

Migration and legal family formats in Sweden

by Hans Ytterberg ¹

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 4 – Migration)

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answers in this section of the database.

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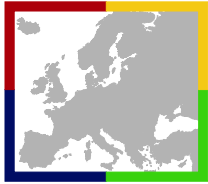


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FamiliesAndSocieties

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. 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.

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 Sweden

The answers concerning Sweden 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 Sweden

by Hans Ytterberg (Section 1)

Income, troubles and legal family formats in Sweden

by Kajsa Walleng (Section 2)

Parenting and legal family formats in Sweden

by Hans Ytterberg (Section 3)

Migration and legal family formats in Sweden

by Hans Ytterberg (Section 4)

Splitting up and legal family formats in Sweden

by Hans Ytterberg (Section 5)

Death and legal family formats in Sweden

by Kajsa Walleng (Section 6)

So this paper is based on **Section 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

4.1 Partner of national citizen

4.2 Partner of national citizen (foreign status)

4.3 Partner of (non-EU) foreigner

4.4 Partner of EU citizen (foreign status)

4.5 Foreign status as impediment to marry

4.6 Foreign status and inheritance

4.7 Citizenship

4.8 Recognition of joint adoption

4.9 Recognition of second-parent adoption

4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

4.10 - General background regarding migration (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 migration, then please do so here.

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Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.01 - Partner of national citizen**

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. 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 0000	2015 Yes 2009	2015 N/A 0000	2015 Yes 1995	2015 Yes 1974	2015 Yes 1988
	N/A 0000		N/A 0000	? 0000	Yes 1974
					? 0000
References to legal sources: Art. 3 of chapter 5 of the Aliens Act (2005:716) [Utlänningslag].		References to legal sources: Art. 3 of chapter 5 of the Aliens Act (2005:716) [Utlänningslag].		References to legal sources: Art. 3 of chapter 5 of the Aliens Act (2005:716) [Utlänningslag].	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Since at least the early 1970s Swedish immigration legislation has not distinguished between married and unmarried couples and also not between same-sex and different-sex couples. The applications of all couples for residence have been considered with respect to the credibility of their relationship. This entitlement / eligibility existed also according to the preceding aliens acts. The Marriage Code (1987:230) [Äktenskapsbalk] was made gender neutral as from 1 May 2009.</p>		<p>Explanations and nuances: Since at least the early 1970s Swedish immigration legislation has not distinguished between married and unmarried couples and also not between same-sex and different-sex couples. The applications of all couples for residence have been considered with respect to the credibility of their relationship. This entitlement / eligibility existed also according to the preceding aliens acts. The Registered Partnership Act (1994:1117) [Lag om registrerat partnerskap] entered into force in 1995 and was open only to same-sex couples. The general rule of the Act was that all statutory law regarding marriage and married couples applies also to registered partnership and registered partners. When the gender neutral Marriage Code entered into force in 2009, the Act was repealed, but remains in force for those couples who had already registered their partnership under Swedish law before 1 May 2009.</p>		<p>Explanations and nuances: Since at least the early 1970s Swedish immigration legislation has not distinguished between married and unmarried couples and also not between same-sex and different-sex couples. The applications of all couples for residence have been considered with respect to the credibility of their relationship. This entitlement / eligibility existed also according to the preceding aliens acts. The Swedish National Federation for LGBT Rights (RFSL) had an active legal assistance service already in the 1970s, and it is therefore with relative certainty that this claim about the legal practice of the immigration authorities as far back as the 1970s can be made. The present Cohabitation Act (2003:376) [Sambolag] is gender neutral. Before 1988 for same-sex couples and before 1974 for different-sex couples there were no statutory rules on cohabitation.</p>	

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.02 - Partner of national citizen (foreign status)**

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

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 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: See question 4.01.		References to legal sources: See question 4.01.			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.03 - Partner of (non-EU) foreigner**

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2009	2015 N/A 0000	2015 Yes 1995	2015 Yes 1974	2015 Yes 1974
	N/A 0000		N/A 0000	? 0000	? 0000
References to legal sources: See question 4.01.		References to legal sources: See question 4.01.		References to legal sources: See question 4.01.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.04 - Partner of EU citizen (foreign status)**

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

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 1989	2015 Yes 1974	2015 Yes 1974
	N/A 0000	N/A 0000	N/A 0000	? 0000	? 0000
References to legal sources: See question 4.01.		References to legal sources: See question 4.01.		References to legal sources: See question 4.01.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Doubt 1998	2015 Yes 1995	X	X
	N/A 0000	N/A 0000	Doubt 1989	X	X
			N/A 0000	X	X
References to legal sources: Art. 4 of chapter 2 of the Marriage Code and art. 1(1) and 7 of chapter 1 of the Certain International Legal Conditions regarding Marriage and Guardianship Act (1904:26 page 1) [Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap].		References to legal sources: Art. 4 of chapter 2 of the Marriage Code and art. 1(1) and 7 of chapter 1 of the Certain International Legal Conditions regarding Marriage and Guardianship Act (1904:26 page 1) [Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap].			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances: The Swedish Registered Partnership Act does not and never did apply to different-sex couples. Whether a foreign registered different-sex partnership would be seen as a legal impediment to marrying someone else in Sweden cannot be answered with certainty, but it is likely, because otherwise Swedish authorities would be party to what could be seen as bigamy in the country of registration. The same reasoning applies to foreign registered same-sex partnerships before the Swedish Partnership Act entered into force in 1995.</p>			

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 Doubt 1998	2015 Yes 1995	X	X
	N/A 0000	N/A 0000	Doubt 1989	X	X
			N/A 0000	X	X
References to legal sources: Art.1 of chapter 3 of the Inheritance Code (1958:637) [Ärvdabalk].		References to legal sources: Art.1 of chapter 3 of the Inheritance Code (1958:637) [Ärvdabalk].			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances: The Swedish Registered Partnership Act does not and never did apply to different-sex couples. Whether a foreign registered different-sex partnership would still be seen as a registered partnership for the purposes of Swedish inheritance law cannot be answered with certainty, but it is likely, because such rules for registered partners and married couples are identical. Whether the same reasoning would have been applied to foreign registered same-sex partnerships before the Swedish Partnership Act entered into force (and thus before registered partnership existed as a legal figure in Sweden) in 1995 is impossible to say with any certainty, but it is less likely, certainly in case of the deceased leaving other relatives behind (also in light of the fact that neither same-sex nor different-sex cohabitants have or ever had any inheritance rights in the absence of a testament).</p>			

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2009	2015 N/A 0000	2015 Yes 1995	2015 Yes 2001	2015 Yes 2001
	N/A 0000		N/A 0000	No 0000	No 0000
References to legal sources: Art. 11-12 of the Swedish Citizenship Act (2001:82) [Lag om svenskt medborgarskap].		References to legal sources: Art. 11-12 of the Swedish Citizenship Act (2001:82) [Lag om svenskt medborgarskap].		References to legal sources: Art. 11-12 of the Swedish Citizenship Act (2001:82) [Lag om svenskt medborgarskap].	
Explanations and nuances: This applies to a foreign partner of a Swedish citizen only. The same applied under preceding Swedish citizenship acts.		Explanations and nuances: This applies to a foreign partner of a Swedish citizen only. The same applied under preceding Swedish citizenship acts.		Explanations and nuances: This applies to a foreign partner of a Swedish citizen only. Under preceding Swedish citizenship acts this only applied to married couples and registered partners.	

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.08 - Recognition of joint adoption**

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1972	2015 Yes 2009	2015 N/A 0000	2015 Yes 2003	2015 ? 0000	2015 ? 0000
Yes, but 0000	N/A 0000		? 1995		
			N/A 0000		
References to legal sources: Art. 3 of the International Legal Conditions regarding Adoption Act (1971:796) [Lag om internatinella rättsförhållnaden rörande adoption].		References to legal sources: Art. 3 and 6 of the International Legal Conditions regarding Adoption Act (1971:796) [Lag om internatinella rättsförhållnaden rörande adoption].		References to legal sources: Art. 3 and 6 of the International Legal Conditions regarding Adoption Act (1971:796) [Lag om internatinella rättsförhållnaden rörande adoption].	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Recognition is automatic if the spouses had their residence in the country of adoption at the time of the decision. Before 1972, however, Swedish citizens (regardless of residence) could not adopt abroad unless the Government had given permission to the adoption in the individual case or had authorised such adoptions in general with respect to the country in which the decision was taken.</p>		<p>Explanations and nuances: Recognition is automatic if the partners had their residence in the country of adoption at the time of the decision. Before 2003, however, registered partners were not allowed to adopt, neither jointly nor individually. Whether the foreign adoption decision would be recognised or not could therefore have depended on if it were to be considered incompatible with Swedish ordre public rules.</p>		<p>Explanations and nuances: Recognition is automatic if the cohabitants had their residence in the country of adoption at the time of the decision. However, under Swedish law only married couples or registered partners may adopt jointly. That possibility is not open to cohabiting couples. So whether the foreign adoption decision would be recognised or not, could therefore depend on if it were to be considered incompatible with Swedish ordre public rules.</p>	

Jurisdiction: **Sweden**

Source: **H. Ytterberg**, "Migration and legal family formats in Sweden". 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-SE-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1972	2015 Yes 2009	2015 N/A 0000	2015 Yes 2003	2015 ? 0000	2015 ? 0000
Yes, but 0000	N/A 0000		? 1995		
			N/A 0000		
References to legal sources: See question 4.08.		References to legal sources: See question 4.08.		References to legal sources: See question 4.08.	
Explanations and nuances: See question 4.08.		Explanations and nuances: See question 4.08.		Explanations and nuances: See question 4.08.	