

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 3: Services and public functions: exceptions

Part 6: Marriage

Gender reassignment: England and Wales: [paragraph 24](#)

Effect

723. [Paragraph 24](#) contains exceptions from the general prohibition of gender reassignment discrimination in section 29 of the Act for the religious solemnisation of marriages.
724. A person with a full Gender Recognition Certificate acquired under the Gender Recognition Act 2004 is able to marry someone of the opposite gender to his or her acquired gender. The Marriage Act 1949 imposes an obligation on a clergyman in the Church of England or a clerk in Holy Orders of the Church in Wales to marry anyone residing in his or her parish, or who fits other stated connection criteria. However, section 5B of that Act contains an exception where the clergyman or clerk reasonably believes one of the parties' gender is acquired under the Gender Recognition Act. The legislation that preceded this Act did not prohibit discrimination because of gender reassignment in the field of public functions. As this Act now prohibits this, [paragraph 24](#) provides an exception for Anglican clergy in England and Wales, as well as those of other faiths in England and Wales whose consent is required to conduct marriages in religious premises registered under the Marriage Act, and others who may solemnise marriages.

Background

725. This paragraph is new. There was previously no prohibition on discriminating against people because of gender reassignment in the exercise of public functions, hence there was no exception in relation to solemnising marriages.

Example

- A clergyman in the Church of England advises an engaged couple that he will not solemnise their marriage as he reasonably believes that one of the couple has acquired his or her gender under the Gender Recognition Act 2004. This would not be unlawful discrimination because of gender reassignment.

Gender reassignment: Scotland: [paragraph 25](#)

Effect

726. [Paragraph 25](#), which applies to Scotland, contains a similar exception to [paragraph 24](#).

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

727. An “approved celebrant” is not obliged to marry a person if he or she reasonably believes the person to have acquired his or her gender under the Gender Recognition Act 2004. An “approved celebrant” is a person defined in the Marriage (Scotland) Act 1977 as a person entitled under that Act to solemnise religious marriages.

Background

728. This paragraph is new. There is currently no prohibition on discriminating against people because of gender reassignment in the exercise of public functions, hence there is no exception in relation to solemnising marriages.

Example

- A Roman Catholic priest, who is recognised as an “approved celebrant” in Scotland, advises an engaged couple that he will not solemnise their marriage as he reasonably believes that one of the couple has acquired his or her legal gender under the Gender Recognition Act 2004. This would not be unlawful discrimination because of gender reassignment.