

Migration and legal family formats in the UK: England and Wales

by Andy Hayward ¹

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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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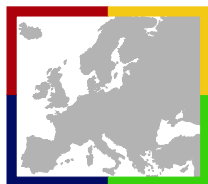


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FamiliesAndSocieties

Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

The six sections of the questionnaire

The interactive LawsAndFamilies Database is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

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

About the questionnaire

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

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

About the answers

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

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

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

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

The six papers about 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 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 4.1 Partner of national citizen
- 4.2 Partner of national citizen (foreign status)
- 4.3 Partner of (non-EU) foreigner
- 4.4 Partner of EU citizen (foreign status)
- 4.5 Foreign status as impediment to marry
- 4.6 Foreign status and inheritance
- 4.7 Citizenship
- 4.8 Recognition of joint adoption
- 4.9 Recognition of second-parent adoption
- 4.10 General background regarding migration

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

4.10 - General background regarding migration (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding migration, then please do so here.

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Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 2000	2016 Yes 2000
	N/A 0000		N/A 0000	No, but 0000	No, but 0000
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If one spouse is lawfully resident in the UK and free from any restriction relating to how long they are permitted to remain (Immigration Rule HC 395 para 5), their spouse will be granted entry provided that they show their marriage is genuine and they intend to live together permanently. They must also show that they can maintain and accommodate themselves (Immigration Rule HC 395 para 281). The conditions for indefinite leave to remain are found in Immigration Rule 287.</p>		<p>Explanations and nuances: If one civil partner is lawfully resident in the UK and free from any restriction relating to how long they are permitted to remain (Immigration Rule HC 395 para 5), their civil partner will be granted entry provided that they show their civil partnership is genuine and they intend to live together permanently. They must also show that they can maintain and accommodate themselves (Immigration Rule HC 395 para 281). The conditions for indefinite leave to remain are found in Immigration Rule 287.</p>		<p>Explanations and nuances: Since 2000 unmarried and same-sex partners have a right to reside in the UK provided they satisfy the requirements in Immigration Rule 295AA. Prior to 2000, acceptance into the country was discretionary. Indefinite leave to stay is determined by Immigration Rule 295H.</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 Yes, but 2000	2016 Yes 2005	X	X
	Yes, but 2005	No, but 1998	Yes, but 2000	X	X
	Yes, but 2001	N/A 0000	No, but 1989	X	X
	N/A 0000		N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>			
<p>Explanations and nuances: The following principles would apply if the marriage contracted abroad was valid.</p> <p>If one spouse is lawfully resident in the UK and free from any restriction relating to how long they are permitted to remain (Immigration Rule HC 395 para 5), their spouse will be granted entry provided that they show their marriage is genuine and they intend to live together permanently. They must also show that they can maintain and accommodate themselves (Immigration Rule HC 395 para 281). The conditions for indefinite leave to remain are found in Immigration Rule 287.</p>		<p>Explanations and nuances: The following principles would apply if the civil partnership contracted abroad was valid.</p> <p>If one civil partner is lawfully resident in the UK and free from any restriction relating to how long they are permitted to remain (Immigration Rule HC 395 para 5), their civil partner will be granted entry provided that they show their civil partnership is genuine and they intend to live together permanently. They must also show that they can maintain and accommodate themselves (Immigration Rule HC 395 para 281). The conditions for indefinite leave to remain are found in Immigration Rule 287.</p> <p>Foreign different-sex civil partners could rely on the provisions for cohabitants. Same-sex civil partners could rely on the same provisions as between 2000 and 2005.</p>			

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2000	2016 Yes, but 2000
	N/A 0000		N/A 0000	No, but 0000	No, but 0000
<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Irrespective of the nationality of the spouse, provided one spouse had indefinite leave to remain and eligibility rules have been satisfied, the other spouse would be eligible to reside.</p>		<p>Explanations and nuances: Irrespective of the nationality of the civil partner, provided one civil partner had indefinite leave to remain and eligibility rules have been satisfied, the other civil partner would be eligible to reside.</p>		<p>Explanations and nuances: Irrespective of the nationality of the cohabitant, provided one of the parties had indefinite leave to remain and eligibility rules have been satisfied, the other party would be eligible to reside.</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2004	2016 Yes 2014	2016 Yes, but 2000	2016 Yes 2005	2016 Yes 2004	2016 Yes 2004
Yes, but 1973	Yes, but 2005	No, but 1998	Yes, but 2000	Yes, but 2000	Yes, but 2000
? 0000	Yes, but 2001	N/A 0000	No, but 1989	No, but 0000	No, but 0000
	N/A 0000		N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Freedom of movement for workers within the Community Regulation (EEC) No 1612/68.</p> <p>British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>European Union Free Movement of Persons Directive 2004/38 EC.</p> <p>Immigration (European Economic Area) Regulation 2006 (SI 2006/1003).</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>European Union Free Movement of Persons Directive 2004/38 EC.</p> <p>Immigration (European Economic Area) Regulation 2006 (SI 2006/1003).</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>		<p>References to legal sources: British Nationality Act 1981.</p> <p>Asylum and Immigration Act 1996.</p> <p>European Union Free Movement of Persons Directive 2004/38 EC.</p> <p>Immigration (European Economic Area) Regulation 2006 (SI 2006/1003).</p> <p>Home Office Immigration Rules https://www.gov.uk/guidance/immigration-rules.</p>	
<p>Explanations and nuances: A spouse would constitute a 'family member' of an EU citizen under Directive 2004/38/EC. This will entitle them as a spouse of a non-British but EU national to reside in the UK.</p> <p>Also note Article 10(1) of EEC Regulation 1612/68, that gave most EU citizens working in another member-state the right to be accompanied by their spouses applicable to the UK from 1973.</p> <p>See also question 4.2.</p>		<p>Explanations and nuances: A civil partner would constitute a 'family member' of an EU citizen under Directive 2004/38/EC. This will entitle them as a civil partner of a non-British but EU national to reside in the UK. The civil partnership will need to be treated equally to a marriage.</p> <p>See also question 4.2.</p>		<p>Explanations and nuances: Cohabitants will need to show that they are to reside in the UK with a partner with whom they have a durable relationship as provided by article 3(2) Directive 2004/38/EU.</p> <p>For the situation before 2004, question 4.3.</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2005	2016 Doubt 1998	2016 Yes 2005	X	X
	No 2001	N/A 0000	No 1989	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources:		References to legal sources: Articles 212-218 of the Civil Partnership Act 2004.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A marriage conducted overseas will be recognised as valid in England and Wales if it would be recognised in the country in which it took place, satisfied the requirements of the law of the country in which it took place and if there were no restrictions on either party's freedom to contract a marriage in that country. If these conditions are satisfied, the foreign marriage would constitute a barrier to marriage in England and Wales and would need to be terminated before a new marriage was contracted.</p>		<p>Explanations and nuances: If parties enter into a civil partnership (or registered partnership) in a foreign country, it will be recognised in England and Wales provided that the formalities of that jurisdiction and rules of eligibility determined by that jurisdiction have been completed (the exception to this is found in article 216 of the Civil Partnership Act 2004 which prohibits the recognition of an overseas opposite-sex civil partnership). Similar to recognising a foreign marriage, a recognised foreign civil partnership will act as an impediment in England and Wales to entry into another civil partnership or marriage.</p>			

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2005	2016 No 1998	2016 Yes, but 2005	X	X
	No 2001	N/A 0000	No 1989	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources:		References to legal sources: Article 71 and Schedule 4 paragraphs 7-12 Civil Partnership Act 2004.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Provided that the marriage satisfies the requirements of the overseas jurisdiction and that the parties have capacity to marry, it will be recognised as a valid marriage in England and Wales. This will mean that upon the death of one spouse without a will (intestate succession), the relationship of marriage will affect the applicable rules.</p> <p>Unsurprisingly, a divorced spouse will not be able to claim under the intestacy rules regarding their former spouse.</p>		<p>Explanations and nuances: Provided that the civil partnership satisfies the requirements of the overseas jurisdiction and that the parties have capacity to marry, it will be recognised as a valid civil partnership in England and Wales. This will mean that upon the death of one civil partner without a will (intestate succession), the relationship will affect the applicable rules. The exception is where the overseas civil partnership is opposite sex as this relationship will not be recognised in England and Wales.</p> <p>Unsurprisingly, a former civil partner will not be able to claim under the intestacy rules regarding their former civil partner.</p>			

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: British Nationality Act 1981. Borders, Citizenship and Immigration Act 2009.		References to legal sources: British Nationality Act 1981. Borders, Citizenship and Immigration Act 2009.		References to legal sources: British Nationality Act 1981. Borders, Citizenship and Immigration Act 2009.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If a spouse who is not a British citizen marries a citizen, they may apply for naturalisation (see article 6 British Nationality Act 1981). However unlike others seeking citizenship, they are required to be in the UK for three years as opposed to five. Therefore marriage makes it easier for a foreign partner to obtain citizenship.</p>		<p>Explanations and nuances: If an individual who is not a British citizen forms a civil partnership with a citizen, they may apply for naturalisation (see article 6 British Nationality Act 1981). However unlike others seeking citizenship, they are required to be in the UK for three years as opposed to five. Therefore civil partnership makes it easier for a foreign partner to obtain citizenship.</p>		<p>Explanations and nuances: An individual who is not married or in a civil partnership can apply for citizenship through naturalisation, however the process is longer and greater evidence of the permanence and stability of the cohabiting relationship is required.</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2002	2016 Yes, but 2005
	N/A 0000		N/A 0000	? 0000	? 0000
<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>		<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>		<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Where there is an 'overseas adoption order' as defined by the 2002 Act, the adoption will be automatically recognised. There is no requirement for the spouses to re-adopt the child in England and Wales.</p> <p>Similarly, the overseas adoption order cannot be challenged unless it is deemed contrary to public policy or was made by an authority that had no competence to make it (see article 89 of the Adoption and Children Act 2002). The adopted child will be deemed a child of the adoptive parents but it does not necessarily obtain citizenship. If the overseas adoption was obtained by UK citizens, the adopted child can apply for British citizenship.</p> <p>Crucially, validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters.</p>		<p>Explanations and nuances: Where there is an 'overseas adoption order' as defined by the 2002 Act, the adoption will be automatically recognised. There is no requirement for the civil partners to re-adopt the child in England and Wales.</p> <p>Similarly the overseas adoption order cannot be challenged unless it is deemed contrary to public policy or was made by an authority that had no competence to make it (see article 89 of the Adoption and Children Act 2002). The adopted child will be deemed a child of the adoptive parents but it does not necessarily obtain citizenship. If the overseas adoption was obtained by UK citizens, the adopted child can apply for British citizenship.</p> <p>Crucially, validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters.</p>		<p>Explanations and nuances: Where there is an 'overseas adoption order' as defined by the 2002 Act, the adoption will be automatically recognised. There is no requirement for the parties to re-adopt the child in England and Wales.</p> <p>Similarly the overseas adoption order cannot be challenged unless it is deemed contrary to public policy or was made by an authority that had no competence to make it (see article 89 of the Adoption and Children Act 2002). The adopted child will be deemed a child of the adoptive parents but it does not necessarily obtain citizenship. If the overseas adoption was obtained by UK citizens, the adopted child can apply for British citizenship.</p> <p>Crucially, validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters. It is likely that greater readiness to recognise an overseas adoption by same-sex cohabitants occurred after the introduction of civil partnerships and of the possibility of adoption by same-sex couples in England and Wales in 2005 (see question 3.10).</p>	

Jurisdiction: **UK: England and Wales**

Source: **A. Hayward**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2002	2016 Yes, but 2005
	N/A 0000		N/A 0000	? 0000	? 0000
<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>		<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>		<p>References to legal sources: Hague Convention on Intercountry Adoption 1993. Adoption (Intercountry Aspects) Act 1999. Adoption and Children Act 2002. Adoptions with a Foreign Element Regulations 2005 (SI 2005/392).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters. Where the adoption involves one spouse becoming the legal parent of the child of another whilst residing abroad, provided that process has satisfied the rules applicable in that state, England and Wales will recognise the adoption. The 'but' relates to the power to refuse to recognise an overseas adoption if it is against public policy.</p>		<p>Explanations and nuances: The validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters. Where the adoption involves one civil partner becoming the legal parent of the child of another whilst residing abroad, provided that process has satisfied the rules applicable in that state, England and Wales will recognise the adoption. The 'but' relates to the power to refuse to recognise an overseas adoption if it is against public policy.</p>		<p>Explanations and nuances: The validity of the adoption is determined by the rules laid down by the state from which the child is adopted. Conditions for recognising an overseas adoption order do not focus on the status of the adopters. Where the adoption involves one cohabitant becoming the legal parent of the child of another whilst residing abroad, provided that process has satisfied the rules applicable in that state, England and Wales will recognise the adoption. Despite powers to refuse to recognise an overseas adoption on the basis of public policy, it is unlikely this would be exercised merely because the adopted parents are opposite or same-sex cohabitants.</p> <p>See questions 4.8 and 3.9.</p>	