

Formalisation of legal family formats in the UK: Scotland

by Kenneth Norrie 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 1 – Formalisation)

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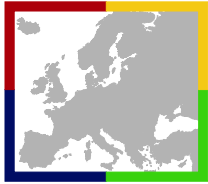
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



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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 Scotland

The answers concerning Scotland 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: Scotland by Kenneth Norrie (Section 1)

Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper is based on **Section 1 (Formalisation)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 1.1 Legal family formats
- 1.2 Two siblings
- 1.3 With resident foreigner
- 1.4 With non-resident foreigner
- 1.5 Two foreigners
- 1.6 Two resident foreigners
- 1.7 Two non-resident foreigners
- 1.8 Start at registry
- 1.9 Start at public authority
- 1.10 Start at religious building
- 1.11 Contract
- 1.12 Statutory contract
- 1.13 Surname
- 1.14 Living together
- 1.15 Sex
- 1.16 General background regarding formalisation
- 1.17 Literature

In the following pages of this paper, first the answers to questions 1.16 and 1.17 are presented, followed by the answers to questions 1.1 to 1.15.

1.16 - General background regarding formalisation (Open question)

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

1.17 - Literature (Open question)

Please list some relevant literature about the family formats concerned, especially in English and/or online (with web links).

The Scottish Parliament was re-established, after almost 300 years in abeyance, in 1999. Since then, every piece of family law legislation it has passed has explicitly included same-sex couples. The first piece of legislation to do so was the Adults with Incapacity (Scotland) Act 2000, which includes within the definition of "nearest relative" (for the purposes of guardianship of disabled adults) the same-sex partner of the adult. The wording was convoluted: "a person of the same sex as the adult [who] is and has been, for a period of not less than 6 months, living with the adult in a relationship which has the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife". This clumsy formulation was replicated in, for example, art. 108 of the Housing (Scotland) Act 2001. After the Civil Partnership Act 2004 introduced civil partnership for same-sex couples into Scotland, subsequent legislation defined cohabitants as opposite-sex couples living together as husband and wife, or same-sex couples living together as civil partners: see for example art. 29 of the Adoption and Children (Scotland) Act 2007. After marriage was opened to same-sex couples by the Marriage and Civil Partnership (Scotland) Act 2014, art. 4 of that Act provides that all references to couples living together as civil partners are to cease to have effect and to be read as couples living together as if they were married to each other.

Clive, E (1999). HUSBAND AND WIFE (3rd ed), Edinburgh, W. Green/SULI.

Norrie, K, Sutherland, E, and Cleland, A (2004). CHILD AND FAMILY LAW, Stair Memorial Encyclopaedia of the Laws of Scotland, Family Law Reissue, Edinburgh, LEXIS/NEXIS Butterworths.

Sutherland, E (2009). CHILD AND FAMILY LAW (2nd ed) (Thomson/W. Green).

Norrie, K (2012). PROFESSOR NORRIE'S COMMENTARIES ON FAMILY LAW, Dundee, Dundee University Press.

**Norrie, K (2013). THE LAW RELATING TO PARENT AND CHILD IN SCOTLAND (3rd ed)
Edinburgh, W. Green/SULI.**

**Norrie, K (2006). "Recognition of Foreign Relationships under the Civil Partnership Act 2004"
JOURNAL OF PRIVATE INTERNATIONAL LAW (2) 137-167.**

**Norrie, K (2014). "Now the Dust has Settled: The Marriage and Civil Partnership (Scotland)
Act 2014" JURIDICAL REVIEW (2) 135-163.**

**Norrie, K (2015). "Parenthood and Artificial Reproduction: The Dangers of Inappropriate
Medicalisation", in INSPIRING A MEDICO-LEGAL REVOLUTION: ESSAYS IN HONOUR OF SHEILA
MCLEAN, Ferguson, P and Laurie, G (eds) Dartmouth, Ashgate, pp 37-52.**

**Norrie, K (2015). "Civil Partnership in Scotland 2004 - 2014, and Beyond", in CIVIL
PARTNERSHIP 2004-2014, Barker, N, and Monk, D (eds) Oxford, Hart Publishing, pp 49-64.**

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.01 - Legal family formats**

Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples?

(For the distinction between registered partnership and cohabitation, see section e of the [Guidance for experts answering questions in the questionnaire](#). If there are two or more formats available for informally cohabiting couples, then please mention these formats separately in the explanation to this question.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 No 0000	2016 Yes 2005	2016 Yes, but 2006	2016 Yes, but 2006
	No 0000		No 0000	No, but 0000	No, but 2000
					No 0000
References to legal sources: Marriage (Scotland) Act 1977. Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, Part 3.		References to legal sources: Adults with Incapacity (Scotland) Act 2000. Ghaidan v Godin-Mendoza [2004] UKHL 30 (UK House of Lords, 21 June 2004). Family Law (Scotland) Act 2006.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Marriage was always understood by the common law to be a relationship between one man and one woman; the matter was put beyond doubt when the Marriage (Scotland) Act 1977, s. 5(4), listed as an impediment to marriage that the couple were not respectively man and woman. This impediment was removed by the Marriage and Civil Partnership (Scotland) Act 2014, which opened marriage to same-sex couples from 16th December 2014.</p>		<p>Explanations and nuances: The Civil Partnership Act 2004, which came into effect in 2005, creates a form of registered partnership but limits its availability to same-sex couples.</p>		<p>Explanations and nuances: Different-sex cohabitants in Scotland could, if they satisfied the criteria for the canon law doctrine of marriage by cohabitation with habit and repute, gain all the legal rights and responsibilities of married couples. Various tax and social security provisions recognised, on an ad hoc basis, the fact that a couple were living together as if husband and wife. But it was not until the 2006 Act that opposite sex cohabitants were properly recognised with similar (but lesser) rights to married couples. That Act also abolished, as no longer necessary, the doctrine of marriage by cohabitation with habit and repute.</p> <p>The 2000 Act is the first explicit statutory recognition of same-sex cohabiting couples in Scots law. The Civil Partnership Act 2004 was mostly limited to registered relationships and made little change to the position of cohabitants. Though the House of Lords, founding on its interpretative obligation in art. 3 of the Human Rights Act 1998 to interpret the cohabitation legislation to include same-sex couples, this was not comprehensive because it did not apply where the legislation was gender specific (as for example with the Matrimonial Homes (Family Protection (Scotland) Act 1981, s.18 as originally enacted).</p> <p>Comprehensive amendment came with the 2006 Act, which statutorily extended all references to cohabitants to same-sex couples; and it also substantially increased the consequences of cohabitation by introducing two new claims. A cohabitant may now seek a financial remedy from the other when the couple separate; and a surviving cohabitant may now seek an award from their deceased partner's estate. Both claims are designed to be less valuable than the analogous claim that a spouse may make on the termination of marriage by death or divorce.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.02 - Two siblings**

Is starting this type of relationship legally possible for two siblings?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: Marriage (Scotland) Act 1977, art. 2 and Schedule 1.		References to legal sources: Civil Partnership Act 2004, art. 86(1)(b) and (3); Schedule 10.		References to legal sources: Family Law (Scotland) Act 2006, art. 25.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Marriage is prohibited between couples who fall within the "forbidden degrees" of relationship: this includes siblings.</p>		<p>Explanations and nuances: Civil partnership is prohibited between couples who fall within the "forbidden degrees" of relationship: this includes siblings.</p>		<p>Explanations and nuances: Cohabitation is defined in most of the statutes as couples who are "living together as if married"; marriage is not possible between siblings and though there is no direct authority for the proposition it can be said with some confidence that a court in Scotland would reject the proposition that two siblings can be cohabitants of each other for the purpose of accessing any of the statutory consequences of cohabitation. If the siblings' relationship is conjugal then they are committing a criminal offence, making it even less likely that they would be recognised as cohabitants.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.03 - With resident foreigner**

Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country?
(As to the meaning of "residing", see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
<p>References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f).</p> <p>Marriage and Civil Partnership (Scotland) Act 2014.</p> <p>Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015, Scottish Statutory Instrument 2015/396.</p>		<p>References to legal sources: Civil Partnership Act 2004, art. 86.</p> <p>Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015, Scottish Statutory Instrument 2015/396.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law contains no nationality or residence requirements for any person wishing to marry in Scotland. If a foreigner is residing (domiciled) in Scotland then any incapacity imposed by the law of their nationality is ignored if inconsistent with Scots law.</p>		<p>Explanations and nuances: Scots law contains no nationality or residence requirements for any person wishing to register a civil partnership in Scotland.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.04 - With non-resident foreigner**

Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f). Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, art.86.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law contains no nationality or residence requirement on any person wishing to marry in Scotland. However, if the foreigner residing abroad is incapable by their own law (the law of their domicile) then that person may not marry in Scotland. BUT, if the incapacity is based on the ground that the proposed marriage is a same-sex marriage, that incapacity will be IGNORED and the foreign person may marry in Scotland.</p>		<p>Explanations and nuances: The rules of eligibility to enter a civil partnership in Scotland, contained in art. 86 of the 2004 Act, do not include any nationality or residence requirement.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.05 - Two foreigners**

Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f). Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, art. 86.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law contains no nationality or residence requirement on any person wishing to marry in Scotland. However, if the foreigner residing abroad is incapable by their own law (the law of their domicile) then that person may not marry in Scotland. BUT, if the incapacity is based on the ground that the proposed marriage is a same-sex marriage, that incapacity will be IGNORED and the foreign person may marry in Scotland.</p>		<p>Explanations and nuances: The rules of eligibility to enter a civil partnership in Scotland, contained in s. 86 of the 2004 Act, do not include any nationality or residence requirement.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.06 - Two resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f). Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, art. 86.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law contains no nationality or residence requirement on any person wishing to marry in Scotland. However, if a foreigner residing in Scotland retains a domicile abroad and is incapable by the law of their domicile then that person may not marry in Scotland. BUT, if the incapacity is based on the ground that the proposed marriage is a same-sex marriage, that incapacity will be IGNORED and the foreign person may marry in Scotland.</p>		<p>Explanations and nuances: The rules of eligibility to enter a civil partnership in Scotland, contained in s. 86 of the 2004 Act, do not include any nationality or residence requirement.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.07 - Two non-resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977, art. 5(4)(f). Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, art. 86.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law contains no nationality or residence requirement on any person wishing to marry in Scotland. However, if either foreigner residing abroad is incapable by their own law (the law of their domicile) then that person may not marry in Scotland. BUT, if the incapacity is based on the ground that the proposed marriage is a same-sex marriage, that incapacity will be IGNORED and the foreign person may marry in Scotland.</p>		<p>Explanations and nuances: The rules of eligibility to enter a civil partnership in Scotland, contained in s. 86 of the 2004 Act, do not include any nationality or residence requirement.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.08 - Start at registry**

Can you legally start this type of relationship at the registry of births, marriages and deaths (État civil, Standesamt)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1939	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
No 0000	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1939. Marriage (Scotland) Act 1977. Marriage and Civil Partnership Act 2014.		References to legal sources: Civil Partnership Act 2004, Part 3. Marriage and Civil Partnership Act 2014.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Marriages could only be brought into existence in Scotland by religious process until the 1939 Act, which created a mechanism for civil marriages. This was a long time coming, having been recommended by a Royal Commission on the Laws of Marriage in 1868. Since 1939, parties have had a choice of starting their marriage by either religious or civil process.</p>		<p>Explanations and nuances:</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.09 - Start at public authority**

Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977.		References to legal sources: Civil Partnership Act 2004, Part 3.			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.10 - Start at religious building**

Can you legally start this type of relationship at a church, synagogue, mosque or other religious building?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2014	X	X
	N/A 0000		No 2005	X	X
			N/A 0000	X	X
References to legal sources: Marriage (Scotland) Act 1977. Marriage and Civil Partnership Act 2014.		References to legal sources: Civil Partnership Act 2004, Part 3. Marriage and Civil Partnership (Scotland) Act 2014.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Parties to a marriage can choose to have it created by religious ceremony in a church, synagogue, mosque or other religious building - or indeed any other place. If the parties wish to be married by non-religious civil process then the ceremony will take place at either the registration office or another "suitable" place - this means a place that is not a religious place.</p>		<p>Explanations and nuances: When civil partnership was first introduced its creation was limited to process before the District Registrar at the registration office. Since 2014 it has been possible, as an alternative, to start the relationship by religious ceremony in a religious (or any other) place. Non-religious civil process can create a civil partnership but this may only be effected at either the registration office or another "suitable" place - this means a place that is not a religious place.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.11 - Contract**

Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? (Think of prenuptial contracts and cohabitation contracts.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 0000	2016 Yes 0000
	N/A 0000		N/A 0000		
References to legal sources: Family Law (Scotland) Act 1985, art. 16.		References to legal sources: Family Law (Scotland) Act 1985, art. 16, as amended by Civil Partnership Act 2004, sched.28(2), para. 22(2)(a).		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Unlike the law in England and Wales, contracts between married couples, entered into before the marriage, during the marriage or preparatory to separation are as enforceable in Scots law as any other contract. This is subject to art. 16 of the 1985 Act, which allows the contract to be escaped from if it can be shown to be unfair or unreasonable at the time it was entered into.</p>		<p>Explanations and nuances: Unlike the law in England and Wales, contracts between civil partners, entered into before the partnership is registered, during the partnership or preparatory to separation are as enforceable in Scots law as any other contract. This is subject to art. 16 of the 1985 Act, which allows the contract to be escaped from if it can be shown to be unfair or unreasonable at the time it was entered into.</p>		<p>Explanations and nuances: Contracts between cohabitants, entered into before the cohabitation commences, during the cohabitation or preparatory to separation are as enforceable in Scots law as any other contract.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.12 - Statutory contract**

Are there specific statutory rules regarding such a contract?

(See question 1.11 about the possibility for the partners to make a contract to organise their relationship.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 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: Family Law (Scotland) Act 1985, art. 16.		References to legal sources: Family Law (Scotland) Act 1985, art. 16, as amended by Civil Partnership Act 2004, sched.28(2), para. 22(2)(a).		References to legal sources:	
Explanations and nuances: See question 1.11.		Explanations and nuances: See question 1.11.		Explanations and nuances: Unlike contracts between married people and civil partners (for which see question 1.11) there are no special rules allowing a party to escape from contract on the ground that it is unfair or unreasonable at the time it was entered into.	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.13 - Surname**

Can (or must) one partner use or have the surname of the other partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 0000	2016 Yes 0000
	N/A 0000		N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	
Explanations and nuances: Scots law does not have rules as to the name a person is entitled to call him- or herself by (other than the law of fraud). So one partner may take the name of the other, or not, or both may take joint names. There is no obligation to do so.		Explanations and nuances: Scots law does not have rules as to the name a person is entitled to call him- or herself by (other than the law of fraud). So one partner may take the name of the other, or not, or both may take joint names. There is no obligation to do so.		Explanations and nuances: Scots law does not have rules as to the name a person is entitled to call him- or herself by (other than the law of fraud). So one partner may take the name of the other, or not, or both may take joint names. There is no obligation to do so.	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.14 - Living together**

Do partners in this type of relationship have a duty to live together in the same house?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1984	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 Yes, but 0000	2016 Yes, but 2000
Yes, but 0000	N/A 0000		N/A 0000		No 0000
References to legal sources: Divorce (Scotland) Act 1976, art. 1. Law Reform (Husband and Wife) (Scotland) Act 1984, art. 2(1).		References to legal sources: Civil Partnership Act 2004, art. 117.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Prior to 1984, spouses had an obligation to "adhere", that is to say to live together but this was a duty that would not be directly enforced, even at common law. The 1984 Act abolished the action of adherence. However, there remains today a ground of divorce if the parties do not live together for either one year (with consent to the divorce) or two years (without consent).</p>		<p>Explanations and nuances: While there has never been an obligation on civil partners to live together, a failure to do so will give a ground to dissolve the partnership if this lasts one year (with consent to the dissolution) or two years (without consent).</p>		<p>Explanations and nuances: While there is no explicit "duty" on unregistered couples to live together, it is part of the definition of cohabitation that the couple are "living together as husband and wife", so it would be difficult but not, perhaps, impossible, to argue that a couple who reside at different addresses are nevertheless cohabitants.</p> <p>See also question 1.1.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Formalisation of legal family formats in UK: Scotland". 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_SC-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.15 - Sex**

Does the law require relationships of this type to be sexual or intimate?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 No, but 2014	2016 N/A 0000	2016 No 2005	2016 No, but 0000	2016 No, but 2000
	N/A 0000		N/A 0000		No 0000
<p>References to legal sources: Divorce (Scotland) Act 1976.</p> <p>Marriage and Civil Partnership (Scotland) Act 2014, art. 5.</p>		<p>References to legal sources: Civil Partnership Act 2004.</p>		<p>References to legal sources: Ghaidan v Godin-Mendoza [2004] UKHL 30 (UK House of Lords, 21 June 2004).</p> <p>Family Law (Scotland) Act 2006, art. 25.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: It is assumed that marriage is a sexually intimate relationship - and is sexually exclusive. So adultery remains a ground of divorce. And for opposite-sex couples a marriage may be annulled if one party was incurably impotent at the date of the marriage (this rule is explicitly NOT applied to same-sex marriages by art. 5 of the 2014 Act).</p>		<p>Explanations and nuances: There is no requirement that a civil partnership be sexually intimate, and the sexual elements of marriage (adultery and impotency) are not replicated in the design of civil partnership in Scotland.</p>		<p>Explanations and nuances: Cohabitants are not explicitly required to be sexually intimate, but the definition of cohabitation that most commonly appears in statutory law (that the couples are living together as if married) carries the implication that the relationship is or at least was originally sexual. If so, then a non-intimate couple who live together will have difficulty in proving that they are "cohabitants" for the purposes of the 2006 (and other) Acts.</p> <p>See also question 1.1.</p>	