

Formalisation of legal family formats in the UK: England and Wales

by Brian Sloan ¹

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

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Published by INED, Paris, 2017, www.LawsAndFamilies.eu

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 1 – Formalisation)

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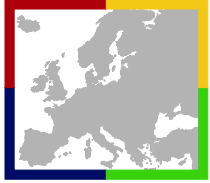


Recommended citation:

B. Sloan, 'Formalisation of legal family formats in the UK: England and Wales', 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 (question 1.x).

Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.



FamiliesAndSocieties

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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 England and Wales

The answers concerning England and Wales 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 UK: England and Wales by Brian Sloan (Section 1)

Income, troubles and legal family formats in the UK: England and Wales by Andy Hayward (Section 2)

Parenting and legal family formats in the UK: England and Wales by Brian Sloan (Section 3)

Migration and legal family formats in the UK: England and Wales by Andy Hayward (Section 4)

Splitting up and legal family formats in the UK: England and Wales by Brian Sloan (Section 5)

Death and legal family formats in the UK: England and Wales by Andy Hayward (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).

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Lowe, N. & Douglas, G. (2015). "Bromley's Family Law" (11th ed). Oxford: Oxford University Press.

Douglas, G. (2016). "The Changing Concept of 'Family' and Challenges for Family Law in England and Wales". In J.M. Scherpe Ed.), "European Family Law: Volume II". Cheltenham: Edward Elgar.

Bainham, A. & Gilmore, S. (2013). "Children: The Modern Law" (4th ed). Bristol: Jordan.

Harper, M. et al (2005). "Civil Partnership: The New Law". Bristol: Jordan.

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 No 0000	2016 Yes 2005	2016 Yes, but 1973	2016 Yes, but 1997
	No 0000		No 0000	No, but 0000	? 1967
					No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Matrimonial Causes Act 1973.</p> <p>Marriage (Same Sex Couples) Act 2013.</p>		<p>References to legal sources: Civil Partnership Act 2004, section 3(1)(e).</p>		<p>References to legal sources: Fair Trading Act 1973, section 77(6).</p> <p>Probert, R. (2012). "The Changing Legal Regulation of Cohabitation From Fornicators to Family, 1600–2010". Cambridge: Cambridge University Press.</p> <p>Sexual Offences Act 1967.</p> <p>Family Law Act 1996, section 62(3)(c).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Most parts of the Marriage (Same Sex Couples) Act 2013 came into force in 2014.</p>		<p>Explanations and nuances: Civil Partnership is a legal near-equivalent of marriage exclusively for same-sex couples, which became available in 2005. It was not extended to opposite-sex couples even after the introduction of same-sex marriage.</p>		<p>Explanations and nuances: Cohabitation is inherently informal in England and Wales and not a specific status, albeit that it is recognized for some legal purposes. Probert ("The Changing Legal Regulation of Cohabitation From Fornicators to Family, 1600–2010") notes that "during the First World War allowances and pensions were paid to women who had been dependent on soldiers (referred to in the records as 'unmarried wives'), and, in its wake, an unemployed man was temporarily allowed to claim an allowance for a woman living with him 'as his wife'. From 1927, however, this explicit recognition of those living together ceased, and was not resumed for many years" (p. 110). She then charts the increasing statutory recognition of heterosexual cohabitation (albeit on a patchy basis) during the 1970s.</p> <p>Private sexual activity between consenting males was illegal until the implementation of the Sexual Offences Act 1967.</p> <p>For examples of early recognition of same-sex cohabitants (in 1999), see questions 2.4 (care between partners) and 6.1 (tenancy continuation). A same-sex couple would have been regarded as a member of the same "household" for the purposes of the protection against domestic violence in the Family Law Act 1996 (see question 2.7).</p>	

Jurisdiction: **UK: England and Wales**

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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
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: Matrimonial Causes Act 1973, section 11(a)(i).		References to legal sources: Civil Partnership Act 2004, section 3(1)(d).		References to legal sources: Inheritance (Provision for Family and Dependants) Act 1975, section 1(1A)-(1B).	
Explanations and nuances: Two siblings would be within the prohibited degrees of relationship, and any marriage between them would be void.		Explanations and nuances: Two siblings would be within the prohibited degrees of relationship, and any civil partnership between them would be void.		Explanations and nuances: There is nothing to stop two siblings from living together informally, but they would not be recognised as "cohabitants" for legal purposes because the relevant legislation tends to refer to people living as spouses or as civil partners of each other: see, e.g., Inheritance (Provision for Family and Dependants) Act 1975, s. 1(1A)-(1B).	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, sections 19-20.		References to legal sources: Civil Partnership Act 2004, section 9A.			
Explanations and nuances: Marriage law does not require citizenship or residency. Particular formalities are, however, imposed upon those subject to immigration control. See www.gov.uk/marriages-civil-partnerships/foreign-national .		Explanations and nuances: Civil partnership law does not require citizenship or residency. Particular formalities are, however, imposed upon those subject to immigration control. See www.gov.uk/marriages-civil-partnerships/foreign-national .			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, sections 19-20.		References to legal sources: Civil Partnership Act 2004, section 9A.			
Explanations and nuances: See question 1.03.		Explanations and nuances: See question 1.03.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, sections 19-20.		References to legal sources: Civil Partnership Act 2004, section 9A.			
Explanations and nuances: See question 1.03.		Explanations and nuances: See question 1.03.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, sections 19-20.		References to legal sources: Civil Partnership Act 2004, section 9A.			
Explanations and nuances: See question 1.03.		Explanations and nuances: See question 1.03.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, sections 19-20.		References to legal sources: Civil Partnership Act 2004, section 9A.			
Explanations and nuances: See question 1.03.		Explanations and nuances: See question 1.03.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage Act 1949.		References to legal sources: Civil Partnership Act 2004.			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
<p>References to legal sources: Marriage and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168.</p> <p>Marriage Act 1949, section 53.</p>		<p>References to legal sources: Marriage and Civil Partnerships (Approved Premises) Regulations 2005, SI 2005/3168.</p> <p>Civil Partnership Act 2004, section 2.</p>			
<p>Explanations and nuances: While marriages can take place in any premises approved for the purpose, civil marriages must be conducted by a superintendent registrar.</p>		<p>Explanations and nuances: While civil partnerships can take place in premises approved for the purpose, the ceremony must be conducted by a civil partnership registrar.</p>			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2010	X	X
	N/A 0000		No 2005	X	X
			N/A 0000	X	X
References to legal sources: Marriage Act 1949. Marriage (Same Sex Couples) Act 2013.		References to legal sources: Civil Partnership Act 2004. Equality Act 2010, section 202.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: As regards opposite-sex marriages conducted by a religious official, additional requirements are imposed on religious organisations other than the Church of England, which is the established church.</p> <p>A religious organisation must specifically "opt in" to conduct same-sex marriages, which would require additional legislation in the case of the Church of England.</p> <p>A religious building can also be an approved premises (see question 1.9), albeit that a civil marriage ceremony must still be conducted by a superintendent registrar.</p>		<p>Explanations and nuances: The prohibition on civil partnerships taking place on religious premises was removed in 2010. That said, the prohibition on the service containing a religious element remains, and the ceremony must still be conducted by a civil partnership registrar.</p>			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2003	2016 Yes, but 2003
	N/A 0000		N/A 0000	Doubt 1975	? 0000
				? 0000	
References to legal sources: Radmacher v Granatino [2010] UKSC 42. Hyman v Hyman [1929] Appeal Cases 601.		References to legal sources: Radmacher v Granatino [2010] UKSC 42. Hyman v Hyman [1929] Appeal Cases 601.		References to legal sources: Sutton v Mishcon de Reya [2003] EWHC 3166 (Ch).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Such agreements are in principle valid if they comply with the general law of contract (Radmacher v Granatino [2010] UKSC 42) but cannot exclude the jurisdiction of the court to redistribute property (Hyman v Hyman [1929] AC 601).</p>		<p>Explanations and nuances: The relevant principles apply equally to civil partnerships as to marriages.</p>		<p>Explanations and nuances: While such agreements may have been void in the past on grounds of public policy, properly concluded contracts are likely to be upheld provided they are not contracts *for* sexual services. The Law Commission has stated in 2007 that "In Tanner v Tanner (No 1) [1975] 1 WLR 1346, the court implied a contractual licence between an unmarried couple, so it seems unlikely that the courts would hold an express contract to be void for illegality." (Law Com 307, Appendix A note 28).</p> <p>The recognition of such agreements between same-sex cohabitants would have been subject to the historical difficulties with such relationships discussed in answers to previous questions.</p>	

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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
2016 Yes, but 1973	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 No 0000	2016 No 0000
? 0000	N/A 0000		N/A 0000		
References to legal sources: Matrimonial Causes Act 1973, sections 34-35. Radmacher v Granatino [2009] EWCA Civ 649.		References to legal sources: Civil Partnership Act 2004, schedule 5, part 13.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Section 34 provides for the basic validity of some such agreements (except for a provision purporting to oust the court's jurisdiction), while section 35 allowed the court to vary them. These provisions were described as "dead letters for more than thirty years" in Radmacher v Granatino [2009] EWCA Civ 649, [134]. It is likely that they were the first statutory provisions specifically dealing with this issue.</p>		<p>Explanations and nuances: The law is substantially the same for civil partnership as for marriage.</p>		<p>Explanations and nuances:</p>	

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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
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 0000	2016 Yes 0000
	N/A 0000		N/A 0000		
References to legal sources: Lowe, N. & Douglas, G. (2015). Bromley's Family Law (11th ed. Oxford: Oxford University Press).		References to legal sources:		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 Lowe and Douglas put it, in England and Wales, "[a]dults may use any surname they choose provided that there is no intention to perpetrate a fraud" (Lowe, N. & Douglas, G. (2015). Bromley's Family Law (11th ed. Oxford: Oxford University Press), 94. There is therefore no obligation for a spouse (or civil partner) to use a partner's name, but he or she may choose to do so.</p>		<p>Explanations and nuances: See under "Marriage".</p>		<p>Explanations and nuances: See under "Marriage".</p>	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 No, but 2005	2016 Yes, but 1973	2016 Yes, but 1997
	N/A 0000		N/A 0000	N/A 0000	N/A 0000
References to legal sources: Radmacher v Granatino [2010] UKSC 42. Sheffield City Council v E [2004] EWHC 2808 (Fam). Matrimonial Causes Act 1973, ss. 1(2)(c)-(e), 18.		References to legal sources: Civil Partnership Act 2004, ss. 44(5)(b)-(d), 57.		References to legal sources: Inheritance (Provision for Family and Dependents) Act 1979, s. 1(1A)-(1B).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Historically, there was a legal duty owed by husbands and wives to live together, and it is expressly provided that an effect of a judicial separation order is that "it shall no longer be obligatory for the petitioner to cohabit with the respondent" (Matrimonial Causes Act 1973, s. 18(1)). That said, any obligation is unlikely to be enforceable (see, e.g., Radmacher v Granatino [2010] UKSC 42). In Sheffield City Council v E [2004] EWHC 2808 (Fam), [131], moreover, it was apparently doubted that "the concept of consortium—the sharing of a common home and a common domestic life" "still has any useful role to play".</p> <p>Even if there is no longer an enforceable legal duty to live together, if a couple do not do so it may provide a basis for divorce: see Matrimonial Causes Act 1973, s. 1(2)(c)-(e).</p>		<p>Explanations and nuances: The relevant law on civil partnerships is essentially the same as that on marriages, except that civil partnerships are a sufficiently modern innovation that "consortium" may be less likely to apply to civil partners. Consistently with this, the removal of an obligation to cohabit is not given as an effect of a separation order (Civil Partnership Act 2004, s. 57), which suggests that no such obligation is imposed upon civil partners in the first place.</p> <p>Note that the term "dissolution" rather than divorce is used in relation to civil partners: Civil Partnership Act 2004, s. 44(5)(b)-(d).</p>		<p>Explanations and nuances: Cohabitation is not recognised as a comprehensive legal status, and therefore there is no general duty for cohabitants to live together. If cohabitants cease to live together, however, they may no longer be considered as such when relevant. For example, for a cohabitant to be eligible to claim provision from the estate of her former partner, she must have been living as a spouse or civil partner of the deceased "for the whole of the period of two years ending immediately before the date when the deceased died" (Inheritance (Provision for Family and Dependents) Act 1973, s. 1(1A)-(1B)).</p>	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Formalisation of legal family formats in UK: England and Wales". 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-UK EW-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
2016 No, but 0000	2016 No, but 2014	2016 N/A 0000	2016 No 2014	2016 Yes, but 1973	2016 Yes, but 1997
	N/A 0000		N/A 0000	N/A 0000	N/A 0000
<p>References to legal sources: Matrimonial Causes Act 1973.</p> <p>Morgan v Morgan [1959] Probate 92.</p>		<p>References to legal sources: Civil Partnership Act 2004.</p>		<p>References to legal sources: Re Watson (deceased) [1999] 1 Family Law Reports 878.</p> <p>Inheritance (Provision for Family and Dependants) Act 1975.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is currently no general duty for spouses to engage in sexual relations.</p> <p>An inability or wilful refusal to consummate an opposite-sex marriage in principle renders it voidable, but the marriage will remain perfectly valid unless and until one of the parties successfully applies for a nullity decree: Matrimonial Causes Act 1973, s. 12(1)(a)-(b). In addition, such an application may be barred if the applicant has led the respondent to believe that she would not rely on non-consummation as a basis for nullity (s. 13(1)), and it is probably not contrary to public policy for at least an older or infirm couple to agree that they will have a "companionate", non-sexual marriage (Morgan v Morgan [1959] P 92).</p> <p>The prohibited degrees of relationship may also imply that marriage is intended to be sexual in nature.</p>		<p>Explanations and nuances: Non-consummation does not render a civil partnership even voidable (Civil Partnership Act 2004, s. 50). The prohibited degrees do apply, however, and this may arguably have the same implication as for marriage.</p>		<p>Explanations and nuances: Because cohabitation is not a comprehensive legal status, there is no general duty for cohabitants to have a sexual or intimate relationships. Such relations were potentially criminal between consenting all-male couples until 1967.</p> <p>That said, in Re Watson (deceased) [1999] 1 FLR 878, it was implied that if a couple never had a sexual relationship they may not qualify as cohabitants for the purposes of the English equivalent of the Inheritance (Provision for Family and Dependents) Act 1975.</p>	