

## Death and legal family formats in Iceland

by Hrefna Friðriksdóttir <sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

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<sup>1</sup> Professor Hrefna Friðriksdóttir (University of Iceland) is grateful for the useful comments that Erna Kristín Blöndal (PhD student at the University of Iceland) made on an earlier version of the answers in this section of the database.

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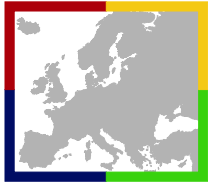
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper 64(2016)*, [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Iceland

The answers concerning Iceland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in Iceland by Hrefna Friðriksdóttir (Section 1)

#### Income, troubles and legal family formats in Iceland by Hrefna Friðriksdóttir (Section 2)

#### Parenting and legal family formats in Iceland by Hrefna Friðriksdóttir (Section 3)

#### Migration and legal family formats in Iceland by Erna Kristín Blöndal (Section 4)

#### Splitting up and legal family formats in Iceland by Hrefna Friðriksdóttir (Section 5)

#### Death and legal family formats in Iceland by Hrefna Friðriksdóttir (Section 6)

So this paper about Iceland is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

#### 6.1 Tenancy continuation

#### 6.2 Property at death

#### 6.3 Inheritance

#### 6.4 Inheritance tax

#### 6.5 Survivor’s pension

#### 6.6 Wrongful death

#### 6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

**6.07 - General background regarding death (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

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Jurisdiction: **Iceland**

Source: **H. Friðriksdóttir**, "Death and legal family formats in Iceland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IS-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.01 - Tenancy continuation**

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 Yes 2010	2015 Yes 1994	2015 Yes 2006
	N/A 0000		Yes 1996	? 0000	? 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 45 of the Rent Act no. 36/1994.		<b>References to legal sources:</b> Art. 45 of the Rent Act no. 36/1994.  Art. 141 of the Marriage Act no. 31/1993, as amended by law no. 65/2010, in force from 27 June 2010 introducing marriage equality.		<b>References to legal sources:</b> Art. 45 of the Rent Act no. 36/1994.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            If a tenant dies before the end of the rental period, the tenant's surviving spouse shall be permitted to take over the lease with its rights and obligations unless the landlord presents valid reasons why they should not do this.</p>		<p><b>Explanations and nuances:</b>            The Icelandic Registered Partnership Act no. 87/1996 came into effect on 27 June 1996, allowing same-sex partners to register their partnership with the same effects regarding dissolution as for marriage. This Act was repealed by law no. 65/2010 which introduced marriage equality, in force from 27 June 2010. Since the Registered partnership Act no. 87/1996 was repealed it is impossible to enter into a registered partnership. According to art. 141 of the Marriage Act no. 31/1993, as amended by law no. 65/2010, it is possible for already registered partners to change their partnership into marriage. This does not happen automatically and registered partners are not obliged to do this. According to art.141(3) registered partnerships established under Act no. 87/1996 have the same legal consequence as marriages. The provisions in the Rent Act on spouses therefore also applies to registered partners.</p>		<p><b>Explanations and nuances:</b>            Art. 45 of the Rent Act also applies to family members who were members of the tenant's household at the time of his death. There are no legal precedents as to how this would have applied to different-sex cohabitants before that time.</p> <p>Same-sex cohabitation was effectively introduced by law no. 65/2006, in force from 27 June 2006. Before that there was some doubt as to whether art. 45 could apply to same sex partners.</p>	

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Section: **6 - Death**

Question: **6.02 - Property at death**

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? (In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No, but 0000	2015 No, but 2010	2015 N/A 0000	2015 No, but 2010	2015 No, but 1981	2015 No 2006
	N/A 0000		No, but 1996	No 0000	No 0000
			N/A 0000		
<b>References to legal sources:</b> Chapter VIII and art. 103 of the Marriage Act no. 31/1993.  Act on Estate Execution no. 20/1991.		<b>References to legal sources:</b> Chapter VIII and art. 103 of the Marriage Act no. 31/1993.  Act on Estate Execution no. 20/1991.  Art. 141 of the Marriage Act, as amended by law no. 65/2010, in force from 27 June 2010.		<b>References to legal sources:</b> There are no laws on cohabitation.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The property of a spouse, acquired before or during a marriage, can be either his/her matrimonial property or separate property. In the absence of a marriage settlement, or specific provisions to the contrary, the property of a spouse shall become his or her matrimonial property. "No but" because it has to be mentioned that even though property is not considered joint, a general principle of division by half applies when one partner dies. According to art. 103 each of the spouses has a claim to one half of the net matrimonial property of the other, provided other statute provisions do not lead to a different arrangement.</p>		<p><b>Explanations and nuances:</b>                      The Icelandic Registered Partnership Act no. 87/1996 came into effect on 27 June 1996, allowing same-sex partners to register their partnership with the same effects regarding dissolution as for marriage. This Act was repealed by law no. 65/2010 which introduced marriage equality, in force from 27 June 2010. Since the Registered Partnership Act no. 87/1996 was repealed it is impossible to enter into a registered partnership. According to art. 141 of the Marriage Act no. 31/1993, as amended by law no. 65/2010, it is possible for already registered partners to change their partnership into marriage.</p> <p>This does not happen automatically and registered partners are not obliged to do this. According to art.141(3) registered partnerships established under Act no. 87/1996 have the same legal consequence as marriages.</p>		<p><b>Explanations and nuances:</b>                      Each cohabiting partner is first and foremost considered the owner of all property he/she acquires during the cohabitation. It is possible to acknowledge joint ownership if the other partner is found to have contributed directly or indirectly to the acquisition of said property. Leading principle is Supreme Court Judgement of 4 February 1981, H. 1981:128.</p> <p>Cohabitation has evolved since before and around the middle of the 20th century, gradually attaching legal rights and obligations to some forms of non marital cohabitation. Until 2006 such legal provisions in general only applied to different-sex partners, with a few exception. Law no. 65/2006, in force from 27 June 2006, amending numerous laws, effectively introduced cohabitation equality as the general rule.</p>	



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Section: **6 - Death**

Question: **6.03 - Inheritance**

When one partner dies without testament, is the other partner then an inheritor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 Yes 2010	2015 No 0000	2015 No 2006
	N/A 0000		Yes 1996		No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 2 and 3 of the Inheritance Act no. 8/1962.		<b>References to legal sources:</b> Art. 2 and 3 of the Inheritance Act no. 8/1962. See also 6.02.		<b>References to legal sources:</b> No law.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            The spouse of a deceased person inherits one third of the estate left by the deceased if the deceased is survived by children. If a deceased person does not leave any surviving descendants, his or her spouse inherits the entire estate.</p>		<p><b>Explanations and nuances:</b>            See explanations for questions 6.02.</p>		<p><b>Explanations and nuances:</b>            There are no statutory rules on inheritance for cohabitants.</p>	

Jurisdiction: **Iceland**

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Section: **6 - Death**

Question: **6.04 - Inheritance tax**

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1984	2015 Yes 2010	2015 N/A 0000	2015 Yes 2010	2015 Yes, but 1984	2015 Yes, but 2006
No 0000	N/A 0000		Yes 1996	No 0000	? 1984
			N/A 0000		No 0000
<b>References to legal sources:</b> Art. 2 of the Inheritance Tax Act no. 14/2004, in force from 1 April 2004.		<b>References to legal sources:</b> Art. 2 of the Inheritance Tax Act no. 14/2004, in force from 1 April 2004.  Art. 141 of the Marriage Act, as amended by law no. 65/2010, in force from 27 June 2010.		<b>References to legal sources:</b> Art. 2 of the Inheritance Tax Act no. 14/2004, in force from 1 April 2004.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Inheritance tax exemption for spouses was introduced by law no. 83/1984, replaced by the current law from 2004.</p>		<p><b>Explanations and nuances:</b>            Provisions relating to spouses apply directly to registered partners.</p>		<p><b>Explanations and nuances:</b>            Yes but because a cohabiting partner is only exempt from paying inheritance tax if he/she inherits in accordance with a testament where the deceased partner clearly names the other as a cohabiting partner.</p>	

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Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?  
 (For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 Yes 2010	2015 Yes, but 0000	2015 Yes, but 2006
	N/A 0000		Yes 1996		No 0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b>            Art. 6 of the Social Assistance Act no. 99/2007, in force from 30 May 2007.</p> <p>Art. 11 and 16 of the Act on Mandatory Pension Insurance and on the Activities of Pension Funds no. 129/1997, in force from 1 July 1998.</p>		<p><b>References to legal sources:</b>            Art 6 of the Social Assistance Act no. 99/2007, in force from 30 May 2007.</p> <p>Art 11 and 16 of the Act on Mandatory Pension Insurance and on the Activities of Pension Funds no. 129/1997, in force from 1 July 1998.</p> <p>Art. 141 of the Marriage Act no. 31/1993, as amended by law no. 65/2010, in force from 27 June 2010 introducing marriage equality.</p>		<p><b>References to legal sources:</b>            Art. 6 of the Social Assistance Act no. 99/2007, in force from 30 May 2007.</p> <p>Art. 2 of the Regulation on Death Compensation no. 179/2003.</p> <p>Art 16(3) of the Act on Mandatory Pension Insurance and on the Activities of Pension Funds no. 129/1997, in force from 1 July 1998.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            According to the Social Assistance Act a surviving spouse can be entitled to a special grant payable for six months following a partner's death.</p> <p>Numerous laws on pension funds have existed since before and around the middle of the last century, allowing for survivor pensions.</p> <p>Since 1980 all employees and employers or self-employed persons are obliged to ensure their pension rights through membership in a pension fund from the age of 16 until the age of 70. Membership in a pension fund and payment of pension contributions are prescribed in collective bargaining agreements, taking due account of minimum terms stipulated in the Act on Mandatory Pension Insurance. Contributions can cover both minimum insurance coverage and individual pension savings. In the event that a beneficiary dies before the individual pensions savings are fully paid out, they are divided among his heirs in accordance with the rules of the Inheritance Act (see question 6.03). A pension fund shall also pay a pension to the spouse of a deceased fund member, meeting certain requirements, for a period no shorter than 24 months.</p>		<p><b>Explanations and nuances:</b>            Provisions relating to spouses apply directly to registered partners.</p>		<p><b>Explanations and nuances:</b>            "Yes but" because of special requirements. According to art. 2 of regulation no. 179/2003 art. 6 of the Social Assistance Act is applicable to cohabitants if they have lived together as registered cohabitants (with Registers Iceland) for at least one year before death, or if the cohabitation is registered and they have or are expecting a child together.</p> <p>According to the Act on Mandatory Pension Insurance, a surviving cohabiting partner does not receive a part of pension savings as cohabitants are not heirs in accordance with the Inheritance Act. A surviving cohabiting partner is entitled to a regular pension the same as a spouse, if the cohabitants lived together at a common domicile, had or where expecting a child together or if the cohabitation had been continuous for at least two years.</p>	

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Section: **6 - Death**

Question: **6.06 - Wrongful death**

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 Yes 2010	2015 Yes 1993	2015 Yes 2006
	N/A 0000		Yes 1996	? 0000	? 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 12, 13 and 26 of the Tort Act no. 50/1993, as amended by law no. 37/1999, in force from 1 May 1999.		<b>References to legal sources:</b> Art. 12, 13 and 26 of the Tort Act no. 50/1993.  Art. 141 of the Marriage Act no. 31/1993, as amended by law no. 65/2010, in force from 27 June 2010 introducing marriage equality.		<b>References to legal sources:</b> Art. 12, 13 and 26 of the Tort Act no. 50/1993.	



Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            In case of wrongful death of a spouse the wrongdoer shall pay funeral costs, pay the other spouse for loss of support and pay damages for non-material damage.</p>		<p><b>Explanations and nuances:</b>            Provisions relating to spouses apply directly to registered partners.</p>		<p><b>Explanations and nuances:</b>            There is no general law on cohabitants. Legal protection for cohabitants has been evolving since around the middle of the last century but there are no explicit legal precedents on this issue until the Tort Act came into force.</p> <p>Provisions relating to spouses in the Tort Act also apply to cohabiting different-sex partners without further qualifications or requirements.</p> <p>Cohabitation equality was effectively introduced in 2006 but before that courts could under special circumstances order wrongdoer to pay damages to others who were close to the deceased. No legal precedents exists for same-sex cohabitants.</p>	