

Formalisation of legal family formats in the Netherlands

by Ian Sumner¹

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 1 – Formalisation)

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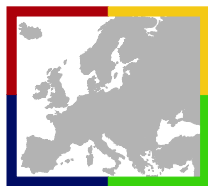


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The six sections of the questionnaire

The [interactive LawsAndFamilies Database](http://www.LawsAndFamilies.eu) is based on the [LawsAndFamilies questionnaire](http://www.LawsAndFamilies.eu), 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. There the user also has access to the [interactive part of the LawsAndFamilies Database](http://www.LawsAndFamilies.eu), 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](http://www.LawsAndFamilies.eu) 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.

The [Guidance document](http://www.LawsAndFamilies.eu) 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](http://www.LawsAndFamilies.eu).

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 the Netherlands

The answers concerning the Netherlands 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):

Formalisation of legal family formats in the Netherlands by Ian Sumner (Section 1)

Income, troubles and legal family formats in the Netherlands by Natalie Nikolina (Section 2)

Parenting and legal family formats in the Netherlands by Natalie Nikolina (Section 3)

Migration and legal family formats in the Netherlands by Ian Sumner (Section 4)

Splitting up and legal family formats in the Netherlands by Natalie Nikolina (Section 5)

Death and legal family formats in the Netherlands by Natalie Nikolina (Section 6)

So this paper is based on **Section 1 (Formalisation)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 1.1 Legal family formats
- 1.2 Two siblings
- 1.3 With resident foreigner
- 1.4 With non-resident foreigner
- 1.5 Two foreigners
- 1.6 Two resident foreigners
- 1.7 Two non-resident foreigners
- 1.8 Start at registry
- 1.9 Start at public authority
- 1.10 Start at religious building
- 1.11 Contract
- 1.12 Statutory contract
- 1.13 Surname
- 1.14 Living together
- 1.15 Sex
- 1.16 General background regarding formalisation
- 1.17 Literature

In the following pages of this paper, first the answers to questions 1.16 and 1.17 are presented, followed by the answers to questions 1.1 to 1.15.

1.16 - General background regarding formalisation (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, constitutional, legal-cultural, religious, etc.) that may be relevant for the understanding of your answers above regarding formalisation, then please do so here.

1.17 - Literature (Open question)

Please list some relevant literature about the family formats concerned, especially in English and/or online (with web links).

A civil marriage is concluded through the exchange of the marriage vows, whereas the registered partnership is concluded through the actual signing of the registered partnership certificate. Although not particularly significant in terms of rights and duties, this is important with respect to the contractual symbolism of the registered partnership.

I. Curry-Sumner, All's well that ends registered?, Antwerp: Intersentia, 2005.

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.01 - Legal family formats**

Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples?

(For the distinction between registered partnership and cohabitation, see section e of the [Guidance for experts answering questions in the questionnaire](#). If there are two or more formats available for informally cohabiting couples, then please mention these formats separately in the explanation to this question.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	2015 Yes 1971	2015 Yes 1979
	No 0000	No 0000	No 0000	No, but 0000	No, but 0000
References to legal sources: Art. 30, Book 1, Dutch Civil Code.		References to legal sources: Art. 80a, Book 1, Dutch Civil Code.		References to legal sources: There is no formal basis for the creation of a cohabitation contract in Dutch law.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Article 1:30 DCC states that civil marriage is possible between persons of the same or different sex. This as amended in 2001 to allow for same-sex couples to enter into a civil marriage. According to Dutch law, only civil marriage is recognised as a legal marital form; religious marriages, although recognised if concluded abroad in a country where such a marriage is legal, are not permitted prior to a civil marriage in the Netherlands (Article 1:68 Dutch Civil Code).</p>		<p>Explanations and nuances: The institution of registered partnership was created on 1st January 1998. This institution is open to both different-sex and same-sex couples. This has always been the case, and still is the case, despite amendments and review by the Dutch Government.</p>		<p>Explanations and nuances: According to Dutch family law, two formal relationship forms co-exist (namely civil marriage and registered partnership). Cohabitation is a family form that remains informal and outside the realm of family law. This can, however, be formalised through the signing of a cohabitation contract. Despite this possibility, the law often only refers to lasting common household or life companion (see W. Schrama in: K. Boele-Woelki et al (eds), <i>European Family Law in Action Volume V: Informal Relationships</i>, Intersentia, 2015; and K. Waaldijk (2005) <i>More or less together: levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners</i>, Paris: Institut National d'Études Démographiques, p. 138-139, http://hdl.handle.net/1887/12585).</p> <p>The cohabitation contract itself is regulated according to the rules of contract law, rather than the rules of family law. Nonetheless, the existence of a cohabitation contract can have important consequences in the field of family law, despite not being regulated by it. Perhaps the easiest example to illustrate this difference is the principle of monogamy. According to Dutch family law, formal relationships adhere to the principle of monogamy. A person may only be involved in one formal relationship form at any given time. A cohabitation contract, on the other hand, is regulated by contract law and may exist with different people at the same time.</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.02 - Two siblings**

Is starting this type of relationship legally possible for two siblings?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2001	2015 No 1998	2015 No 1998	2015 Yes, but 0000	2015 Yes, but 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 41, Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(5), Book 1, Dutch Civil Code.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: All those related to each other by blood or affinity in the ascending sort descending line, or related to each other as brother and sister, brothers or sisters are prohibited from entering into a civil marriage with one another.</p>		<p>Explanations and nuances: The prohibition on sibling marriage has been duly copied for registered partnerships.</p>		<p>Explanations and nuances: A cohabitation contract is simply a contract dealing with the property rights of the parties concerned. As a result, it is regulated entirely by contract law, rather than family law. Accordingly, the contract itself may be entered into by anyone who has contractual capacity. Being related to each other in the prohibited degrees of relationship for marriage and registered partnership, does not prevent this sort of contract from taking place.</p> <p>Outside of cohabitation contracts, any two people can live together, including siblings. Nonetheless, the majority of specific provisions do not apply to cohabiting relatives (W. Schrama, <i>ibid</i>, p. 75).</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.03 - With resident foreigner**

Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country?
 (As to the meaning of "residing", see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1970	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	X	X
? 0000	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to this provision, parties wishing to get married must first notify the civil registrar of their intention to get married. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that both parties are living in the Netherlands.</p>		<p>Explanations and nuances: According to this provision, parties wishing to enter into a registered partnership must first notify the civil registrar of their intention to do so. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that both parties are living in the Netherlands.</p>			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.04 - With non-resident foreigner**

Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1970	2015 Yes 2001	2015 Yes 2001	2015 Yes 2001	X	X
? 0000	N/A 0000	No, but 1998	No, but 1998	X	X
		N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to this provision, parties wishing to get married must first notify the civil registrar of their intention to get married. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands.</p>		<p>Explanations and nuances: According to this provision, parties wishing to enter into a registered partnership must first notify the civil registrar of their intention to do so. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands.</p> <p>A foreigner without "residence entitlement" (verblijfstitel) could not enter into a registered partnership from 1998-2001. This will have excluded most non-resident foreigners, but arguably not most non-resident EU citizens.</p> <p>See also K. Waaldijk (2005) More or less together: levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same0sex partners, Paris: Institut National d'Études Démographiques, p. 150, http://hdl.handle.net/1887/12585.</p>			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.05 - Two foreigners**

Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1970	2015 Yes 2001	2015 Yes 2001	2015 Yes 2001	X	X
? 0000	N/A 0000	No, but 1998	No, but 1998	X	X
		N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to this provision, parties wishing to get married must first notify the civil registrar of their intention to get married. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands. As long as one party legally resides in the Netherlands, the nationality of the parties is not relevant.</p>		<p>Explanations and nuances: According to this provision, parties wishing to enter into a registered partnership must first notify the civil registrar of their intention to do so. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands. As long as one party legally resides in the Netherlands, the nationality of the parties is not relevant.</p>			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.06 - Two resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1970	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	X	X
? 0000	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to this provision, parties wishing to get married must first notify the civil registrar of their intention to get married. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands. As long as one party legally resides in the Netherlands, the nationality of the parties is not relevant.</p>		<p>Explanations and nuances: According to this provision, parties wishing to enter into a registered partnership must first notify the civil registrar of their intention to do so. If they wish to do so, they must do so in the municipality where one of them is living. This provision therefore provides for a rule for the situation that only one of the parties is resident in the Netherlands. As long as one party legally resides in the Netherlands, the nationality of the parties is not relevant.</p>			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.07 - Two non-resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 1970	2015 No 2001	2015 No 1998	2015 No 1998	X	X
? 0000	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1, Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			
Explanations and nuances: As the provision deems it necessary that one of the parties is resident in the Netherlands, then this particular part of the provision cannot apply. The possibility is available for those couples, both of whom live outside of the Netherlands to enter into a marriage, but in this case at least one of the parties must be in possession of Dutch nationality.		Explanations and nuances: As the provision deems it necessary that one of the parties is resident in the Netherlands, then this particular part of the provision cannot apply. The possibility is available for those couples, both of whom live outside of the Netherlands to enter into a registered partnership, but in this case at least one of the parties must be in possession of Dutch nationality.			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.08 - Start at registry**

Can you legally start this type of relationship at the registry of births, marriages and deaths (État civil, Standesamt)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 43(1), Book 1 Dutch Civil Code.		References to legal sources: Art. 80a(4), Book 1, Dutch Civil Code.			
Explanations and nuances: Those persons wishing to enter into a marriage, must do so by making their desire known to the civil registrar. The process of getting married therefore must commence with the civil registrar.		Explanations and nuances: Those persons wishing to enter into a registered partnership, must do so by making their desire known to the civil registrar. The process of registering a partnership therefore must commence with the civil registrar.			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.09 - Start at public authority**

Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2001	2015 No 1998	2015 No 1998	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances: All marriages must be registered before the civil registrar.		Explanations and nuances: All registered partnerships must be registered before the civil registrar.			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.10 - Start at religious building**

Can you legally start this type of relationship at a church, synagogue, mosque or other religious building?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2001	2015 Yes, but 1998	2015 Yes, but 1998	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 1:68, Book 1, Dutch Civil Code.		References to legal sources:			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A religious marriage must always first be preceded by a civil marriage.</p>		<p>Explanations and nuances: Religious partnership registrations are theoretically possible prior to a civil partnership registration (but they would have no legal effect). Art. 68, Book 1, Dutch Civil Code is not applied analogously to registered partnerships. In practice there are no religious institutions in the Netherlands that perform religious registered partnerships. Therefore, although the law permits such registrations, this is a purely theoretical possibility.</p>			

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.11 - Contract**

Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? (Think of prenuptial contracts and cohabitation contracts.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	2015 Yes 0000	2015 Yes 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Title 6 and 8, Book 1, Dutch Civil Code.		References to legal sources: Art. 80b, Book 1, Dutch Civil Code.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: On the basis of the provisions of Book 1, Dutch Civil Code, the parties to a marriage may depart from the statutory matrimonial property regime by means of marital contracts. When marriage was opened to couples of the same-sex, these provisions were applied to same-sex couples. Currently proposals are before the Dutch Parliament to amend the statutory regime of matrimonial property, which would also bring changes to the law applicable to marital contracts. However, these changes will affect marriages regardless of the sex of the parties to the marriage.</p>		<p>Explanations and nuances: This provision declares Titles 6, 7 and 8, Book 1, Dutch Civil Code applicable to registered partnerships. As a result, the provisions related to marital contracts is equally applicable to registered partnerships.</p>		<p>Explanations and nuances: The cohabitation contract is in its very essence a contract between the parties to regulate the property affairs of the parties. As a result, this is not regulated in the family law provisions of the Civil Code, but is simply based on the contractual law provisions of the Civil Code.</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.12 - Statutory contract**

Are there specific statutory rules regarding such a contract?

(See question 1.11 about the possibility for the partners to make a contract to organise their relationship.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Yes 1998	2015 Yes 1998	2015 No 0000	2015 No 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Title 8, Book 1, Dutch Civil Code.		References to legal sources: Art. 80b, Book 1, Dutch Civil Code, in conjunction with Title 8, Book 1, Dutch Civil Code.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: As already stated in the answer to the previous question, if parties wish to depart from the statutory rules on matrimonial property, they are allowed to draft marital contracts. In Title 8 a number of standard provisions are included. However, these provisions only provide for a framework and may be departed from entirely.</p>		<p>Explanations and nuances: As already stated in the answer to the previous question, if parties wish to depart from the statutory rules on partnership property, they are allowed to draft partnership property contracts. In Title 8, a number of standard provisions are included. However, these provisions only provide for a framework and may be departed from entirely. These provisions are declared equally applicable to registered partnerships by virtue of Art. 80b, Book 1, Dutch Civil Code.</p>		<p>Explanations and nuances: As cohabitation contracts are governed by contract law, parties are entirely free to draft their contracts according to their own desires.</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.13 - Surname**

Can (or must) one partner use or have the surname of the other partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 Yes, but 2001	2015 Yes, but 1998	2015 Yes, but 1998	2015 No 0000	2015 No 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 9(1) (as well as art. 9(3)), Book 1, Dutch Civil Code.		References to legal sources: Art. 9(1) (as well as Art. 9(3)), Book 1, Dutch Civil Code.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The first provision provides that a woman may use the name of her spouse. Since 1998, article 9(3) gives the same right to a man. The use of the surname is limited to (a) instead of her own name, (b) in combination with her own surname and in front of it, (c) in combination with her own surname and after it. She is also entitled not to use it and retain her own surname. It is also important to note here, that the use of the spouse's name, is simply the ability to use the surname, and does not actually change her name in official documents. The passport, ID card, driving licence etc will all continue to contain her official name, although these may make reference of the new surname to be used.</p>		<p>Explanations and nuances: These provisions refer to registered partners in exactly the same way as married couples. Therefore, registered partners are entitled to use each others name in the same way as married partners.</p>		<p>Explanations and nuances: Art. 9, Book 1, Dutch Civil Code only refers to the use of surnames by spouses and registered partners. This means that if a non-formalised relationship form uses each others names, this use will in fact be unlawful.</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.14 - Living together**

Do partners in this type of relationship have a duty to live together in the same house?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 2001	2015 No 2001	2015 No 2001	2015 No 2001	2015 Yes, but 1979	2015 Yes, but 1979
Yes 0000	N/A 0000	Yes 1998	Yes 1998	No, but 0000	No, but 0000
		N/A 0000	N/A 0000		
References to legal sources: Art. 83 (old), Book 1, Dutch Civil Code.		References to legal sources: Art. 83 (old), in conjunction with art. 80b, Book 1, Dutch Civil Code.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Up until 2001, it was Dutch law that married couples needed to live in the same house. This law was repealed in 2001. Although this was also the same year that same-sex couples were permitted to marry, there was a period of a few weeks when the cohabitation requirement still applied to same-sex couples (i.e. from 1st April until 22n May 2001).</p>		<p>Explanations and nuances: Up until 2001, it was Dutch law that married couples needed to live in the same house. This law was repealed in 2001. As a result, when registered partnerships were created in 1998, the cohabitation requirement also applied to registered partnerships for the first few years of the creation of the institution.</p>		<p>Explanations and nuances: There is no statutory condition for couples to cohabit, however the nature of the contract is such that the couples draft such instruments when deciding to cohabit.</p> <p>In fact, for quite a lot of legislation on cohabitation, one of the conditions is that the couple lives together in the same household. The rent law of 1979 is an example (see questions 1.1 and 6.1).</p>	

Jurisdiction: **Netherlands**

Source: I. Sumner, "Formalisation of legal family formats in Netherlands". 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, [LawsAndFamilies-NL-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.15 - Sex**

Does the law require relationships of this type to be sexual or intimate?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 1970	2015 No 2001	2015 No 1998	2015 No 1998	2015 No 0000	2015 No 0000
? 0000	N/A 0000	N/A 0000	N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	
Explanations and nuances: There is no provision in Dutch family law that requires the relationship between the parties to be sexual or intimate. As this rule did not apply to different-sex married couples, such a provision was never applied to couples of the same-sex.		Explanations and nuances: This was never a discussion point when introducing the registered partnership scheme in 1997.		Explanations and nuances: As this is a contractual relationship, rather than a family law matter, this issue has never arisen. The term "life companion" does not seem to imply, a sexual or intimate relationship, and this applies a fortiori for the legislative notion of "lasting joint household".	