

Parenting and 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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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 3 – Parenting)

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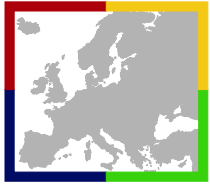


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FamiliesAndSocieties

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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 3 (Parenting)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

3.1 Assisted insemination

3.2 IVF

3.3 Surrogacy

3.4 Legal parenthood

3.5 Parental authority

3.6 Parental leave for both parents

3.7 Parental leave for partners

3.8 Grandparents

3.9 Second-parent adoption

3.10 Joint adoption

3.11 Individual adoption

3.12 General background regarding parenting

3.13 Single parenting

3.14 Multiple parenting

In the following pages of this paper, first the answers to questions 3.12, 3.13 and 3.14 are presented, followed by answers to questions 3.1 to 3.11.

3.12 - General background regarding parenting (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 parenting, then please do so here.

3.13 - Single parenting (Open question)

If there are any developments in legal policy and case law regarding the possibilities of an individual person without a partner to have a child through adoption, medically assisted insemination, and/or IVF, you could indicate that here.

3.14 - Multiple parenting (Open question)

If there are any developments in legal policy or case law regarding possibilities for a child to have more than two parents, you could indicate that here.

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All of these are possible: see Adoption and Children Act 2002, s. 51 in the case of adoption. As regards assisted reproduction, the need for "supportive parenting" must be considered before treatment is provided (Human Fertilisation and Embryology Act 1990, s. 13).

I am not aware of any such developments, although it should be noted that parental *responsibility* can be held by more than two people.

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.01 - Assisted insemination**

Is it legally possible in this type of relationship to become pregnant through medically assisted insemination using sperm of a donor?

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 2009	2016 Yes 0000	2016 Yes 2009
	N/A 0000		Yes, but 2005		Yes, but 1990
			N/A 0000		Yes 0000
References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.		References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.		References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.	
Explanations and nuances: Before the Human Fertilisation and Embryology Act 1990, the position was essentially unregulated and there were no prohibitions.		Explanations and nuances: See under "Marriage". As regards access to treatment between 1990 and 2009, opposite-sex couples were privileged.		Explanations and nuances: See under "Registered partnership".	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.02 - IVF**

Is it legally possible in this type of relationship to become pregnant through in vitro fertilisation (IVF) using donated egg or sperm?

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 2009	2016 Yes 0000	2016 Yes 2009
	N/A 0000		Yes, but 2005		Yes, but 1990
			N/A 0000		Yes 0000
References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.		References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.		References to legal sources: Human Fertilisation and Embryology Act 2008. Human Fertilisation and Embryology Act 1990.	
Explanations and nuances: See question 3.1.		Explanations and nuances: See question 3.1.		Explanations and nuances: See question 3.1.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.03 - Surrogacy**

Is it legally possible for both partners in this type of relationship to become the legal parents of a child through the help of a surrogate mother in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1990	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2009	2016 Yes, but 2009	2016 Yes, but 2009
Yes, but 0000	N/A 0000		Yes, but 2005	Yes, but 2005	Yes, but 2005
			N/A 0000	No 0000	No 0000
<p>References to legal sources: Human Fertilisation and Embryology Act 2008, section 54. Human Fertilisation and Embryology Act 1990, section 30. Surrogacy Arrangements Act 1985.</p>		<p>References to legal sources: Human Fertilisation and Embryology Act 2008, section 54. Human Fertilisation and Embryology Act 1990, section 30. Surrogacy Arrangements Act 1985.</p>		<p>References to legal sources: Human Fertilisation and Embryology Act 2008, section 54. Human Fertilisation and Embryology Act 1990, section 30. Surrogacy Arrangements Act 1985.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A married couple can apply for a "parental order" in order to become legal parents following surrogacy. Before 1990, adoption could in principle have been used to confer parenthood. Commercial surrogacy is in principle prohibited due to restrictions on advertising etc, but is effectively available via the mechanism of retrospective judicial authorisation of payments.</p>		<p>Explanations and nuances: Since 2009, civil partners have been able to apply for a parental order. Before then, adoption could in principle have been used to confer parenthood. See under Marriage on commercial surrogacy.</p>		<p>Explanations and nuances: Since 2009, "two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other" have been able to apply for a parental order. Before then, adoption could in principle have been used to confer parenthood. See under Marriage on commercial surrogacy.</p>	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.04 - Legal parenthood**

When one partner gives birth, will (or can) the other partner then also become legal parent of the child, without having to go through adoption?
 (For example automatically, or by way of recognition/acknowledgement.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2009	2016 Yes 0000	2016 Yes, but 2009
	N/A 0000		No 2005		No 0000
			N/A 0000		
References to legal sources: Human Fertilisation and Embryology Act 2008, section 35. Human Fertilisation and Embryology Act 1990.		References to legal sources: Human Fertilisation and Embryology Act 2008, section 42.		References to legal sources: Human Fertilisation and Embryology Act 2008, sections 36, 43.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If the mother's husband is the biological father, he will be the legal father. If the husband is not the biological father but the biological father and the mother's husband give relevant consent, the husband will become the child's second parent (irrespective of whether the mother is inseminated within a clinic). Section 35 applies to situations where the mother is married at the time of "the placing in her of the embryo or the sperm and eggs or of her artificial insemination", which might include natural intercourse with a third party. Even if it does not, the husband benefits from a presumption of parenthood even if he is not the biological father (which existed before and after 1990), although this could be rebutted where the true biological father had not given a relevant consent. If the mother is married to a woman, and the biological parent and the mother's wife give relevant consent, the wife will become the child's second parent (whether or not treatment has been provided in a clinic). Section 42 applies to situations where the mother is in a same-sex marriage and of "the placing in her of the embryo or the sperm and eggs or of her artificial insemination", which might include natural intercourse with a third party.</p>		<p>Explanations and nuances: If the biological parent and the mother's civil partner give relevant consent, the civil partner will become the child's second parent (whether or not treatment has been provided in a clinic). Section 42 applies to situations where the mother is in a civil partnership and of "the placing in her of the embryo or the sperm and eggs or of her artificial insemination", which might include natural intercourse with a third party.</p>		<p>Explanations and nuances: If a male cohabitant is the biological father, he will be treated as a parent, for example via registration on the child's birth certificate or if necessary a declaration of paternity (although he may have to rebut a presumption if the mother is married to someone else). The "agreed female parenthood" conditions would have to be complied with in order for a same-sex cohabitant to become the second parent without adoption. There are similar provisions for when an unmarried male cohabitant of the mother is not the biological father.</p>	

Jurisdiction: **UK: England and Wales**

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Section: **3 - Parenting**

Question: **3.05 - Parental authority**

Is joint parental authority/responsibility possible for the couple, while only one of the partners is the legal parent of the child?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1991	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1991	2016 Yes 1991
? 0000	N/A 0000		N/A 0000	? 0000	? 0000
References to legal sources: Children Act 1989, especially s. 4A.		References to legal sources: Children Act 1989, especially s. 4A.		References to legal sources: Children Act 1989.	
Explanations and nuances: Parental responsibility for a step-parent can be conferred by virtue of an agreement with all parents with parental responsibility or a court order. Before 2005, such responsibility could be conferred via a residence order.		Explanations and nuances: The law is essentially the same for civil partnership as for marriage.		Explanations and nuances: A "step-parent" is defined in Children Act 1989, s. 4A as a person who is married to, or a civil partner of, a child's parent who has parental responsibility for the child. A partner who does not satisfy this definition would have to apply for a child arrangements order or similar in respect of the child: s. 12.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.06 - Parental leave for both parents**

When both partners are the legal parents of a child, does each partner then have a statutory right to paid or unpaid parental leave?

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, but 1999	2006 Yes, but 2005
No 0000	N/A 0000		N/A 0000	No 0000	N/A 0000
References to legal sources: Maternity and Parental Leave etc. Regulations 1999, reg. 13.		References to legal sources: Maternity and Parental Leave etc. Regulations 1999, reg. 13.		References to legal sources: Maternity and Parental Leave etc. Regulations 1999, reg. 13.	
Explanations and nuances: Reg. 13 imposes a minimum employment period of a year for parental leave.		Explanations and nuances: See under Marriage.		Explanations and nuances: A parent must have or expect to have "responsibility" for a child, which equates to "parental responsibility", or be registered as a parent, to be entitled to parental leave under reg. 13.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.07 - Parental leave for partners**

When only one partner is the legal parent of a child, does each partner then have a statutory right to paid or unpaid parental leave?

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 Yes, but 1999	2016 Yes, but 1999
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
References to legal sources: Maternity and Parental Leave etc. Regulations 1999, regulation 13.		References to legal sources: Maternity and Parental Leave etc. Regulations 1999, regulation 13.		References to legal sources: Maternity and Parental Leave etc. Regulations 1999, regulation 13.	
Explanations and nuances: A parent (whether a parent or not) must have or expect to have "responsibility" for a child, which equates to "parental responsibility" in the case of a non-parent, to be entitled to parental leave under regulation 13.		Explanations and nuances: See under Marriage.		Explanations and nuances: See under Marriage.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.08 - Grandparents**

Do grandparents have a statutory right to visit the children in this type of relationship?

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 No, but 0000	2016 No, but 0000
	N/A 0000		N/A 0000		
References to legal sources: Children Act 1989, Part II.		References to legal sources: Children Act 1989, Part II.		References to legal sources: Children Act 1989, Part II.	
Explanations and nuances: Grandparents have no statutory right to contact, but may in principle apply to the court for a child arrangements order specifying the grandparent as a person with whom the child should have contact.		Explanations and nuances: See under Marriage.		Explanations and nuances: See under Marriage.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.09 - Second-parent adoption**

When only one partner is the legal parent of a child, does the other partner then have the possibility of becoming the child's second parent by way of adoption?

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 2005	2016 Yes 2005
	N/A 0000		N/A 0000	No 0000	No 0000
References to legal sources: Adoption and Children Act 2002, section 51.		References to legal sources: Adoption and Children Act 2002, section 51.		References to legal sources: Adoption and Children Act 2002, section 51.	
Explanations and nuances: Before the implementation of the Adoption and Children Act 2002 (commenced in 2005), it was necessary for the parent and the partner to apply for adoption as a couple, so that the parent had to adopt his or her own child.		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.10 - Joint adoption**

Can partners jointly adopt a child?

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 2005	2016 Yes 2005
	N/A 0000		N/A 0000	No 0000	No 0000
References to legal sources: Adoption and Children Act 2002, section 50.		References to legal sources: Adoption and Children Act 2002, section 50.		References to legal sources: Adoption and Children Act 2002, section 50.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Before the implementation of the Adoption and Children Act 2002 in 2005, only married couples could adopt jointly, but it would have been possible for one partner to adopt as a single applicant and for a joint residence order to be made in favour of one partner.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Parenting 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, [LawsAndFamilies-UK EW-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.11 - Individual adoption**

Can one partner in this type of relationship individually adopt a child?

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 Yes, but 0000	2016 Yes, but 0000
	N/A 0000		N/A 0000		
References to legal sources: Adoption and Children Act 2002, section 51.		References to legal sources: Adoption and Children Act 2002, section 51.		References to legal sources: Adoption and Children Act 2002, section 51.	
Explanations and nuances: A married person cannot individually adopt a child unless his spouse "cannot be found", "the spouses have separated and are living apart, and the separation is likely to be permanent", or "his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order" (Adoption and Children Act 2002, s. 51(3)).		Explanations and nuances: The law is essentially the same for married couples as for civil partners.		Explanations and nuances: The informal relationships of a prospective adopter are not formally relevant to eligibility to adopt, but would be taken into account in the welfare assessment. This would have made it particularly difficult for a person in a same-sex relationship to adopt a child even as an individual for most of the 20th century.	