

## Birmingham City Council Equality Act 2010 Fact sheet

### MARRIAGE AND CIVIL PARTNERSHIPS

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. However, within the Act there are some significant differences and exceptions in terms of the protections for the different groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet looks at the provisions with regard to **MARRIAGE AND CIVIL PARTNERSHIP**. It is part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the nine protected characteristics. For more detailed guidance and information about the provisions, refer to the Equality Act 2010 [Statutory Code of Practice Employment](#).

#### **WHO ARE THE PEOPLE WHO SHARE THE PROTECTED CHARACTERISTIC OF MARRIAGE AND CIVIL PARTNERSHIP?**

People who are legally married or in a registered civil partnership share the protected characteristic of marriage and civil partnership. People, who are single, cohabiting, divorced, or who have had their civil partnership dissolved are not covered by the Act.

#### **Example:**

"An employer offers 'death in service' benefits to the spouses and civil partners of their staff members. A worker who lives with her partner, but is not married to him, wants to nominate him for death in service benefits. She is told she cannot do this as she is not married. Because being a cohabitee is not a protected characteristic, she would be unable to make a claim for discrimination".

Equality Act 2010 [Employment Statutory Code of Practice](#) (p56)

#### **WHAT PROTECTION IS AVAILABLE?**

The Act provides protection against **direct** and **indirect** discrimination because of marriage and civil partnership in the area of **employment** only. Protection does not extend to services, the exercise of public functions or membership of an association:

**Direct Discrimination:** Employees who share this protected characteristic can seek legal redress if they are discriminated against –namely, treated less favourably than another worker because they are married or in a civil partnership.

Marriage and civil partnership is not a protected characteristic in regard to **discrimination by association**<sup>1</sup>, **discrimination by perception**<sup>2</sup> or harassment, although harassment related to civil partnership is in effect, harassment related to sexual orientation<sup>3</sup> and therefore, covered by the harassment provisions<sup>4</sup>.

**Indirect Discrimination:** Employees who share the protected characteristic of marriage and civil partnership are protected from indirect discrimination – i.e. where an apparently neutral provision, criteria or practice puts workers who share this characteristic at a particular disadvantage. For indirect discrimination to take place a number of requirements must be met<sup>5</sup>.

### **ARE THERE ANY EXCEPTIONS?**

In certain circumstances, it is lawful for an employer to require a job applicant or worker to have (or not have), a particular protected characteristic. This is known as “occupational requirement”<sup>6</sup> In the case of marriage and civil partnership the occupational requirement is “not to be married or a civil partner”.

The employer must be able to demonstrate that the requirement is crucial to the nature and context of the work and is a proportionate means of achieving a legitimate aim.

**What about positive action?** - The Act gives employers the option of introducing positive action measures in the workplace. Such measures can be used to address inequality and disadvantage for employees across all of the protected characteristics including marriage and civil partnership.<sup>7</sup>

### **DO PUBLIC BODIES HAVE A DUTY TO PROMOTE EQUALITY FOR PEOPLE WHO SHARE THIS PROTECTED CHARACTERISTIC?**

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity for people of different groups, and foster good relations between people who share the protected characteristic and those who do not.

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<sup>1</sup> **Discrimination by Association** - e.g. A person is discriminated against or harassed because he or she is **associated** with another person who has a protected characteristic.

<sup>2</sup> **Discrimination by perception** – e.g. A person is discriminated against or harassed because he or she is mistakenly thought to share a protected characteristic.

<sup>3</sup> Equality Act 2010 Statutory Code Employment

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Equality Act 2010 Statutory Code Employment

<sup>7</sup> Ibid

For marriage and civil partnership, the duty means having due regard to the need to eliminate discrimination in employment. There is no obligation to advance equality nor a foster good relations as far as this protected characteristic is concerned.

Fulfilling the duty may entail monitoring marriage and civil partnership alongside other protected groups, as part of the Council's existing workforce monitoring arrangements. The duty also means paying due regard to this characteristic when developing and reviewing employment-related policies/practices/procedures, as with other protected characteristics.

### **ARE THERE ANY IMPLICATIONS FOR MARRIAGE AND CIVIL PARTNERSHIP ARISING FROM "THE MARRIAGE (SAME SEX COUPLES) BILL"?**

The Marriage (Same Sex Couples) Bill received Royal Assent on 17 July 2013. The new Act will: -

- allow same sex couples to marry in civil ceremonies
- allow same sex couples to marry in religious ceremonies, where the religious organisation has 'opted in' to conduct such ceremonies and the minister of religion agrees
- protect those religious organisations and their representatives who don't wish to conduct marriages of same sex couples from successful legal challenge
- enable civil partners to convert their partnership to a marriage, if they wish
- enable married individuals to change their legal gender without having to end their marriage

As far as the Equality Act provisions are concerned, there are no obvious implications arising from this new piece of legislation. For more information please visit <https://www.gov.uk/government/publications/marriage-same-sex-couples-bill>

## **Resources and Contacts:**

1. Equality Act 2010 Statutory Code of Practice Employment  
[http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/employercode.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf)
2. EQUALITY ACT 2010: EXPLANATORY NOTES Revised Edition  
(August 2010) Crown copyright 2010
3. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
4. ACAS "The Equality Act – What's new for employers?"  
[www.acas.org.uk/publications](http://www.acas.org.uk/publications)