church life. In setting out the definition of marriage, it is recommended that no reference is made to the 2013 Act or even of the concept of same sex marriage, as this can appear negative and reactionary. Any biblical definition should state positively what the Bible says about marriage and celebrate the doctrinal understanding of marriage as the inheritance of the Christian faith through two millennia of biblical scholarship and teaching. Not only should the doctrine be clear, unambiguous and publicly available in its statement on the doctrine of marriage, but this doctrine, along with other doctrines held by the church need to be positively subscribed to by trustees, leaders and membership of the church, so that the church not only have grounds for stopping same sex marriage ceremonies, but can also exercise discipline with those that act against the doctrinal basis of the church.

Where a charity’s governing document, which was in place before 13th March 2014, refers to “marriage”, under the law this continues to be understood to be between a man and a woman only. Any mention of marriage in existing Trust Deeds or other governing documents created prior to 13th March 2014 is not deemed to include same sex marriage, as the legal definition of marriage at the time the document was written only included opposite sex couples.

8.4 Property trustees

As stated above trustees of places of worship are “proprietors” of the place of worship and therefore need to be included with any opt in for the building to be used for same sex marriage ceremonies. Often for historical reasons, the trustees of church premises hold them under Trusts which relate only to the premises and are separate from the Trust governing the church membership, which has its own separate Trust and trustees. Trustees of the church premises, whether they are holding the property under a separate property Trust or under a church membership Trust, need to make clear to any occupying church that they are the proprietors in relation to the 2013 Act. For a building to be registered for the solemnising of same sex marriages there needs to be an additional or separate registration process from the solemnisation of opposite sex marriages. The building (or the relevant part of the building) must already be certified as a Registered Place of Worship (as mentioned in section 4.2 above). The application must be made by the proprietor or trustee(s) of the building to the Superintendent Registrar. The application to be registered as a place for the solemnization of marriages must be accompanied by a certificate demonstrating the consent of the relevant governing authority. It can be seen that the property trustees are integrally involved with the process and that it cannot happen without their agreement.

Where a place of worship is held under a separate Property Trust in many cases there are doctrines set out in the Trust, to which any occupying church needs to adhere. If there are no doctrines set out in the Trust, property trustees may wish to consider adopting appropriate doctrines, including a biblical definition of marriage. Where there are already doctrines, but no clear definition of marriage, this could be added in the same way as set out above.

8.5 Hiring policy

There is a high risk of churches being accused of discrimination when refusing to hire church premises for events connected with same sex marriage celebrations, rather than the marriage ceremony itself. A clear hiring policy is recommended to set out limitations on what activities would be acceptable. The limitations would have to be based on doctrinal beliefs and on activities, rather than people. Helpful guidance on this is shown in the Additional Information section below.

8.6 Dealing with the media

In case the local media asked for the church’s views or someone complains, it may be worthwhile for a church to prepare a statement on the church’s position in respect of marriage. This should be presented in a positive way, expressing the church’s long-held views on the biblical definition of marriage and the fact that the church, like the overwhelming majority of UK churches, is not authorised to conduct same sex marriage ceremonies. It is important to be sensitive to others’ views and not insulting in the language used.

9.0 Additional information

Marriage (Same Sex Couples) Act 2013

<http://www.legislation.gov.uk/ukpga/2013/30/contents/enacted>

Articles 9, 10 & 14 of European Convention on Human Rights or Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 9 - Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of Expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14 - Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Christian Institute's booklet on Same Sex Marriage

<http://www.christian.org.uk/wp-content/downloads/ssm-legal-guide.pdf>

Anthony Collins Solicitors' paper on "Your House, Your Rules The effect of the Equalities Act 2010 on letting out your church buildings"

<http://www.anthonycollins.com/sites/default/files/Your%20House%20Your%20Rules.doc>

Evangelical Alliance's Resources for church leaders - Biblical and pastoral responses to homosexuality

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

Evangelical Alliance's paper on Marriage - FAQs

<http://www.eauk.org/current-affairs/politics/upload/Evangelical-Alliance-Marriage-FAQs.pdf>

Further thoughts on the biblical basis for marriage

In the beginning God created Adam and Eve – one man united to one woman (Genesis 2:18-25). Sexual intimacy was enjoyed by Adam and Eve before the Fall and is a gift to humankind. Old Testament scriptures make it clear that the model set out in Genesis 2 is the God-given pattern for marriage (e.g. Genesis 24, Song of Songs, Proverbs 31:10-12). Wherever sexual activity occurs outside of marriage it is presented in a negative light, and the law expressly forbade adultery (Exodus 20:14) and fornication (Exodus 22:16), as well as homosexual sex (Leviticus 18:22 and Leviticus 20:13).

New Testament teaching upholds the teaching of Genesis on marriage; Jesus when asked about divorce refers to Genesis 1-2 (Matthew 19:5-6), making it clear he understood marriage to be a relationship between a man and a woman, where they become one flesh. The Apostle Paul's teaching is that marriage entails a husband-wife relationship (Ephesians 5:22-33). All New Testament references to homosexual sex are negative and indicate that it is sinful (Romans 1:18-32, 1Corinthians 6:9-11 and 1Timothy 1:8-10).

