

# Income, troubles and legal family formats in the UK: England and Wales

by Andy Hayward <sup>1</sup>

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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 2 – Income and troubles)

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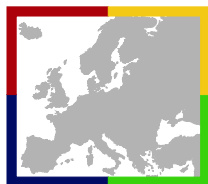


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# FamiliesAndSocieties

## 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](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

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

## About the questionnaire

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

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

## About the answers

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

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

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

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

### The six papers about 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](http://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 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 2.1 Lower income tax
- 2.2 Social benefits
- 2.3 Health insurance
- 2.4 Care between partners
- 2.5 Care for a parent
- 2.6 Next of kin
- 2.7 Domestic violence
- 2.8 Criminal procedure
- 2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

**2.09 - General background regarding income and troubles (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, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

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Jurisdiction: **UK: England and Wales**

Source: **A. Hayward, "Income, troubles and 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK EW-Section2.pdf](#) (please use this full citation when citing any information from this table).**

Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

Can a relationship of this type result in lower income tax than for two individuals without a partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2015	2016 N/A 0000	2016 Yes 2015	2016 No 0000	2016 No 0000
	N/A 0000		No 2005		
			N/A 0000		
<b>References to legal sources:</b> Articles 45 and 46 of Income Tax Act 2007.  Article 11 of Finance Act 2014 entering into force in 2015.		<b>References to legal sources:</b> Articles 45 and 46 of Income Tax Act 2007.  Article 11 of Finance Act 2014 entering into force in 2015.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A person in a marriage is assessed independently for tax purposes. However, since 2015, it has been possible for a married person to transfer a proportion of their personal allowance (which constitutes the amount a person can earn tax-free each tax year) to the other spouse. In order to transfer this allowance:</p> <p>(1) The spouse must be married.                      (2) One must be earning £10,600 (€13,499) or less.                      (3) The other spouse must be a basic-rate taxpayer.                      (4) Both must be born after 6 April 1935.</p> <p>This is termed a 'marriage allowance' and completion of this transfer can save married couples up to £212 (€152).</p> <p>Do note that the provisions enabling same-sex marriage under the Marriage (Same Sex Couples) Act 2013 came into force in 2014 and not simultaneously with the royal assent of the Act.</p>		<p><b>Explanations and nuances:</b>                      Only same-sex couples can form a civil partnership in England and Wales. Therefore the ability to obtain lower income tax would only apply to same-sex couples in a civil partnership.</p> <p>The general rule is that, like married couples, civil partners are assessed separately. However, since 2015 it has been possible for a civil partner to transfer a proportion of their personal allowance (which constitutes the amount a person can earn tax-free each tax year) to the other civil partner. In order to transfer this allowance :</p> <p>(1) The civil partner must be in a civil partnership.                      (2) One must be earning £10,600 (€13,499) or less.                      (3) The other civil partner must be a basic-rate taxpayer.                      (4) Both must be born after 6 April 1935.</p> <p>Despite applying to civil partners, this is nevertheless termed a marriage allowance and completion of this transfer can save civil partners up to £212 (€152).</p> <p>Do note that the provisions enabling civil partnership under the Civil Partnership Act 2004 came into force in 2005 and not simultaneously with the royal assent of the Act.</p>		<p><b>Explanations and nuances:</b>                      The marriage allowance only applies to married couples and civil partners. Cohabitants are assessed separately for income tax purposes. No transferral of allowances is permitted.</p>	

Jurisdiction: **UK: England and Wales**

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Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1992	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1992	2016 Yes 2005
? 0000	N/A 0000		N/A 0000	? 0000	No 0000
<b>References to legal sources:</b> Articles 136 and 137 of Social Security Contributions and Benefits Act 1992.		<b>References to legal sources:</b> Articles 136 and 137 of Social Security Contributions and Benefits Act 1992 as amended by Schedule 24 Paragraph 46 of Civil Partnership Act 2004.  Article 39 of Welfare Reform Act 2012.		<b>References to legal sources:</b> Articles 136 and 137 of Social Security Contributions and Benefits Act 1992 as amended by Schedule 24 Paragraph 46 of Civil Partnership Act 2004.  Article 39 of Welfare Reform Act 2012.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Article 136(1) provides that "where a person claiming an income-related benefit is a member of a family, the income and capital of any member of that family shall, except in prescribed circumstances, be treated as the income and capital of that person".</p> <p>Article 137(1) states that "family" in art 136(1) covers a married couple.</p>		<p><b>Explanations and nuances:</b>                      The provisions of the Social Security Contributions and Benefits Act 1992 were extended to civil partners in 2005. The later Welfare Reform Act 2012 Article 39 makes clear that the meaning of couple covers "two people of the same sex who are civil partners of each other and are members of the same household".</p>		<p><b>Explanations and nuances:</b>                      The provisions originally covered married and unmarried opposite-sex couples only. However, after the introduction of the Civil Partnership Act 2004, this was extended to both civil partners and, as per Schedule 24 para 46(3)(d), for "two people of the same sex who are not civil partners of each other but are living together as if they were civil partners".</p>	



Jurisdiction: **UK: England and Wales**

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Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

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, but 2005	2016 ? 0000	2016 ? 0000
	N/A 0000		N/A 0000		
<b>References to legal sources:</b> National Health Service Act 1977 as amended by the Health and Social Care Act 2012.		<b>References to legal sources:</b> National Health Service Act 1977 as amended by the Health and Social Care Act 2012.		<b>References to legal sources:</b> National Health Service Act 1977 as amended by the Health and Social Care Act 2012.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A distinction must be drawn between public and private health insurance.</p> <p>England and Wales benefits from the National Health Service established in 1946. This means there is no public health insurance in England and Wales as treatment is free. Money used to fund the National Health Service is derived from National Insurance Contributions (banded in classes) which are not assessed according to relationship status.</p> <p>Private health insurance is freely available and a competitive market for consumers. The premiums will be stipulated by the terms of the insurance contract. Whilst many providers sell 'joint medical insurance', it is unclear whether this offers discounted rates (as opposed to what you would get if single) or merely ease of transferring the policy benefits between the couple.</p>		<p><b>Explanations and nuances:</b>                      A distinction must be drawn between public and private health insurance.</p> <p>England and Wales benefits from the National Health Service established in 1946. This means there is no public health insurance in England and Wales as treatment is free. Money used to fund the National Health Service is derived from National Insurance Contributions (banded in classes) which are not assessed according to relationship status.</p> <p>Private health insurance is freely available and a competitive market for consumers. The premiums will be stipulated by the terms of the insurance contract. Whilst many providers sell 'joint medical insurance', it is unclear whether this offers discounted rates (as opposed to what you would get if single) or merely ease of transferring the policy benefits between the couple.</p>		<p><b>Explanations and nuances:</b>                      A distinction must be drawn between public and private health insurance.</p> <p>England and Wales benefits from the National Health Service established in 1946. This means there is no public health insurance in England and Wales as treatment is free. Money used to fund the National Health Service is derived from National Insurance Contributions (banded in classes) which are not assessed according to relationship status.</p> <p>Private health insurance is freely available and a competitive market for consumers. The premiums will be stipulated by the terms of the insurance contract. Whilst many providers sell 'joint medical insurance', it is unclear whether this offers discounted rates (as opposed to what you would get if single) or merely ease of transferring the policy benefits between the couple.</p>	

Jurisdiction: **UK: England and Wales**

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Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1999	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1999	2016 Yes 1999
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.</p>		<p><b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996 as amended by the Civil Partnership Act 2004 Schedule 27 para 151.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.</p>		<p><b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Provided a spouse tells their employer the reason for their absence as soon as reasonably practicable (article 57A(2) Employment Rights Act 1996 as amended), a spouse is entitled to take a reasonable amount of time off work to care for dependants.</p> <p>This is to provide assistance or make arrangements for assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted (see art 57A(1)).</p> <p>Art 57A(3)(a) covers 'spouse' in the definition of dependant.</p>		<p><b>Explanations and nuances:</b>                      Provided a civil partner tells their employer the reason for their absence as soon as reasonably practicable (art 57A(2) Employment Rights Act 1996 as amended), a civil partner is entitled to take a reasonable amount of time off work to care for dependants.</p> <p>This is to provide assistance or make arrangements for assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted (see art 57A(1)).</p> <p>Art 57A(3)(a) as amended by Civil Partnership Act 2004 Schedule 27 para 151 provides that 'civil partner' would be covered by the definition of dependant.</p>		<p><b>Explanations and nuances:</b>                      Cohabitants are not directly covered by these provisions as they refer to spouse or civil partner specifically. However, article 57A(3)(d) provides that a dependant can also include "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder". This would cover individuals in a cohabiting relationship. Articles 57A(4)(a) and (b) and article 57A(5) would prima facie extend protection to individuals in a relationship but who do not live together if that person reasonably relies on the provision of care or arrangement of provision of care by the employee.</p>	

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Section: **2 - Income and Troubles**

Question: **2.05 - Care for a parent**

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1999	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No, but 1999	2016 No, but 1999
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.		<b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.		<b>References to legal sources:</b> Articles 57A and 57B Employment Rights Act 1996.  Schedule 4(2) paragraph 1 Employment Relations Act 1999.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A parent of the employee would be covered (whether they lived with the employee or elsewhere).</p> <p>Where it is the parent of the employee's spouse, this is not directly covered. However article 57A(3)(d) provides that dependant can cover "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder". This would apply if the parent resides with the spouses which is unlikely but possible.</p> <p>Alternatively articles 57A(4)(a) and (b) and article 57A(5) would prima facie extend protection to a spouse's parent who does not live in the household but reasonably relies on the provision of care or arrangement of provision of care by the employee.</p>		<p><b>Explanations and nuances:</b>                      A parent of the employee would be covered (whether they lived with the employee or elsewhere).</p> <p>Where it is the parent of the employee's civil partner, this is not directly covered. However article 57A(3)(d) provides that dependant can cover "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder". This would apply if the parent resides with the civil partners.</p> <p>Alternatively articles 57A(4)(a) and (b) and article 57A(5) would prima facie extend protection to a civil partner's parent who does not live in the household but reasonably relies on the provision of care or arrangement of provision of care by the employee.</p>		<p><b>Explanations and nuances:</b>                      A parent of the employee would be covered (whether they lived with the employee or elsewhere) - the provision is not limited.</p> <p>Where it is the parent of the employee's cohabitant, this is not directly covered.</p> <p>However article 57A(3)(d) provides that dependant can cover "a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder". This would apply if the parent resides with the cohabitants.</p> <p>Alternatively articles 57A(4)(a) and (b) and article 57A(5) would prima facie extend protection to a cohabitant's parent who does not live in the household but reasonably relies on the provision of care or arrangement of provision of care by the employee.</p>	

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Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

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 2005	2016 Yes, but 2005
	N/A 0000		N/A 0000	? 0000	? 0000
<b>References to legal sources:</b> Mental Health Act 1983 as amended by the Mental Capacity Act 2005 and Mental Health Act 2007.		<b>References to legal sources:</b> Mental Health Act 1983 as amended by the Mental Capacity Act 2005 and Mental Health Act 2007.		<b>References to legal sources:</b> Mental Health Act 1983 as amended by the Mental Capacity Act 2005 and Mental Health Act 2007.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      'Next of kin' is not legally defined in England and Wales. The term has been supplemented in some contexts by 'nearest relative' as introduced by the Mental Health Act 1983 (this means that some people can informally be termed 'next of kin' and others as 'nearest relative').</p> <p>In the context of medical decision-making, hospitals will accept spouses as next of kin (whether opposite or same sex). Normally, the patient will stipulate who will be the 'next of kin' upon admission to the hospital. If advance nomination of next of kin cannot be made, some statutory rules may apply such as rules applicable to mental health (see article 26 of the Mental Health Act 1983 providing a hierarchical list of 'nearest relatives' that contribute to decision-making relating to the patient. Spouses are top of this list.</p>		<p><b>Explanations and nuances:</b>                      'Next of kin' is not legally defined in England and Wales. The term has been supplemented in some contexts by 'nearest relative' as introduced by the Mental Health Act 1983 (this means that some people can informally be termed 'next of kin' and others as 'nearest relative').</p> <p>In terms of law, next of kin has no legal meaning but, in the context of medical decision-making, hospitals will generally accept civil partners. Normally, the patient will stipulate who will be the 'next of kin' upon admission to the hospital.</p> <p>If advance nomination of next of kin cannot be made, some statutory rules may apply such as rules applicable to mental health (see article 26 of the Mental Health Act 1983 providing a hierarchical list of 'nearest relatives' that can contribute to decision making. Article 26(2) of the Mental Health Act 2007 amended the Mental Health Act 1983 to include civil partner on the list as a nearest relative. Alongside spouses it is top of the list.</p>		<p><b>Explanations and nuances:</b>                      'Next of kin' is not legally defined in England and Wales. The term has been supplemented in some contexts by 'nearest relative' as introduced by the Mental Health Act 1983 (this means that some people can informally be termed 'next of kin' and others as 'nearest relative').</p> <p>In terms of law, next of kin has no legal meaning but, in the context of medical decision-making, hospitals will generally accept cohabitants as 'next of kin' (particularly in light of the major increase in cohabitation in England and Wales). Normally, the patient will stipulate who will be the 'next of kin' upon admission to the hospital.</p> <p>If advance nomination of next of kin cannot be made, some statutory rules may apply such as rules applicable to mental health. (See article 26 of the Mental Health Act 1983 providing a hierarchical list of 'nearest relatives' that can determine decision making. Cohabitants are also covered provided that the couple has been living together as husband and wife or as civil partners for six months or more. However this provision would not apply if one person in the couple is married to someone else or not permanently separated from them).</p>	



Jurisdiction: **UK: England and Wales**

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Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1997	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1997	2016 Yes 2005
Yes 1976	N/A 0000		N/A 0000	Yes, but 1976	Yes, but 1997
? 0000				? 0000	No 0000
<b>References to legal sources:</b> Family Law Act 1996 Part IV entering into force 1st October 1997.  Domestic Violence, Crime and Victims Act 2004.		<b>References to legal sources:</b> Family Law Act 1996 Part IV as amended by Schedule 9 Civil Partnership Act 2004.  Domestic Violence, Crime and Victims Act 2004.		<b>References to legal sources:</b> Family Law Act 1996 Part IV entering into force 1st October 1997.  Articles 3 and 4 of the Domestic Violence, Crime and Victims Act 2004.  Schedule 9 para 13 Civil Partnership Act 2004.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b> Part IV of the Family Law Act 1996 sets out two types of orders; namely, non-molestation orders and occupation orders. These civil law orders are specific family law protections and should be contrasted against other non-specific protections for family members found in tort law (see the Protection from Harassment Act 1997) or in the criminal law.</p> <p>A non-molestation order prohibits the respondent from molesting another person associated with the respondent or a relevant child. Applications are based on whether the applicant is an 'associated person' and a breach of such an order constitutes a criminal offence. An occupation order declares or regulates the right to occupy the family home. Applications are based on when the applicant is 'entitled' or 'non-entitled'.</p> <p>Spouses and former spouses constitute associated persons under article 62(3) for the purposes of obtaining a non-molestation order. Spouses possess matrimonial home rights under article 30 Family Law Act 1996 and thereby would constitute entitled applicants for the purpose of obtaining an occupation order. Former spouses can apply as non entitled applicants for occupation orders.</p> <p>The Domestic Violence and Matrimonial Proceedings Act 1976 was a precursor the Family Law Act 1996 and enabled an opposite-sex spouse or cohabitant to obtain a non-molestation order (then known as an 'ouster order').</p> <p>Similarly, the Domestic Proceedings and Magistrates Court Act 1978 enabled magistrates to grant an 'exclusion order' against a physically violent spouse.</p>		<p><b>Explanations and nuances:</b> Part IV of the Family Law Act 1996 sets out two types of orders; namely, non-molestation orders and occupation orders. These civil law orders are specific family law protections and should be contrasted against other non-specific protections for family members found in tort law (see the Protection from Harassment Act 1997) or in the criminal law.</p> <p>A non-molestation order prohibits the respondent from molesting another person associated with the respondent or a relevant child. Applications are based on whether the applicant is an 'associated person' and a breach of such an order constitutes a criminal offence. An occupation order declares or regulates the right to occupy the family home. Applications are based on when the applicant is 'entitled' or 'non-entitled'.</p> <p>After Schedule 9 para 13 of the Civil Partnership Act 2004, civil partners and former civil partners constitute associated persons under article 62(3) for the purposes of obtaining a non-molestation order. Following Schedule 9 para 1 civil partners possess home rights under article 30 Family Law Act 1996 and thereby would constitute entitled applicants for the purpose of obtaining an occupation order. Former civil partners can apply as non-entitled applicants for occupation orders following Schedule 9 para 6.</p>		<p><b>Explanations and nuances:</b> Part IV of the Family Law Act 1996 sets out two types of orders; namely, non-molestation orders and occupation orders. These civil law orders are specific family law protections and should be contrasted against other non-specific protections for family members found in tort law (see the Protection from Harassment Act 1997) or in the criminal law. A non-molestation order prohibits the respondent from molesting another person associated with the respondent or a relevant child. Applications are based on whether the applicant is an 'associated person' and a breach of such an order constitutes a criminal offence. An occupation order declares or regulates the right to occupy the family home. Applications are based on when the applicant is 'entitled' or 'non-entitled'.</p> <p>Cohabitants, whether opposite or same-sex, are explicitly covered by these protections. Indeed, Schedule 9 para 13 of the Civil Partnership Act 2004 amends the meaning of cohabitant to expressly encompass same-sex cohabitants. Prior to that provision coming into force, a same-sex cohabitant could obtain protection under the Family Law Act 1996, Article 62(3)(c), but only as someone that lives or has lived in the same household rather than as a same-sex cohabitant per se. This would enable them to access non-molestation orders. See also article 4 of the Domestic Violence, Crime and Victims Act 2004 that extends the concept of associated person to individuals who have or have had an intimate personal relationship with each other which is or was of significant duration.</p> <p>Cohabitants do not obtain matrimonial / home rights under article 30 of the Family Law Act 1996. Unless they have a property law entitlement to occupy the family home, they would only represent non-entitled applicants for the purpose of obtaining an occupation order.</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward, "Income, troubles and 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK EW-Section2.pdf](#) (please use this full citation when citing any information from this table).**

Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1999	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		
<b>References to legal sources:</b> Article 53 of the Youth Justice and Criminal Evidence Act 1999.  Article 80 Police and Criminal Evidence Act 1984.		<b>References to legal sources:</b> Article 53 of the Youth Justice and Criminal Evidence Act 1999.  Article 80 Police and Criminal Evidence Act 1984.  Article 84 and Schedule 27 Civil Partnership Act 2004.		<b>References to legal sources:</b> Article 53 of the Youth Justice and Criminal Evidence Act 1999.  Article 80 Police and Criminal Evidence Act 1984.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A distinction has been drawn between competence and compellability to give evidence.</p> <p>In criminal law, article 53 of the Youth Justice and Criminal Evidence Act 1999 provides that all persons can be competent to give evidence at every stage of criminal proceedings thereby amending the earlier position in the Police and Criminal Evidence Act 1984.</p> <p>A spouse can be compelled to give evidence as a witness for the accused in all cases (unless spouses are charged jointly). A spouse can only be compelled to give evidence for the prosecution in a very limited range of circumstances.</p>		<p><b>Explanations and nuances:</b>                      A distinction has been drawn between competence and compellability to give evidence.</p> <p>For criminal proceedings, civil partners are competent to give evidence. They can be compelled to give evidence for the accused in all cases. Following Schedule 27 para 97 they can only be compelled to give evidence for the prosecution in limited circumstances laid down in article 80 of the Police and Criminal Evidence Act 1984.</p>		<p><b>Explanations and nuances:</b>                      There are no special rules relating to competence or compellability of cohabitants. They are both competent and compellable to give evidence in civil and criminal proceedings.</p>	