

## Splitting up and legal family formats in the UK: England and Wales

by Brian Sloan <sup>1</sup>

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

Edited by Kees Waaldijk,<sup>2</sup> Marie Digoix,<sup>3</sup> Natalie Nikolina,<sup>2</sup> Giuseppe Zago,<sup>2</sup> Daniel Damonzé,<sup>2</sup> Arianna Caporali,<sup>3</sup> Kamel Nait Abdellah <sup>3</sup>

Published by INED, Paris, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 5 – Splitting up)

© 2017 Brian Sloan

<sup>1</sup> Dr Brian Sloan (College Lecturer, Director of Studies and Fellow in Law, Robinson College, Cambridge, [www.law.cam.ac.uk/people/academic/bd-sloan/409](http://www.law.cam.ac.uk/people/academic/bd-sloan/409)) is grateful for the useful comments that Professor Kenneth MCK. Norrie (Professor of Law, University of Strathclyde, Glasgow, Scotland) made on an earlier version of the answers in this section of the database.

<sup>2</sup> [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, [www.leiden.edu](http://www.leiden.edu).



<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).

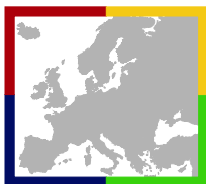


**Recommended citation:**

B. Sloan, 'Splitting up and legal family formats in the UK: England and Wales', in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu) (question 5.x).

## Acknowledgment

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



# 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 5 (Splitting up)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 5.1 Dissolution by court**
- 5.2 Agreed administrative dissolution**
- 5.3 Unilateral administrative dissolution**
- 5.4 Agreed informal dissolution**
- 5.5 Unilateral informal dissolution**
- 5.6 Dissolution by marrying someone else**
- 5.7 Ending by conversion**
- 5.8 Ending by marrying each other**
- 5.9 Property at dissolution**
- 5.10 Alimony**
- 5.11 Parental authority**
- 5.12 General background regarding splitting up**

In the following pages of this paper, first the answer to question 5.12 is presented, followed by the answers to questions 5.1 to 5.11.

**5.12 - General background regarding splitting up (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 splitting up, then please do so here.

–

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.01 - Dissolution by court**

Can this type of relationship be ended by court decision?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part I.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part I, chapter 2.			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

Can this type of relationship be ended by mutual agreement in an administrative procedure?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1973	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
No 0000	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part 1.  Family Procedure Rules 2010.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part I, chapter 2.  Family Procedure Rules 2010.  Marriage (Same Sex Couples) Act 2013.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      In principle, divorce remains a judicial process in England and Wales requiring a finding that the marriage has broken down irretrievably, evidenced by one of five facts. That said, divorce procedure means that most divorce petitions are undefended, and there is in reality very little scrutiny of the facts alleged in an undefended divorce petition. The result is that there is effectively unilateral divorce in England and Wales.</p>		<p><b>Explanations and nuances:</b>                      The law is essentially the same for civil partnership as for marriage, except that a conversion of a civil partnership to a marriage will technically end the civil partnership.</p>			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.03 - Unilateral administrative dissolution**

Can this type of relationship be ended by one partner unilaterally in an administrative procedure?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1973	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
No 0000	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part 1.  Family Procedure Rules 2010.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part I, chapter 2.  Family Procedure Rules 2010.			
<b>Explanations and nuances:</b> See question 5.2.		<b>Explanations and nuances:</b> See question 5.2.			



Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

Can this type of relationship be ended by mutual agreement without involvement of any authority?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part 1.  Family Procedure Rules 2010.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part I, chapter. 2.  Family Procedure Rules 2010.			
<b>Explanations and nuances:</b> See question 5.2.		<b>Explanations and nuances:</b> See question 5.2.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.05 - Unilateral informal dissolution**

Can this type of relationship be ended by one partner unilaterally without involvement of any authority?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part 1.  Family Procedure Rules 2010.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part I, chapter 2.  Family Procedure Rules 2010.			
<b>Explanations and nuances:</b> See question 5.2.		<b>Explanations and nuances:</b> See question 5.2.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.06 - Dissolution by marrying someone else**

Can a registered partnership be ended by one partner marrying someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 No 2005	X	X
X	X		N/A 0000	X	X
		<b>References to legal sources:</b> Matrimonial Causes Act 1973, section 11.			
		<b>Explanations and nuances:</b> Any marriage involving a person in a subsisting civil partnership with someone else would be void.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

Can this type of relationship be ended by the partners by way of conversion (of a marriage into a registered partnership or vice versa)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 Yes 2014	X	X
	N/A 0000		No 2005	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Marriage (Same Sex Couples) Act 2013.		<b>References to legal sources:</b> Marriage (Same Sex Couples) Act 2013, section 9.			
<b>Explanations and nuances:</b> An opposite-sex couple are ineligible for a civil partnership in the first place. It does not appear to be possible to convert a same-sex marriage into a civil partnership without first dissolving the marriage.		<b>Explanations and nuances:</b>			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.08 - Ending by marrying each other**

Can a registered partnership be ended by the partners marrying each other?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 No, but 2014	X	X
X	X		No 2005	X	X
X	X		N/A 0000	X	X
		<b>References to legal sources:</b> Marriage (Same Sex Couples) Act 2013.			
		<b>Explanations and nuances:</b> It seems that the conversion procedure (see question 5.7) should be used.			

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.09 - Property at dissolution**

In case the partners split up, do statutory rules consider as joint property any possessions acquired by either of them after they started 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 0000	2016 No 0000
	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part II.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part II, chapter 3.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> A system of separation of property is in operation in England and Wales. A court nevertheless has a wide discretion to redistribute the property of spouses on divorce.		<b>Explanations and nuances:</b> The law is the same for civil partners as for spouses.		<b>Explanations and nuances:</b> There is no comprehensive scheme of statutory property redistribution covering the breakdown of cohabitation.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.10 - Alimony**

In case the partners split up, do statutory rules on alimony apply?

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		
<b>References to legal sources:</b> Matrimonial Causes Act 1973, Part II.		<b>References to legal sources:</b> Civil Partnership Act 2004, Part II, chapter 3.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> Maintenance is considered as part of the court's wide discretion to redistribute property on divorce.		<b>Explanations and nuances:</b> Maintenance is considered as part of the court's wide discretion to redistribute property on dissolution.		<b>Explanations and nuances:</b> There is no statutory scheme for maintenance of former cohabitants per se on relationship breakdown.	

Jurisdiction: **UK: England and Wales**

Source: **B. Sloan**, "Splitting up 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.11 - Parental authority**

In case the partners split up, do statutory rules on parental authority/responsibility apply?

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 0000	2016 Yes, but 0000
	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Children Act 1989.		<b>References to legal sources:</b> Children Act 1989.		<b>References to legal sources:</b> Children Act 1989.	
<b>Explanations and nuances:</b> The ending of a relationship does not itself directly affect the parental responsibility of parents. In practice, however, disputes about the child's upbringing are more likely following relationship breakdown, and if brought to court these will be resolved by treating the child's welfare as the "paramount" consideration.		<b>Explanations and nuances:</b> See under Marriage.		<b>Explanations and nuances:</b> See under Marriage.	