

2025

IAFL Sexual
Orientation and
Gender Identity
(SOGI) Guide

Foreword by IAFL President Rachael Kelsey

I am delighted to write a few words of introduction to the Second Edition of the IAFL Guide to some of the most common family law issues that arise for LGBTQ individuals and their families. Whilst there are some bright spots in relation to the development of proper equality before the law for LGBTQ individuals – read the entry for Malta, and ask Anne Marie Bisazza what the answers would have been 20 years ago – progress is still slow, and, indeed, parts of the world where there has been worrying regression. As ILGA highlighted in their recent Publication, “Laws on Us” published in May 2024, we still find ourselves in a place where consensual sex between same-sex individuals is criminalised in a third of the world, and jurisdictions which retain the death penalty.

The IAFL supports all efforts towards full equality of the LGBTQ community throughout the world, and the end to rules that discriminate against such individuals and their families. There remains a lot of work to be done and this Guide is part of our contribution. The individual submissions in this survey are the work of Fellows of the IAFL and other colleagues who have kindly donated their time and expertise to answer a set series of questions on the law in their individual jurisdictions for the benefit of the IAFL as a whole and the LGBTQ community.

The IAFL SOGI Committee intends that this should be a living resource. When we first published the Guide, we had contributions from 46 jurisdictions, and we now have 56 jurisdictions represented. It is a work in progress to find contributors in more places, and to keep the Guide up to date to reflect changes in the law. Please do get in touch if you are willing to contribute, or know of other suitably qualified people who can provide information about jurisdictions where we do not have responses at the moment.

Ensuring that the IAFL is a safe and welcoming space for our LGBTQ Fellows is a priority for us and we have used the last couple of years to build on our processes when it comes to making that real, for example, when it comes to selecting venues for meetings we require that consideration is given to potential impact on LGBTQ Fellows and their families, and we have created a Respect and Representation Advisory Group to make recommendations on steps we could – and should – be taking to put diversity, equality and inclusion at the heart of all we do – and are now acting on their recommendations.

A huge amount of work has been done on this Guide, and more generally for IAFL, by the SOGI Committee and the contributors and I take this opportunity to thank all those involved. Particular mention must go to Dave Allison, the Chair of the SOGI Committee (and its predecessor). Dave has devoted enormous amounts of time and energy, over many years, to looking after the IAFL family, when it comes to ensuring that we are a safe and inviting space for LGBTQ individuals and their families. He has inspired, encouraged and jollied along the SOGI Committee (and the Executive Committee) to do more, and to do better. We owe him a debt of thanks, and I personally take this opportunity to thank him for his wisdom, encouragement, and support to me during my term of office. His firm, FLiP are also to be thanked for so generously supporting the preparation and publication of the Guide. Here's to the Third Edition!

Rachael Kelsey
IAFL President

Note from David Allison – IAFL SOGI committee co-chair

This guide would not have been possible without the hard work of the IAFL SOGI committee and the willingness of individual IAFL fellows and others to donate their time and expertise. I am personally grateful to each of them and I hope others find this guide as helpful as I have.

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DISCLAIMER

This guide represents the individual knowledge and views of the contributors. It is not intended to replace individual legal advice and IAFL cannot be liable for any errors contained in the submissions.

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Survey Questions

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?
2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?
3. If you have further comments on the matters raised in this section, please add them below.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?
5. Are foreign marriages of same-sex couples recognised?
6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?
7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?
8. Is customary marriage recognised? If so, is it recognised between same-sex couples?
9. If you have further comments on the matters raised in this section, please add them below.

Parenting

10. Can more than two people be recognised as the parents of a child?
11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?
12. If you have further comments on the matters raised in this section, please add them below.

Survey Questions (cont'd)

Adoption

13. Is adoption possible?
14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy

15. Is surrogacy legal?
16. Is commercial/compensated surrogacy legal?
17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?
18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?
20. Are same-sex couples who have a child through artificial insemination recognised as the parents?
21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?
23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Survey Questions (cont'd)

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?
25. If you have further comments on the matters raised in this section please add them below.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?
27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?
28. If you have further comments on the matters raised in this section please add them below.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?
30. Is gay conversion therapy banned?
31. If you have further comments on the matters raised in this section, please add them below.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.
33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.
34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?
35. What happens to the status of the marriage/civil partnership when one party transitions?
36. Is changing gender a ground for divorce?
37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Botswana



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Being a homosexual is not criminalised in Botswana. What was criminalised was the acts they took part in as they were said to be against the order of nature (same-sex intercourse). However in the watershed case of *Moshidiemang v Attorney General*, sections 164, 165 and 167 of the Penal Code were challenged and were sought to be declared unconstitutional.

Section 164 states: “Any person who – (a) has carnal knowledge of any person against the order of nature; (b) [not relevant] or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.”

Section 165 states: “Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment term not exceeding five years.”

Section 167 states: “Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.”

The court agreed with the applicant and declared the said provisions unconstitutional as they infringed his right to privacy, dignity and liberty.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Unfortunately, there are no facilities in Botswana for gender affirming and concerned people rather go to neighbouring South Africa to do so. What they are allowed to do is to change their gender mark in the national register to reflect the new gender. This happened in *ND v Attorney General*.

3. If you have further comments on the matters raised in this section, please add them below.

The legal atmosphere in Botswana is changing as same-sex relations are being recognised albeit at a snail's pace. There seems to be some resistance but in roads are being made to recognise same-sex relations rights in other spheres.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex couples cannot get married as there is no dispensation in the legal frameworks evident from the Marriage Act of 2000 that only heterosexual persons may marry.

5. Are foreign marriages of same-sex couples recognised?

Since there is no legal framework that recognises such there is no recognition. the State would not interfere but it would be bunding between the parties

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There on no lesser non marriage status for same-sex couples. the point of departure is in Botswana it is either you are married or not. With a full marriage there are laws which govern same including inheritance maintenance and so forth and no such for same-sex couples. The least they can get is when they part ways the doctrine of universal partnerships governs their property division. Besides that there are no benefits whatsoever.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There is no recognition whatsoever as such relations are seen as anathema. Like I said above in roads are being made as there is talk about about amending the Marriage Act to accord recognition to same-sex unions. The jury is still out as there are consultations going on regarding the subject.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary law marriages are recognised in Botswana in respect of a heterosexual couples. Same sex marriages are frowned upon in the traditional law space.

9. If you have further comments on the matters raised in this section, please add them below.

Instead of mending the Marriage Act to accord recognition to same-sex couples I believe it is best to enact an Act (Civil Unions Act) to govern same-sex marriages. This would have a snow ball effect to change or make new laws like their property rights, inheritance etc.

Parenting

10. Can more than two people be recognised as the parents of a child?

Depending on the dynamics it is possible particularly with blended families.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The Children's Act says a child has a right to nationality at birth and it is a requirement that both parent's names be included in the child's birth certificate.

12. If you have further comments on the matters raised in this section, please add them below.

Where the circumstances of birth of a child relates to commission of an offence, like incest or rape the father's name is not put up in the child's certificate and the person is not accorded any parental rights in respect of the child to protect the best interest of that child. However an adulterine child's father's name should be written therein.

Adoption

13. Is adoption possible?

Adoption is possible and recognised as one of the ways of exercising or transferring parental rights over a child. It is governed by the Adoption of Children Act and under customary law.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There is qualification for adoption in the relevant Act. Married couples and single individuals. Grey area is whether same-sex couples qualify to adopt. They can only where they process the adoption as individuals and not as a couple.

Surrogacy

15. Is surrogacy legal?

There is not legal framework for surrogacy but it is done under the veil of secrecy. Under customary law it does exist unfortunately it is also done under a veil of secrecy.

16. Is commercial/compensated surrogacy legal?

There is no framework governing same.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There is no legal framework.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Because of the absence of a legal framework there are no statistics available.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete donations as governed by the Public Health Act can only be done for dental or medical purposes only and with the approval of the Director of Health Services.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

This is a grey area that needs to be looked into. I think people have found a way to bypass such.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The bias is in respect of heterosexual couples for purposes of recognition.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

There has not been any case touching on this aspect.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Their properties are dealt with in terms of universal partnership. As for other benefits or rights such cases have not arisen.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

With opposite-sex couples everything is covered as there are laws governing all attendant rights and none for same-sex relations or couples.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes unless there is a will.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

This is the only way they can inherit.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Botswana recognises equal protection of the law for all irrespective of their status or orientation.

30. Is gay conversion therapy banned?

There are no facilities here and as such people flock to South Africa and other regions to do same.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

It is non-existent and if done it is on a case-by-case basis.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

It is either you are male or female.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Hard to tell. Does the marriage cease to exist as same-sex people can't get married in Botswana.

36. Is changing gender a ground for divorce?

Does not fall within the legal framework If anything it may amount to unreasonable behaviour.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Ghana



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Contributor Firm	B&P Associates

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Homosexuality or engaging in consensual homosexual acts is classified as “*unnatural carnal knowledge*” under Section 104 of the Criminal Offences Act, 1960 (Act 29), and constitutes a punishable offense. This offense is categorized as a misdemeanour, punishable by a term of imprisonment not exceeding three years, as stipulated under Section 296(4) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

In Ghana, there are no specific laws that explicitly criminalize aspects of gender identity or gender-affirming treatments. As a result, individuals undergoing such treatments or expressing diverse gender identities are not subject to any legislation. However, the legal framework in Ghana is also silent on recognizing or supporting gender identity and gender-affirming treatments. This means that while these practices are not criminalized, there is also no formal legal acknowledgment or protection for individuals seeking or undergoing gender-affirming care or expressing non-conforming gender identities.

3. If you have further comments on the matters raised in this section, please add them below.

In 2021, a Bill titled, “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill” was presented before Ghana’s 8th Parliament. The primary objective of this Bill was to explicitly outlaw activities associated with LGBTQ+ identities and related practices, including gender identity and gender-affirming treatments. If enacted, the Bill would have imposed severe penalties for such actions, with sentences ranging from a minimum of three years to a maximum of ten years imprisonment.

However, the 8th Parliament did not pass the Bill before the end of its tenure, rendering the proposed legislation defunct, commonly referred to as “dead.” For the Bill to be reconsidered, it must be reintroduced in the 9th Parliament, following the necessary legislative procedures.

The Bill, if passed, would represent a significant legal shift by formally criminalizing gender identity expressions and gender-affirming treatments, which are currently neither explicitly penalized nor recognized under

Ghanaian law. This legislative development underscores the ongoing debate surrounding LGBTQ+ rights in Ghana, highlighting a clash between traditional values and contemporary human rights discourse.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No. Same-sex relationships and marriages are not legally recognized in Ghana. The common law definition of marriage, as established by Lord Penzance in *Hyde v. Hyde* (1866) L.R. IP & D 130, continues to apply in Ghana. According to this definition, marriage is a voluntary union for life between one man and one woman to the exclusion of all others.

This definition sets out essential validity requirements for a marriage, the absence of which renders the union null and void. A key requirement is that the parties to the marriage must be biologically male and female. Consequently, any purported marriage between individuals of the same-sex is considered void under Ghanaian law.

Additional essential elements of a valid marriage under Ghanaian law include:

- The mutual agreement of a man and a woman to live together as husband and wife.
- Consummation of the marriage, which, under Ghanaian law, must involve individuals of the opposite sex.

These provisions underscore Ghana's adherence to a traditional understanding of marriage, rooted in both legal precedent and societal norms.

5. Are foreign marriages of same-sex couples recognised?

No. Foreign marriages of same-sex couples are not legally recognised in Ghana. The common law definition of marriage, as established by Lord Penzance in *Hyde v. Hyde* (1866) L.R. IP & D 130, continues to apply in Ghana. According to this definition, marriage is a voluntary union for life between one man and one woman to the exclusion of all others. This definition sets out essential validity requirements for a marriage, the absence of which renders the union null and void. A key requirement is that the parties to the marriage must be of biologically male and female. Consequently, any purported marriage between individuals of the same-sex is considered void under Ghanaian law.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

As discussed above, same-sex marriages are not legally recognisable in Ghana. Consequently, lesser, non-marriage statuses such as civil union-type schemes for same-sex couples are not recognized in Ghana.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No. As discussed above, same-sex marriages are not legally recognisable in Ghana. Consequently, de facto/cohabiting/live-in relationships for same-sex are not recognized in Ghana.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary law marriages are legally recognized in Ghana under Part One of the Marriages Act (Cap 127). These marriages are conducted in accordance with traditional customs, which can include polygamous unions where a man may marry multiple women, provided he is able to support them.

However, same-sex marriages are not recognized under customary law in Ghana. While customary law marriages are valid, they must align with the traditional and legal definitions of marriage, which require the union to be between a man and a woman. As such, any marriage between same-sex couples is deemed invalid under Ghanaian customary law and is thus not recognisable in Ghana.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

Section 124 of the Children's Act, 1998 (Act 560) (as amended) defines a parent as a natural parent and expands this definition to include anyone who assumes the role of a parent. This broad interpretation allows for the possibility that more than two individuals may be legally recognized as a child's parents. For instance, in cases where custody is awarded to a person other than the biological parents, both the biological parents and the individual granted custody would be recognized as the parents of the child. This provision acknowledges that primary caregivers of a child may not always be limited to the biological parents. As such, individuals who take on parental responsibilities – whether through legal guardianship, adoption, or custody arrangements – can be recognized as parents under Ghanaian law.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Under Ghanaian law, the status of a parent upon the birth of a child is typically determined by biological and legal principles. The person giving birth is automatically recognized as the legal mother of the child. This is in line with the conventional understanding of parentage, where the biological mother is immediately granted legal recognition as the mother, regardless of her personal preference.

In contrast, the status of the father is subject to different criteria. Generally, a father is legally presumed and recognised as such if he is married to the mother at the time of the child's birth (Section 32(1) of the Evidence

Act, 1975 (NRCD 323). However, in certain circumstances, some evidence may have to be adduced to prove the parentage of a father to a child. This includes, performing customary naming ceremony as the father of the child or acknowledging paternity by being named as the father on the child's birth certificate. In the absence of these factors, the father may need to establish paternity through legal means, such as a DNA test or a court order, to gain formal recognition as the child's parent. (Children's Act, 1998 (Act 560)).

In situations where the child is born through alternative means, such as surrogacy, the legal parentage may not automatically follow the traditional biological parent-child relationship. For instance, in a surrogacy arrangement, the surrogate mother is initially recognized as the legal mother unless a court issues a parental order to transfer parentage to the intended parents (Section 22, Act 1027). This ensures that the rights and responsibilities of all parties involved in non-traditional birth scenarios are clearly defined.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Adoption is a legally recognized and practicable process in Ghana. It is governed by Part IV of the Children's (Amendment) Act, 2016 (Act 937), which provides a comprehensive framework for both in-country and intercountry adoptions. This legal framework outlines the requirements and procedures necessary for adopting a child, ensuring that the process is consistent, transparent, and in the best interests of the child.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

The Children's Amendment Act, 2016 (Act 937) outlines specific eligibility criteria for prospective adoptive parents, including considerations of age, marital status, and the capacity to provide a stable and supportive environment for the child.

For inter-country adoptions, single applicants are not permitted to apply (Section 86J). However, in the case of cohabiting couples, one partner may apply as a single applicant. Should the couple subsequently marry, the adopted child is legally recognized as a member of their household. The Act explicitly precludes individuals in same-sex relationships from pursuing inter-country adoption (Section 86K). This prohibition aligns with Ghana's legal stance, which does not recognize same-sex relationships. Consequently, applications from same-sex couples for inter-country adoption are not approved.

While the Act does not explicitly address the eligibility of same-sex couples for in-country adoption, the lack of legal recognition for same-sex relationships in Ghana implies that such applications would likely be denied on grounds of public policy. The prevailing legal and cultural norms prioritize traditional family structures, thereby influencing the approval process for adoption applications.

Surrogacy

15. Is surrogacy legal?

Section 22 of the Registration of Births and Deaths Act, 2020 (Act 1027) legalizes surrogacy and addresses the registration of births resulting from surrogacy and other assisted reproductive methods. The Act permits intended parents to engage a surrogate and outlines procedures to ensure the legal recognition of parentage. Specifically, it allows intended parents to apply to the High Court for a pre-birth or post-birth parental order, which designates the legal parents of the child prior to or after birth.

16. Is commercial/compensated surrogacy legal?

Act 1027 does not explicitly prohibit commercial or compensated surrogacy arrangements. Thus if all the elements of a valid contract exist and the agreement was made in accordance with the Contracts Act, 1960 (Act 25), the agreement will be honoured by the Ghanaian courts. This omission suggests that such practices are permissible within Ghana, provided they adhere to the established legal framework. Consequently, couples considering surrogacy in Ghana can legally engage in compensated surrogacy agreements.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Section 48 of Act 1027 defines an intended parent as a person who seeks to become a parent through surrogacy or other assisted reproductive arrangements. The provision does not explicitly exclude any specific group from participating in surrogacy arrangements. However, given that Ghanaian law does not legally recognize same-sex relationships or gender identities outside the binary framework, it is highly unlikely that a surrogacy agreement involving individuals in a same-sex relationship would be acknowledged or enforced by Ghanaian courts. This legal position reflects broader societal and legislative attitudes toward such relationships, creating significant barriers to surrogacy arrangements for individuals in same-sex partnerships.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

As indicated above, the parentage of same-sex couples who have become parents through surrogacy overseas would not be acknowledged or enforced by the Ghanaian courts.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Section 48 of Act 1027 recognizes the use of modern technological advancement including fertility medication artificial insemination and in vitro fertilisation to cause reproductive and childbirth other than by the orthodox means. The definition of surrogacy also includes the use of a gamete and/or an embryo from the donor. It can thus be inferred that gamete and embryo donation is legal in Ghana.

As discussed above, a pre-birth or post-birth parental order is required to terminate the parental relationship between the donor and the child. The law is silent on donations made to same-sex married couples or same-sex unmarried individuals. This may be due to the fact that same-sex marriages are not legally recognised in Ghana.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No. As discussed above, same-sex marriages are not legal and recognisable in Ghana thus same-sex couples who have a child through artificial insemination will not be legally recognized as the parents of the child.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Parentage of the spouse in the instance of a biologically male father is recognised as though the child was born by orthodox means. (Kindly refer to our response to question 15). The law does not recognise same-sex relationships, civil unions or common-law/de facto/cohabiting relationships and as such does not make any provision for them.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

As discussed above, same-sex marriages are not permitted in Ghana. There is thus no legal framework for divorce processes concerning finances or custody for same-sex couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Lesser non-marriage form of union e.g., civil union type scheme is not recognised in Ghana.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Same-sex marriages are not recognized under Ghanaian law thus there is no legal framework for financial and custody claims in relation to divorces or the breakdown of the marriage.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Same-sex marriages are not recognized under Ghanaian law so inferably they are not recognized for purposes of inheritance.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Section 1 of the Wills Act, 1971 (Act 360) provides that any person of or above the age of eighteen years may in writing and in accordance with this Act make a will disposing of any property which is his or to which he will be entitled at the time of his death or to which he may be entitled thereafter.

This provision, buttressed by the principle of testamentary freedom means that a person is at liberty to devise his property to anyone he wishes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/ intersex/non-binary) or sexual orientation? If so, how?

There is a blanket provision in the 1992 Constitution of Ghana that prohibits discrimination on grounds of gender. Article 17(1) of the 1992 Constitution provides that all persons shall be equal before the law. Clause (2) further adds that a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

30. Is gay conversion therapy banned?

There is no express law that bans gay conversion therapy.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

There is no legal framework currently that regulates gender changes in Ghana. The recognized gender is what is assigned at birth being male and female.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Gender-affirming treatments for legal minors are not regulated by law in Ghana. As previously noted, Ghanaian law does not recognize gender-affirming treatments, either explicitly or implicitly. Consequently, there is no existing legal framework to guide or regulate such treatments.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Section 4(2)(a)(ii) of the National Identity Register Act, 2008 (Act 750) (as amended) indicates sex as part of the personal information required to be recorded in the National Identity Register. Genders outside male and female are not recognized in Ghana. Identity documents can only provide for these two gender markers.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The legal framework does not recognize transitions and gender changes and as such the law would still recognize the parties as male and female despite any transition by one party. Any further steps taken would depend on the parties to the marriage.

36. Is changing gender a ground for divorce?

Section 1 of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a divorce petition is that the marriage has broken down beyond reconciliation. Section 2 establishes the way a party can establish the breakdown of marriage. Potentially, a change of gender could be argued under the ground of the “unreasonable behaviour” of the other party.

A gender change can be subsumed under this ground to prove that the marriage has broken down beyond reconciliation. It is important to note however this issue has neither been legislated upon nor tested out in the Ghanaian court.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Kenya



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Yes, 14 years imprisonment or more in aggravated cases.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

On 5, the provisions are not explicit but the expression of homosexuality is what would be prosecuted. This however is not common.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No.

5. Are foreign marriages of same-sex couples recognised?

No.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

On 8 above, Unregistered customary marriages are there in some tribes and recognised for certain and specific purposes e.g a wife marrying another woman to bear children for her.

Parenting

10. Can more than two people be recognised as the parents of a child?

Yes.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Yes, person giving birth is automatically named the mother.

12. If you have further comments on the matters raised in this section, please add them below.

Answer in Number 14 above is in the context of step parent in access and maintenance arrangements which is in most cultures and in the Children Act of Kenya.

However, birth certificate would only have 2 parents.

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

1. Unmarried men as per the Children Act of Kenya, However there was a High Court ruling that found this to be unconstitutional so what is pending is the amendment of that provision of law.

2. Same-sex, transgender, non-binary or intersex are excluded.

Surrogacy

15. Is surrogacy legal?

Yes and no. However, there is only case law so far and no statutory/regulatory framework.

16. Is commercial/compensated surrogacy legal?

Yes however, any clause in the written agreement needs to qualify that the compensation is for the loss of income that would have been received during the period of the surrogacy.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Yes.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

No.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

By insertion into the birth certificate. This is not the case for same-sex relationship.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

N/A.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

N/A.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

N/A.

25. If you have further comments on the matters raised in this section please add them below.

N/A is based on the fact that same-sex union or cohabiting are not legal nor are they recognized by our laws.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

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28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes it may be possible by will or bequests.

30. Is gay conversion therapy banned?

Yes.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes but only for intersex cases.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Only for inter-sex children. The parent will usually give consent to the doctors and so the relevant medical forms would have to be filled. There is no other specific legal process.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Only intersex persons and children can be registered.

35. What happens to the status of the marriage/civil partnership when one party transitions?

N/A.

36. Is changing gender a ground for divorce?

N/A.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

South Africa



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No aspect of gender identity is illegal. I don't think any illegality pertains to gender affirming treatment either.

3. If you have further comments on the matters raised in this section, please add them below.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, in terms of the Civil Union Act, 2006.

A Civil Union can be concluded between heterosexual or same-sex couples. The union can be termed a civil union or a marriage. The distinction between the Civil Union Act 2006 and the Marriage Act 1961 that allowed marriage officers to refuse to solemnise a civil union on the basis of conscientious objection has recently been legislatively deleted. At present only opposite-sex couples can marry under the Marriage Act, 1961.

Note that a single marriage statute that will regulate all unions in South Africa, including religious marriages and same-sex unions, is at an advanced stage of Parliamentary consideration, with public hearings already having been held.

5. Are foreign marriages of same-sex couples recognised?

Yes. The 1996 Constitution prohibits discrimination on, amongst other, the ground of sexual orientation.

The denial of exemptions regarding immigration permits to foreigners who are same-sex partners of permanent South African residents was declared unconstitutional. The amended definition in the Immigration Act, 2002, now makes reference to a *“permanent homosexual or heterosexual relationship which calls for cohabitation and mutual financial and emotional support”*.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

See the answer to 4 above.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There is only limited recognition of any cohabiting relationships for same-sex and opposite-sex couples. What are now legally defined as “life partnerships” are recognised for the purposes of intestate succession, and for qualifying for post-death benefits under the Maintenance of Surviving Spouses Act. This occurred after the Constitutional Court decision in *Bwanya v The Master* (CC 441/2020) which upheld the right of a life partner to post death maintenance from her partners estate.

Universal Partnerships may be found by a court to exist where two domestic partners cohabit for a long period of time, during which period their relationship closely resembles that which two married individuals share. This relationship, as described in case law, is one which primarily pertains to a commercial undertaking, the object of which is to make a profit. Upon dissolution of this relationship, it becomes a commercial entity, one in which a contract, either explicitly or tacitly, had come into existence. This “device” is used when one partner seeks a remedy in order that he or she may institute a valid monetary claim against their deceased partner or ex-partner. In order for one to succeed in a claim establishing the existence of a universal partnership, the requirements are: firstly, that each of the partners bring something into the partnership, whether it be money, labour or skill; secondly, that the business should be carried on for the joint benefit of the parties; and third, that the object should be to make a profit.

There appears to be no reasons why the remedy could not apply to same-sex couples in the same way as it does for heterosexual partners. The claim is a contractual one; it does not require cohabitation.

The Maintenance Act 1998 does not only apply to married couples, but applies as soon as a legal duty to maintain arises. This implies that same-sex or opposite-sex life partners who have contracted to maintain one another are included for the purposes of this Act.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriage is recognised through dedicated legislation (The Recognition of Customary Marriages Act, 1998). Customary marriages are also intended to be subsumed in the single marriage bill now under consideration.

Customary law does not permit same-sex customary marriage (to the best of my knowledge).

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No. However, parental rights and responsibilities can be awarded to more than one person, eg a grandmother or other relative.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In *J v Minister of Home Affairs*, the Constitutional Court declared s 5(1)(a) of the Children's Status Act (now repealed) to be constitutionally invalid. The applicants were lesbian partners in a permanent life partnership. The second applicant gave birth to twins who were conceived through artificial insemination. The sperm was donated by an anonymous man; the ova were provided by the first applicant. The second applicant, who – although she did not provide the ova – physically gave birth to the twins, was registered as their mother. Despite their having a genetic connection, s 5(1)(a) of the Children's Status Act precluded the registration of the first applicant as a "parent" of the children. The applicants thus sought an order requiring, *inter alia*, that both applicants be recorded as parents on the children's birth certificates (the second applicant as the "mother" and the first applicant as the "parent") and for the forms annexed to the regulations to be amended to allow for a person in the position of the first applicant ('where such person is the donor of a gamete used in the conception of the child') to be recorded as the parent of the child. The section was held to discriminate on the ground of marital status, which was inextricably linked to the applicants' sexual orientation, both of which constitute presumptively unfair discrimination. Accordingly, the relevant provisions were declared to be inconsistent with the Constitution to the extent that the word "married" appears in s 5 (which should be struck out in each instance), and to the extent that the section does not include the words "or permanent same-sex life partner" after the word "husband" wherever it appears. The Children's Status Act was repealed in toto by the Children's Act of 2005.

The forms issued by the Department for Registration of Birth are not entirely gender-neutral. They provide for the details of the "mother" (also termed "Parent A") to be provided, as well as those of the "father" (also termed "Parent B").

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not by law.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

The most important requirements are that at least one of the intended parents (or the intended parent) must donate gametes for the purposes of fertilisation (genetic link requirement); that per-fertilisation approval from a court must be obtained; and that the parties be domiciled in the Republic; and the intended parents (or parent) are not able to give birth to a child and that the condition is permanent and irreversible.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Arguably yes. They would possibly have to register the child's birth in South Africa.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes it is legal. There is no difference whether the couple is same-sex or is an unmarried individual.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

No right, responsibility or obligation arises between a child born of a woman as a result of artificial fertilisation and any person whose gamete has been used for such artificial fertilisation except where that person is the woman who gave birth to the child or that person was her husband (subject to the surrogacy provisions). This entails that AI in South Africa is anonymous. (Section 40 of the Children's Act, read with the Regulations to the National Health Act, 2012; Regulation 19 provides that no person shall disclose the identity of any person who donated a gamete or received a gamete, or any matter related to the artificial fertilisation of such gametes, or reproduction resulting from such artificial fertilisation except where a law provides otherwise or a court so orders).

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

There are no differences.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

It is the same as for hetero-sexual marriages.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Save as provided for above in section 7, there are no financial claims accorded to de facto relationships that break down, be they same-sex or heterosexual. Regarding custody, this might be effected by a parental rights and responsibilities agreement, a parenting plan, or by a court. Note though that unmarried biological fathers do not acquire parental responsibility (section 21 of the Children's Act). There are additional criteria to be met before there is such automatic acquisition of parental responsibilities and rights by a biological unmarried father, such as the degree of commitment shown towards the child.

Because the Civil Union Act 2006 equates the consequences of a civil union and a civil marriage, the mother's (male or female) civil union partner also acquires full parental responsibility and rights. This is so even where the second mother in the union has no genetic connection to the child.

In *V v Minister for Social Development*, a constitutional challenge was brought by two women in a same-sex relationship to s40 of the Children's Act, concerning artificial reproduction. They were not in a civil union, but planned to have a family using the gametes donated by the first applicant. As a consequence of the definition of "spouse", even though the first applicant might be a gamete donor, she would be excluded from being a legal parent to any children carried by the second applicant (although she would act as a social parent in the nurturing and raising of the children). Under the legislative scheme, only the second applicant would establish rights and responsibilities. Declaring s40 of the Children's Act to be unconstitutional to the extent that it did not include permanent life partners, the Court ordered that these words be read in at various places in the relevant section, after the word "spouse".

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Alteration of Sex Description and Sex Status Act 2003 provides for legal alteration. A person whose sex has been altered in terms of the Alteration Act *“is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such alteration.* Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvement through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register. An application must be accompanied by the requisite medical reports, but a court order is not required.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes. The normal rules concerning children’s consent to medical treatment set out in section 129 of the Children’s Act would apply. Essentially a child over the age of 12 years may consent to his own medical treatment, and may also consent to surgical operations, provided that he or she has the mental capacity to understand the risks and benefits associated with the surgery, and is duly assisted by his or her parent or guardian.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Rights and obligations that have been acquired before the alteration of his or her alteration are not affected. In practice, however, the Department of Home Affairs has stalled providing gender recognition certificates where the parties are still legally married under the 1961 Marriages Act, as this Act provides that a marriage only be between a man and a woman.

36. Is changing gender a ground for divorce?

Divorce is premised on irretrievable breakdown, so it might be if one party alleges it.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Australia



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, being homosexual is not illegal, nor is it illegal to engage in consensual homosexual sexual acts under Australian law.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender identity and gender affirming treatments are not illegal (for the most part) in Australia. Although gender affirming treatments are predominantly not illegal, certain conversion practices (i.e. “conversion therapy” and suppression practices) are banned in several Australian jurisdictions.

For children, navigating gender affirming care is a more complex topic. Pursuant to s 61C of the Family Law Act 1975 (Cth), each parent of a child has parental responsibility for their child. There are certain special medical procedures for children which fall outside parental responsibility to consent to the treatment on behalf of a child and require determination by the Court. Gender affirming medical treatment for transgender children was previously considered one of these special medical procedures, but since 2013 this court authorisation is no longer required, if the parents, medical practitioners, and the child agree, and no other special circumstances exist.

3. If you have further comments on the matters raised in this section, please add them below.

N/A.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can marry. There is no difference from opposite-sex marriages.

5. Are foreign marriages of same-sex couples recognised?

Yes, same-sex marriages that were validly performed overseas will be recognised in Australia. This recognition applies to marriages performed before and after the legalisation of same-sex marriage in Australia in 2017. When considering the validity of the marriage, the court will assess several factors, including the parties' financial dependence or interdependence, the nature of their household and the presence of a sexual relationship, among other factors.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes, both same-sex and opposite-sex couples who are not legally married may be recognised as being in a de facto relationship if they live together on a genuine domestic basis and are not closely related. Unlike marriage, which is formalised by a marriage certificate, de facto relationships have no formal requirement for registration, although they can be registered in each state and territory under State legislation. This includes domestic relationships for same-sex couples. The key difference is that de facto relationships can generally be ended more simply, without the formal divorce process required to dissolve a marriage.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Under the Family Law Act, same-sex de facto relationships are fully recognised and have the same legal rights as opposite-sex de facto relationships. There are no differences in how the law treats the breakdown of these relationships, both receive equal consideration regarding financial and parenting matters.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriages will be recognised in Australia if all the legal requirements of the Marriage Act 1961 and the Migration Act 1958, and their associated Regulations, are met. An example of a customary marriage that may be recognised under Australian law is that of an Aboriginal or Torres Strait Islander marriage, which is treated as a de facto relationship. Forced marriages are not recognised in Australia as they do not meet the legal requirements to be considered a valid marriage. If a marriage is customary and sanctioned culturally but not legally it will not be recognised. This is the same for same-sex couples.

9. If you have further comments on the matters raised in this section, please add them below.

N/A.

Parenting

10. Can more than two people be recognised as the parents of a child?

Only two people can be listed as parents of a child on a birth certificate. However, more than two people can be recognised as having parental responsibility for decision making of a child through court orders. Only 2 however can be declared parents by court order or adoption.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Australian law allows a person to change their record of sex and may apply to have their child's birth certificate changed accordingly. There are three parental descriptors: mother, father and parent on a child's birth certificate.

Where a child is born as a result of an artificial conception procedure, a woman who gives birth to a child is legally a parent of that child. If the child was born to a woman whilst married or in a de facto relationship, their partner will also be considered a parent, only if they consented to the procedure.

Where a child is born as a result of a surrogacy arrangement, the surrogate will be named as mother on the birth certificate, however in the case of an altruistic surrogacy which is recognised by a state or territory, commissioning parents will be recognised as parents and the birth certificate will be amended upon the making of parentage order for the commissioning parent.

Same-sex couples will also be considered parents of a child if the child was born through an artificial conception procedure or altruistic surrogacy arrangement. Same sex couples can legally adopt in all jurisdictions of Australia however, Adoption in Australia is rare for children under 18.

12. If you have further comments on the matters raised in this section, please add them below.

N/A.

Adoption

13. Is adoption possible?

Adoption is possible under Australian law. However, an adoption order is rarely made for children under 18 due to the exceptional nature of an adoption order in most states and territories. There are different types of adoption in Australia. Local or domestic adoption involves adopting a child who is an Australian citizen or permanent resident and is usually arranged through State or Territory government agencies. Intercountry adoption involves Australian people adopting children from overseas countries (typically countries in the Hague Convention agreement or a bilateral arrangement with Australia). Known child adoption applies when a child is adopted by someone they already know, such as a stepparent or a relative.

To adopt a child, there are certain requirements that must be met to be eligible. Eligibility varies between states and territories, but typically applicants must be at least 18 years old and there may be a required age gap between the adoptive parent and child. Applicants usually need to be Australian citizens or permanent residents, and they must undergo health, financial, and character assessments.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In Australia, most people are eligible to adopt (subject to assessment), including unmarried individuals, de facto couples, same-sex couples and people who are in the LGBTQIA+ community. In Victoria, for instance,

a prospective adoptive parent need not meet any special qualifications. They can apply if they are currently married, in a de facto relationship for at least two years or a single person. They must show they are ready to adopt, are capable of being a parent, are committed to open adoption. Birth parents may express wishes relating to the background of the applicants, their religion, occupation and other factors. There are no age limits to become an adoptive parent (unless they are a minor), but they should be fit and healthy enough to care for the child through to adulthood.

Surrogacy

15. Is surrogacy legal?

Surrogacy is legal across Australia when it is altruistic. This means the surrogate cannot be paid a commercial sum. Commercial surrogacy, where a surrogate mother is paid to carry intended parents' child, is illegal. The laws on surrogacy vary by state and territory. Intended parents must apply for a parentage order after the birth to become the child's legal parents. The surrogate (and their partner, if applicable) must freely consent and can withdraw consent until the parentage order is made. Eligibility criteria for intended parents vary but often include being medically unable to conceive or carry a pregnancy. Australians sometimes pursue surrogacy abroad. However, commercial surrogacy undertaken overseas is illegal for residents of some states under extraterritorial laws (ACT, NSW, QLD) and in some cases long arm laws (NT, SA, WA). If the form of surrogacy regulation overseas is adoption, then offences can be committed for residents of every state, e.g., Adoption Act 1984 (Vic), ss. 116,119.

16. Is commercial/compensated surrogacy legal?

Commercial surrogacy agreements are illegal in all eight State and Territory jurisdictions across Australia.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Gender identity, sexual orientation and marital status are not legal barriers for being eligible to enter an altruistic surrogacy arrangement, except in WA. WA restricts access to surrogacy to heterosexual couples, lesbian couples and single women.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

In Australia, the parentage of same-sex couples who have become parents through overseas surrogacy arrangements, especially commercial surrogacy, is generally not legally recognised. However, parentage of a child born overseas through surrogacy in many countries is automatically recognised if the parents are named on the birth certificate. Under Australian law, the surrogate (and sometimes their partner) is considered the legal parent of the child at birth and is in most countries named as a parent on the child's birth certificate. There have been a number of court decisions where the intended genetic father through surrogacy has been held to be a parent. The law in this area is in a state of flux. The surrogate remains the legal parent unless parentage is transferred by a court order, which is typically only available for domestic altruistic surrogacy. However, intended parents who are not legally recognised may apply to the Federal Circuit and Family Court in Australia for a

parental responsibility order. In some cases, if there is an overseas court order granting parentage or parental responsibility, parts of that order may be recognised in Australia, making them enforceable; however, judges have discretion and may choose not to enforce such orders.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and embryo donation is legal in Australia, however there are specific regulations and conditions that must be adhered to and it is generally done through an IVF clinic. Altruistic donation is the only permissible form of donation, meaning donors cannot be paid for their gamete or embryo donation. Anonymous donations are not permitted, and donors must consent to having their identity released to any child born through donation.

Under section 60H of the Family Law Act 1975 (Cth), if a married or de facto couple (regardless of sex) consents to artificial reproductive treatment and a child is born, both partners are considered the legal parents, even if neither provided the gametes. Generally, the donor has no parental status under the law. However, as was the case in *Masson v Parsons* [2019] HCA21, a sperm donor may be considered a legal parent by the Court if he played a significant role in the child's life and there was no other legal father. In a recent decision, an intended father through IVF was held to be a parent, even though he had no genetic connection with the child.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

In Australia, same-sex couples who conceive a child through artificial insemination are typically recognised as the legal parents of the child, provided they meet certain criteria.

Under the Family Law Act 1975 (Cth), both mothers in a lesbian relationship will be recognised as the legal parents of a child born through artificial insemination providing they meet the requirements of s60H. The non-birth mother must have consented to the procedure and have been living with the birth mother on a genuine domestic basis when it was performed. In these circumstances, the sperm donor will not be considered a legal parent.

For same-sex male couples the law differs, and the birth mother will be considered the legal parent if the couple does not adopt the child or apply for the transfer of parentage from herself to the couple. There have been a number of court decisions where the intended genetic father through surrogacy has been held to be a parent. The law in this area is in a state of flux.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

If a person gives birth to a child through IVF or other ART procedures, the non-birth partner will be legally recognised as a parent if they are married to the birthing partner or are a de facto partner, had consented to the procedure and the procedure was performed through a registered provider.

This applies to same-sex and opposite-sex couples, whether married or in a de facto relationship. There are slight differences in lesbian and gay same-sex relationships, which is addressed in the question above.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No, in Australia, there are no differences in the divorce process for same-sex couples concerning either finances or custody. While there are some cases in the Federal Circuit and Family Court which have imposed strict requirements on recognising de facto relationships that give rise to property adjustment, this can apply to same-sex or opposite-sex couples who are living together.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

If a civil union or similar non-marriage form of relationship is recognised as a de facto relationship under Australian law, its dissolution is governed by the Family Law Act 1975, which provides for financial and property settlements much like divorce. There is no legal distinction between same-sex and opposite-sex de facto couples. Both have equal rights to make claims for property division, spousal maintenance, and parenting arrangements upon separation.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Under Australian law, same-sex de facto couples have the same legal rights and obligations as opposite-sex de facto couples when a relationship breaks down. This includes rights to seek financial settlements, spousal maintenance, and parenting (custody) orders under the Family Law Act 1975 (Cth).

There is no legal distinction based on the sex or gender of the parties. To access these rights, the couple must meet the legal definition of a de facto relationship, which generally includes living together on a genuine domestic basis for at least two years, or having a child together, or making a substantial contribution, among other factors.

25. If you have further comments on the matters raised in this section please add them below.

N/A.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No, there are no differences between same-sex couples and opposite-sex couples in terms of inheritance laws so long as the claimant under the relevant family provision legislation was married or in a de facto relationship with the deceased

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, same-sex couple can inherit property via alternative arrangements.

28. If you have further comments on the matters raised in this section please add them below.

N/A.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The law prohibits discrimination on the basis of gender or sexual orientation through the Sex Discrimination Act 1984. These protections apply in areas such as employment, education, and service provision and apply equally to all individuals, regardless of their gender identity or sexual orientation.

30. Is gay conversion therapy banned?

Yes, gay conversion therapy is banned in all Australian jurisdictions.

31. If you have further comments on the matters raised in this section, please add them below.

N/A.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes, an adult in Australia can legally change their gender, usually through a state registry without court involvement. The process typically requires a statutory declaration and a statement from a medical or psychological professional confirming appropriate gender transition treatment (surgery is not required). Spousal consent is not needed, and a person can change their legal gender without having to divorce.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Under Australian law, gender-affirming medical treatment for minors available, including puberty blockers, hormone therapy (and sometimes surgery). These treatments are subject to strict medical and legal safeguards, with parental consent and clinical assessment necessary to the process.

Puberty blockers may be prescribed to minors with the informed consent of the child, their parents or guardians, and the treating clinicians. Hormone therapy similarly requires parental and medical consent, and the child must be assessed as Gillick competent; that is, capable of fully understanding the nature, effects, and consequences of the treatment. Gender-affirming surgery is rarely offered to minors and is generally considered only in exceptional circumstances; even with parental consent, it typically requires court authorisation.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

In Australia, individuals who do not identify exclusively as male or female can choose to have their gender recorded as “X” on certain official documents, such as passports and some state or territory-issued identity cards, including driver’s licences. This option recognises non-binary, indeterminate, or unspecified gender identities; however, the availability of the “X” marker on documents like birth certificates varies between states and territories.

35. What happens to the status of the marriage/civil partnership when one party transitions?

When one party in a marriage or de facto relationship transitions, the legal status of the marriage or partnership remains unchanged.

36. Is changing gender a ground for divorce?

Changing genders is not a ground for divorce. Australia is a “no-fault” jurisdiction, meaning the Court does not consider why the marriage or de facto relationship ended or what caused the relationship to break down. The only ground for divorce is that the marriage irretrievably broke down and the parties have been separated for at least 12 months.

37. If you have further comments on the matters raised in this section, please add them below.

N/A.

JURISDICTION

India



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, In India, homosexuality and consensual homosexual sexual acts are legal following a landmark Supreme Court ruling on September 6, 2018 (Constitution Bench of the Supreme Court of India in *Navtej Singh Johar v. Union of India* [(2018) 10 SCC 1]). This ruling decriminalised consensual same-sex relationships by striking down parts of Section 377 of the erstwhile Indian Penal Code (IPC), which had previously criminalised such acts as “unnatural offences”.

Section 377 was introduced during British colonial rule in 1861 and had been used to criminalize homosexual acts, leading to significant stigma and discrimination against the LGBTQ community in India. The Supreme Court’s decision marked a significant victory for LGBTQ rights, affirming that individuals have the fundamental right to express their sexual orientation without fear of legal repercussions. However, it is pertinent to mention that, non-consensual acts and acts involving minors are still illegal under the remaining provisions of Section 377, which were not struck down by the court.

Before the decriminalisation, violations of Section 377 could lead to severe penalties, including imprisonment for up to ten years. However, since the ruling, consensual homosexual acts are no longer subject to criminal penalties in India. The only remaining legal consequences pertain to non-consensual acts or those involving minors, which can still incur significant penalties under existing laws.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

In India, aspects of gender identity and gender-affirming treatment are legally recognized, particularly under the Transgender Persons (Protection of Rights) Act, 2019, enacted by the Indian Parliament, which allows adults to self-identify and pursue gender-affirming surgeries.

The High Court of Delhi in *Srishti Madurai Educational Research Foundation v. State (NCT of Delhi)* [2022 SCC OnLine Del 5003], the High Court of Madras in *Arun Kumar v. Inspector General of Registration* [2019 SCC OnLine Mad 8779] and recently, the High Court of Kerala in *X v. Director of Health Services* [2023 SCC OnLine Ker 6244] were faced with the question of the legality of gender affirming surgeries on intersex children and the Court

held that gender affirming surgeries cannot be performed on infants, since they are in no state to give consent unless it is medically necessary. Courts have expressed the necessity of establishing multidisciplinary committees to assess the need for such surgeries in minors, emphasizing the importance of consent and the potential for evolving gender identity during adolescence. However, they are all silent on whether minors who are not infants can voluntarily opt for such surgeries.

3. If you have further comments on the matters raised in this section, please add them below.

In 2019, the Indian Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, with the primary aim of safeguarding the rights and promoting the welfare of individuals who are either born as transgender or identify as such. Section 2(k)5 of the Act defines a “transgender person” as an individual whose gender identity does not align with the gender assigned to them at birth and includes trans men and trans women, people with intersex variations and individuals with sociocultural identities such as kinner, hijra, aravani, and jogta.

To attain legal recognition as a transgender person, an individual who identifies as such can initiate the process by applying to the District Magistrate (DM) under Sections 5 and 6 of the Act for the issuance of a certificate. Upon receipt of such an application, the DM is mandated to issue the applicant a certificate that officially acknowledges their transgender identity. Section 7 of the Act specifically addresses those who have undergone gender affirming surgeries. It allows them to seek a revised certificate reflecting their reaffirmed gender identity by making an application to the DM. The DM, upon satisfying the application’s accuracy, would issue a certificate that reflects the change in the individual’s gender identity.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No. Same-sex couples cannot legally marry in India, as the country’s laws currently define marriage exclusively as a union between a man and a woman. Despite the decriminalization of homosexuality in 2018, which was a significant victory for LGBTQ+ rights, there has been no legal recognition of same-sex marriages. The Supreme Court of India recently ruled against the legalization of same-sex marriage on October 17, 2023 in the case of *Supriyo @ Supriya Chakraborty & Anr. v Union of India* [2023 SCC OnLine SC 1348], stating that the issue should be addressed by Parliament rather than through judicial intervention.

Consequently, same-sex couples do not enjoy the legal rights and benefits associated with marriage, such as inheritance rights, joint property ownership, and adoption rights, which are available to opposite-sex couples. While some same-sex couples may participate in traditional ceremonies, these unions lack legal status and do not confer the same protections or recognitions afforded to heterosexual marriages.

5. Are foreign marriages of same-sex couples recognised?

No. India does not legally recognize same-sex marriages, including those solemnized abroad. The Foreign Marriage Act, 1969, provides that marriages celebrated outside India can be recognized if at least one party is domiciled in India, but it does not explicitly include same-sex unions. Consequently, same-sex marriages conducted in foreign jurisdictions are not entitled to the same legal status or benefits as heterosexual marriages within India. The Supreme Court of India has ruled that while discrimination against same-sex couples must end, the decision to recognize such marriages is left to the Parliament.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

As of now, India does not have a legally recognized civil union or similar non-marriage status for same-sex couples. Although the Supreme Court of India has acknowledged the right to enter into unions, it has not established a formal framework for civil unions. In a recent ruling on October 17, 2023, the court denied the constitutional validity of same-sex marriages while suggesting that there is a potential for recognizing civil unions under the Special Marriage Act. However, this recognition is not yet codified into law.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

In India, de facto, cohabiting, or live-in relationships for same-sex couples are not formally recognized under law, but recent judicial rulings have provided some limited legal protections. The Supreme Court has acknowledged that same-sex couples can form stable relationships and granted them certain rights akin to those of live-in couples, particularly in the context of social security and protection from domestic violence. However, these rights are not as comprehensive as those afforded to opposite-sex couples in marriage.

Significant Differences:

1. **Legal Recognition:** Same-sex live-in relationships lack formal legal status, while opposite-sex marriages are recognized under various laws, providing a broader range of rights and protections.
2. **Rights and Benefits:** Opposite-sex couples in marriage enjoy extensive legal rights, including inheritance rights, tax benefits, and spousal rights, which are not fully extended to same-sex couples in live-in arrangements.
3. **Judicial Protections:** While courts have ruled that same-sex live-in relationships are not unlawful and can receive limited protections (like police protection), these do not equate to the full legal framework that governs heterosexual marriages.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

In India, customary marriages are recognized under various personal laws, including the Hindu Marriage Act, 1955, which allows marriages to be solemnized according to the customary rites and ceremonies of either party.

However, this recognition is primarily applicable to opposite-sex couples. Currently, there is no legal framework in place for recognizing same-sex customary marriages. While same-sex couples may hold traditional ceremonies, these unions lack legal status and do not provide the same rights or protections as heterosexual marriages.

The Supreme Court has acknowledged the existence of live-in relationships among same-sex couples and granted them certain limited legal protections, but this does not extend to customary marriage recognition. As a result, any breakdown of a same-sex relationship does not afford the same legal remedies or protections that would be available to opposite-sex couples under customary marriage laws. Thus, while customary marriage exists within the legal framework for heterosexual couples, same-sex couples remain without formal recognition or equivalent rights in India.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

In India, the legal framework currently does not recognize more than two individuals as legal parents of a child. Parenthood is primarily understood in terms of biological or adoptive relationships, typically involving a mother and a father. Existing laws such as the Hindu Minority and Guardianship Act, 1956, and the Juvenile Justice (Care and Protection of Children) Act, 2015, define parentage in this traditional manner, limiting the recognition of legal parents to two individuals. While there has been a growing discourse around diverse family structures, including those involving social parents (such as step parents or guardians), Indian law does not formally grant them the same legal status as biological or adoptive parents. Some courts have acknowledged the role of social parents, particularly in matters related to custody and guardianship, but these acknowledgments do not create a formal legal status equivalent to that of biological or adoptive parents. The current legal framework also poses limitations in the context of surrogacy or assisted reproductive technologies (ART), where more than two individuals might have an interest in the upbringing of the child. Despite discussions around inclusive definitions of parenthood, Indian law does not yet accommodate scenarios where more than two individuals can be legally recognized as parents of a child.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In India, the status of a parent upon a child's birth is primarily defined by biological and legal frameworks. The person giving birth is automatically recognized as the mother in official documents, while the father's name is often required but not always mandatory. The legal system has traditionally favoured paternal identification, which has led to challenges for single mothers and non-traditional family structures. Recent judicial rulings have begun to address these issues, allowing for the possibility of recognizing the mother's name alone on certain documents. However, there is no provision for a person to choose to be identified as "parent" or "father" at birth; the designation typically defaults to mother for the birthing individual.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes, adoption is possible in India and is governed primarily by two laws; the Hindu Adoption and Maintenance Act, 1956 (HAMA) and the Juvenile Justice (Care and Protection of Children) Act, 2015. HAMA allows Hindus, Buddhists, Jains, and Sikhs to adopt children, while the Juvenile Justice Act provides a framework for all other communities, including Muslims and Christians, to adopt children who are orphans, abandoned, or surrendered. The adoption process involves registration with the Central Adoption Resource Authority (CARA), which oversees both domestic and inter-country adoptions.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In India, certain classes of people are ineligible to adopt based on existing laws and guidelines. Here are the key points regarding eligibility for adoption:

1. **Unmarried Individuals:** Unmarried women can adopt children of any gender, while unmarried men are generally restricted from adopting female children. They can adopt male children but must meet specific conditions, including being at least 21 years older than the child.
2. **Same-Sex Couples:** As per Constitution Bench of Supreme Court of India in *Supriyo v. Union of India* [2023 SCC OnLine SC 1348]) Same-sex couples are not legally recognized as adoptive parents under Indian law. Adoption laws do not provide a framework for same-sex couples to adopt, which means they cannot legally adopt a child together. However, a partner in the same-sex couple may adopt the child as a single parent and not as a couple.
3. **Transgender, Non-Binary, or Intersex Individuals:** There is currently no explicit legal provision in Indian adoption laws that addresses the eligibility of transgender, non-binary, or intersex individuals to adopt. Transgender couples in heterosexual marriages are permitted to adopt. However, the Juvenile Justice (Care and Protection of Children) Act, 2015, does allow individuals to adopt regardless of marital status, but practical implementation may vary and could exclude non-binary or intersex individuals due to societal biases.
4. **Married Couples:** For married couples, both partners must consent to the adoption. If one partner is not supportive or deemed unfit by the court, the adoption may not proceed.

In short, while there have been positive changes allowing single parents to adopt, significant restrictions remain for unmarried men and same-sex couples in India, reflecting ongoing societal and legal challenges regarding diverse family structures.

Surrogacy

15. Is surrogacy legal?

Yes, surrogacy is legal in India, however, it is strictly regulated under the Surrogacy (Regulation) Act, 2021.

This law permits only altruistic surrogacy, which means that surrogate mothers cannot receive any financial compensation beyond medical expenses and insurance coverage during the pregnancy. Surrogacy is allowed for Indian couples who have been married for at least five years and suffer from proven infertility. Single women who are widowed or divorced can also opt for surrogacy, but they must meet specific age criteria (between 35-45 years).

The law explicitly prohibits single men, same-sex couples, and live-in couples from entering into surrogacy arrangements. It is pertinent to mention that, surrogates must be married women with at least one child of their own, aged between 25 and 35 years, and can only serve as a surrogate once in their lifetime. They must also obtain medical and psychological fitness certificates. The Act establishes a regulatory framework that includes the formation of a National Surrogacy Board to oversee surrogacy practices and ensure compliance with the law. Violations of the surrogacy laws can result in severe penalties, including imprisonment for up to ten years and fines up to Rs10 lakh.

16. Is commercial/compensated surrogacy legal?

No, commercial surrogacy is not legal in India. The Surrogacy (Regulation) Act, 2021, explicitly prohibits commercial surrogacy, allowing only altruistic surrogacy, where surrogate mothers cannot receive any compensation beyond medical expenses and insurance coverage during the pregnancy. This ban was implemented to prevent exploitation of surrogate mothers and address ethical concerns associated with commercial arrangements, such as child trafficking and the commodification of children. Violating this law can result in severe penalties, including imprisonment for up to ten years and fines of up to Rs10 lakh (approximately \$12,000) for engaging in or advertising commercial surrogacy. The regulation aims to ensure that surrogacy practices are conducted ethically and prioritize the welfare of both the surrogate mother and the child.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In India, certain classes of people are ineligible to participate in surrogacy based on the Surrogacy (Regulation) Act, 2021. Here are the key points regarding eligibility:

Unmarried Individuals: Unmarried men are not eligible to engage in surrogacy. Unmarried women can participate only if they are between the ages of 35 and 45 and are either divorced or widowed. However, if they have a surviving child from a previous relationship, they are ineligible.

Same-Sex Couples: Same-sex couples are explicitly prohibited from entering into surrogacy arrangements under the current legal framework.

Transgender, Non-Binary, or Intersex Individuals: The legislation does not specifically address the eligibility of transgender, non-binary, or intersex individuals for surrogacy. Individuals falling into permitted categories may be permitted to participate as intending parents. As such, they may face challenges in participating in surrogacy arrangements due to the lack of explicit legal recognition.

Married Couples: Only married couples who have been married for at least five years and can provide proof of infertility are eligible for surrogacy. Additionally, they must not have any surviving biological or adopted children, except in cases where the child has a mental or physical disability.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No, the parentage of same-sex couples who have become parents through surrogacy overseas is not recognized in India. According to the government's stance presented in the Supreme Court of India, same-sex couples are explicitly excluded from the provisions related to surrogacy and assisted reproduction under Indian law, which primarily allows only heterosexual married couples to engage in these practices. This exclusion is rooted in concerns about child welfare and the desire to provide a "complete family" structure, as articulated by the government in its legal arguments.

As a result, even if a same-sex couple successfully becomes parents through surrogacy in another country, they would not have legal recognition of their parental status upon returning to India. To address this lack of recognition, same-sex couples may need to pursue additional legal steps, such as applying for adoption or seeking a court order for parentage recognition, although these processes can be complex and may not guarantee success due to existing legal frameworks that do not acknowledge their relationship as valid for parental rights.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, gamete and embryo donation is legal in India, regulated under the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021. These laws set specific eligibility criteria for donors and recipients, emphasising informed consent, donor anonymity, and the prohibition of commercial transactions.

Requirements for Terminating Parental Relationships

To terminate the parental relationship between the donor and the child:

- **Informed Consent:** Donors must provide informed consent acknowledging that they relinquish any parental rights over the gametes or embryos donated. This consent must be documented and is crucial to ensure that the donor cannot claim parental rights in the future.
- **Legal Framework:** The laws stipulate that once the gametes are donated and used in assisted reproductive procedures, the donor has no legal claim to parenthood, which is particularly important for protecting the intended parents' rights.

Differences for Same-Sex Couples

Currently, there are significant restrictions regarding gamete donation for same-sex couples:

- **Eligibility:** The law primarily allows married couples to utilise gamete donation for assisted reproductive technologies. Same-sex couples, whether married or unmarried, do not have explicit legal recognition

under these laws for accessing gamete donation.

- **Further Steps:** If a same-sex couple were to pursue surrogacy or gamete donation overseas, they would face challenges upon returning to India, as their parental status would not be recognized without additional legal validation, such as adoption proceedings.

In summary, while gamete and embryo donation is legal in India with clear requirements for terminating parental relationships, same-sex couples face significant barriers in accessing these reproductive technologies legally within the country.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Same-sex couples who have a child through artificial insemination are not legally recognized as parents in India. The current legal framework does not provide for the recognition of same-sex marriages or partnerships, which significantly impacts parental rights. Although the Supreme Court has decriminalized same-sex relationships and acknowledged the need to end discrimination against queer individuals, it has not yet extended legal recognition to same-sex marriages or partnerships, which would be necessary for establishing parental rights through artificial insemination.

In recent rulings, the Supreme Court of India has indicated that the right to family life is a fundamental human right, but it has placed the responsibility on Parliament to create laws that recognize same-sex unions and their parental rights. As a result, even if a same-sex couple successfully becomes parents through artificial insemination, they may face challenges in obtaining legal recognition of their parental status without additional steps, such as adoption proceedings. This lack of recognition is compounded by government statements asserting that only heterosexual married couples are eligible for benefits related to surrogacy and assisted reproduction, further marginalizing same-sex couples in matters of family and parenthood.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

In India, the recognition of parentage for a spouse in cases where a person gives birth following treatment at an IVF clinic is primarily governed by existing laws regarding parenthood. The person giving birth is automatically recognized as the mother, while the spouse (if they are legally married) is typically recognized as the father or parent. This recognition is straightforward for heterosexual couples, where both parents can be listed on the child's birth certificate.

Same-Sex Relationships and Other Union Types

For same-sex couples, civil unions, or common-law/de facto relationships, the situation is more complex:

1. **Same-Sex Couples:** Currently, same-sex couples do not have legal recognition of their relationship in India. Consequently, even if a same-sex couple uses IVF to conceive, the non-birthing partner does not automatically gain parental rights. They may need to pursue additional legal avenues, such as adoption, to establish their parental status.

2. **Civil Unions and Common-Law Relationships:** Similar to same-sex couples, individuals in civil unions or common-law relationships face challenges in obtaining legal recognition of their parental rights. The lack of formal legal frameworks for these relationships means that the non-birthing partner may not have recognized parental status without further legal action.

For non-biological parents in same-sex relationships or those in civil unions may need to seek adoption or a court order to establish legal parentage.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Same-sex marriage is currently not legally recognized in India, as reiterated by the Supreme Court's judgment on October 17, 2023. This ruling has significant implications for divorce processes concerning same-sex couples if such marriages were permitted.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

As of now, there is no formal recognition of civil unions for same-sex couples, and the Supreme Court's recent rulings have emphasised that non-heterosexual marriages cannot be recognized under existing laws. Moreover, same-sex relationships have limited legal recognition in India and cohabitation rights. However, no consequential rights are provided for under Indian law, except for the general laws regarding domestic violence and human rights and transfer of property via wills.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

In India, the legal framework for de facto, cohabiting, or live-in relationships as well as customary marriages is currently limited, especially for same-sex couples. Same-sex couples do not have legal recognition for their relationships, meaning they cannot claim maintenance or alimony upon separation. The absence of legal status means that financial contributions made during the relationship may not be recognized in court.

In contrast, opposite-sex couples can claim maintenance and alimony based on established laws governing marriage and divorce. This provides a legal basis for financial support post-separation. Same-sex couples typically cannot jointly own property due to the lack of recognition of their relationship. They may need to rely on individual ownership or wills to confer rights upon each other.

However, heterosexual couples can jointly own property and have clearer rights regarding the division of assets acquired during the relationship.

Same-sex couples face significant barriers in custody claims, especially if they have children through artificial insemination or other means. The non-birthing partner may have no automatic legal rights to custody or

visitation unless they pursue adoption or legal recognition through court. Currently, same-sex couples cannot adopt children together unless same-sex marriage is legalized, which further complicates custody arrangements. Opposite-sex couples have established rights regarding custody and visitation based on the welfare of the child. Courts generally prioritise the best interests of the child when determining custody arrangements.

In conclusion, while both same-sex and opposite-sex couples may enter into cohabiting relationships or customary marriages, the lack of legal recognition for same-sex unions in India creates significant disparities in financial and custody claims upon separation.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes, same-sex couples are treated differently regarding inheritance rights in India compared to opposite-sex couples. The current legal framework does not recognize same-sex marriages or unions, which significantly impacts inheritance rights. Moreover, same-sex couples lack legal recognition and associated rights under current laws, while opposite-sex couples enjoy established protections. Same-sex partners must rely on wills for inheritance rights, whereas opposite-sex partners have automatic claims under intestate succession laws. The absence of legal recognition for same-sex relationships in India leads to significant disparities in inheritance rights compared to opposite-sex couples, highlighting the need for legislative reforms to ensure equality and protection for all individuals regardless of sexual orientation.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, same-sex couples in India can inherit property through alternate arrangements such as wills and bequests, but they face significant challenges due to the lack of legal recognition for their relationships. Same-sex couples can secure their inheritance rights by explicitly naming each other in their wills. This legal document allows individuals to designate their partner as a beneficiary, ensuring that their property is transferred to them upon death. Similar to wills, bequests allow individuals to leave specific assets or properties to their partners. This ensures that the surviving partner has a claim to the designated property.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Although the Constitution of India prohibits discrimination on the basis of gender, discrimination based on sexual orientation continues to persist. Indian law now explicitly prohibits discrimination on the grounds of gender, which includes transgender, intersex, and non-binary identities, as well as sexual orientation. This prohibition is primarily rooted in constitutional provisions and landmark Supreme Court rulings.

1. Constitutional Provisions:

- a. Article 14: Guarantees equality before the law and equal protection of the laws to all individuals, which serves as a foundation against discrimination.
- b. Article 15: Specifically prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The Supreme Court has interpreted “sex” to include sexual orientation and gender identity, thereby extending protections to LGBTQ+ individuals.

2. Supreme Court Rulings:

- a. *Navtej Singh Johar v. Union of India* (2018): The Supreme Court decriminalised consensual same-sex relations by ruling that discrimination based on sexual orientation is unconstitutional. The court stated that sexual orientation falls under the category of “sex,” thus banning discrimination against LGBTQ+ individuals.
- b. *National Legal Services Authority v. Union of India* (2014): This ruling recognized transgender individuals as a third gender and affirmed that discrimination based on gender identity is constitutionally prohibited. The court emphasised that gender identity is integral to an individual’s identity, thus warranting protection under Article 15.

3. **Transgender Persons (Protection of Rights) Act, 2019:** This legislation aims to protect the rights of transgender individuals and prohibits discrimination in various areas, including employment, education, and healthcare.

30. Is gay conversion therapy banned?

Yes, gay conversion therapy has been effectively banned in India in 2022. The National Medical Commission (NMC) declared conversion therapy as an act of professional misconduct and prohibited medical professionals from attempting to change an individual’s sexual orientation or gender identity. This decision follows a series of court rulings aimed at protecting the rights of the LGBTQIA+ community.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In India, an adult can legally change their gender, primarily through a process that involves both medical and legal steps. This process does not require spousal consent, but it does involve specific procedures to ensure the change is recognized officially. The legal process for changing gender does not require spousal consent. Individuals have the autonomy to change their gender without needing approval from a spouse or partner.

Legal Process for Changing Gender

1. **Affidavit Creation:** The individual must prepare an affidavit declaring their intention to change their gender. This affidavit should include personal details such as the individual's name, father's name, address, age, and the new gender designation.
2. **Publishing an Advertisement:** The next step involves placing an advertisement in a leading newspaper to publicly announce the change of gender. This advertisement should reflect the information contained in the affidavit.
3. **Gazette Procedure:** The individual must file a formal application with the Department of Publication along with the necessary documents and prescribed fees. This application includes:
 - a. Two self-attested copies of government-issued IDs (e.g., Aadhar card, passport).
 - b. A medical certificate confirming the individual's gender change (if applicable).
 - c. A declaration stating that the information provided is accurate.
 - d. Any additional documentation as required by the authorities.
4. **Gazette Publication:** After reviewing the application, the Department of Publication will publish the change in the official government Gazette. This process typically takes about 45 to 60 business days.
5. **Updating Official Documents:** Once the gender change is published in the Gazette, individuals can update their gender on official documents such as Aadhar cards, PAN cards, and passports by following the respective procedures for each document.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, in India, gender-affirming treatments for legal minors, including puberty blockers, hormonal therapy and surgeries, are available but come with specific legal and medical considerations. But in cases of conflict, some courts have held that surgeries cannot be conducted on a child except in life-threatening situations, which threat is to be determined by a Committee (medical and non medical members) set up by courts.

Legal Process and Parental Consent

1. **Parental Consent:**

Parental consent is typically required for minors seeking any form of medical intervention related to gender transition, including puberty blockers and hormonal therapy. This ensures that parents are involved in the decision-making process regarding their child's health.

2. **Psychological Evaluation:**

A thorough psychological assessment is often mandated before any treatment can commence. This evaluation helps determine the minor's readiness for treatment and ensures that they have a clear understanding of the implications.

3. **Medical Guidelines:**

The process is guided by medical standards set by organisations such as the World Professional Association for Transgender Health (WPATH) and other relevant health authorities, which emphasise informed consent and comprehensive care.

4. **Court Involvement:**

In cases where there is a dispute regarding treatment or if parental consent cannot be obtained, legal intervention may be necessary. Courts may need to assess the situation on a case-by-case basis, especially if there are concerns about the minor's well-being or if they wish to pursue treatment against parental wishes.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

In India, the legal recognition of non-binary or gender-neutral identities on official documents such as birth certificates and passports is currently limited. As of now, government documents primarily recognize three gender categories: male, female, and transgender, but does not explicitly include a non-binary or gender-neutral option such as "X" or "other". The Transgender Persons (Protection of Rights) Act, 2019 recognizes the right to self-perceived gender identity, allowing individuals to identify as male, female, or transgender. However, it does not explicitly provide for the recognition of non-binary identities within official documentation. The Supreme Court of India has emphasised the importance of recognizing diverse gender identities and has ruled that transgender individuals have the right to self-identify. However, practical implementation regarding non-binary or gender-neutral options in identity documents remains limited.

35. What happens to the status of the marriage/civil partnership when one party transitions?

When one party transitions within a marriage or civil partnership in India, the marriage remains valid and is not rendered void due to the transition. According to the Supreme Court's interpretation, individuals have the right to change their gender identity even after entering into a marriage. Therefore, Individuals have the right to transition while married. The Supreme Court has affirmed that marriages remain valid even if one partner transitions. This was highlighted in the context of transgender individuals, where it was stated that a marriage between a cisgender person and a transgender person is legally recognized under existing laws, including personal laws governing marriage. However, these provisions primarily apply to heterosexual relationships, as same-sex marriages are still not legally recognized in India. The ongoing discussions and recent rulings indicate a potential for future changes in this area, but significant legal reforms would be necessary to fully address these issues for all types of relationships.

36. Is changing gender a ground for divorce?

In India, changing gender is not explicitly listed as a ground for divorce under the existing marriage laws. However, the implications of a gender transition can affect marriage dynamics, and there are legal considerations to keep in mind. While transitioning itself is not a ground for divorce, if one partner experiences emotional distress or feels that the relationship has fundamentally changed due to the transition, they might seek divorce on grounds such as cruelty or irretrievable breakdown of marriage. However, these claims would need to be substantiated with evidence.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Japan



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. There is no such kind of laws. (1873-1882 an act which criminalise homosexual intercourse using anus between men was repealed. Called chicken sex offence.)

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

In practice, not illegal. If there is no medical necessity of a “treatment”, it might be criminal offence when it is beyond the scope of effective consent to injury.

3. If you have further comments on the matters raised in this section, please add them below.

The fact that there was not a sodomy law means rather that gay had been made completely invisible.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No. Impossible. The Civil Code does not provide marriage between those who has the same legal gender.

5. Are foreign marriages of same-sex couples recognised?

Good question. There is no precedents. In my understanding of Japanese conflict of laws act, the marriage of same-sex couples who do not have Japanese nationality is most likely valid. If one of them has Japanese nationality, it is void in the eye of Japanese law.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Nothing. Actually, there is not non-marriage status for opposite-sex, either.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There has been no de facto/cohabiting/live-in relationships for same-sex couples that are legally recognised. But Japanese Supreme Court has ruled that the word of *“a person who is in the same position as legally married person has”* does not exclude a person only because that persons legal gender is the same gender. This was an interpretation of the law without mentioning any human rights, based on the aim of the law.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No. No, even between opposite legal gender persons.

9. If you have further comments on the matters raised in this section, please add them below.

Practically, it is very hard to set up a semi-marriage only for same-sex couple as there is no historical experience of legal framework of family other than legal marriage.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The Supreme Court ruled that always the person who gave birth is the mother in a recognition case of Nevada family court order that confirms that commissioning parents are the parents and that the surrogate is not the mother.

12. If you have further comments on the matters raised in this section, please add them below.

In the surrogacy cases, a commissioning person who provided sperm can recognize the child as his child.

Adoption

13. Is adoption possible?

Possible. There are two kinds of adoption.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No. Unmarried couple cannot adopt a child jointly. Married couple have to adopt jointly a minor child unless the child is legitimate [the word of civil code] child of the spouse or the spouse has lost ability to express will.

Surrogacy

15. Is surrogacy legal?

Yes. Rather I should say, not illegal.

16. Is commercial/compensated surrogacy legal?

Yes. Rather, not illegal.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There is none. Some diet members are going to submit a bill (1) only married couple can use ART (with criminal penalty against medical staffs) and (2) to ban or not to admit surrogacy.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

The Supreme Court ruled that always the person who gave birth is the mother in a recognition case of Nevada family court order that confirms that commissioning parents are the parents and that the surrogate is not the mother. In the surrogacy cases, a commissioning person who provided sperm can recognize the child as his child.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Legal. What is clear is only what is provided by an act. That is, when a wife got pregnant with ART, using sperm donated by a person other than the husband with consent of the husband, the husband, the child, and the wife cannot deny the legitimacy of the child. [the law still use the word legitimate] It means the person who provided

sperm cannot argue that the father of the child is the sperm donor when a wife got pregnant with ART, using sperm donated by a person other than the husband with consent of the husband.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No rule, act, or case law for a same-sex couples.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The mother is always the person who gave birth. The person who provided sperm is or might be able to recognize the child (the person who gave birth is or might be able to argue that the person is mother and seek parental responsibility of the sperm provider) except when a wife got pregnant with ART, using sperm donated by a person other than the husband with consent of the husband. There is no reliable case law on this issue.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

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23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

It is worth trying as we have the Supreme Court ruling in the case of payment to the partner of a victim of crime.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

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27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

No, they cannot inherit as an heir.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No. There are some laws that prohibit discrimination on the basis of gender (not including transgender/intersex/non-binary).

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

An Act confirms that there must not be improper discrimination based on sexual orientation or gender identity but according to ordinary understanding the wording has no direct legal effect.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

An adult legally change their gender with Court sanction.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Legally this is possible, though the medical guidelines issued by a medical academy provides that for puberty blockers to be prescribed for minors, the consent of both parents is required. The medical guideline requires that persons who get surgery should be 18 years old and over.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Transition is not possible.

36. Is changing gender a ground for divorce?

No as the transition is impossible.

37. If you have further comments on the matters raised in this section, please add them below.

Japanese Diet has enacted a gender recognition law in 2003. It took effect in 2004. According to the Japanese Law Translation office, which is administered the Ministry of Justice, the name of this law can be translated as the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder.

This act requires applicants to meet three major requirements to have a “treatment”¹ that change their registered gender.

The first one is to get a medical diagnose of gender identity disorder² by two doctors. The second consist of five sub- requirements, which are (1) being not less than 18 years old (majority under Japanese civil code) (2) not being married at the time of the request (3) having no minor children (no children before 2008 revision), (4) having no reproductive glands³ or having reproductive glands which will never function, and (5) having a body which appears to have parts that resembles the genital organs of the other sex. The third requirement is to apply to a family court for a court order. Various rulings were delivered on this case.

Before 2021, most ruling rejected the call for a declaration of unconstitutionality⁴ addressed toward the Diet; however, since then, the situation has much changed. In 2023, the Supreme Court ruled that the sub-requirement (4) is void as it violates the right not to get invasion of body which is interpreted as guaranteed by the Article 13 of the Constitution.

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- 1 The act does not say to change gender marker but to say to change legal handling, treatment, or recognition of gender.
 - 2 Defined by the Article 2 of the act as “a person whose biological gender is evident, but who holds a persistent conviction under which they psychologically identify themselves as being of the opposite gender (hereinafter referred to as the “Opposite Gender”), and who has the intention of physically and socially conforming with the Opposite Gender” (Japanese Law Translation) The definition is different from that of DSM-IV or ICD-10.
 - 3 Japanese word is *Seishokusen*, which means ovaries and testes and does not include womb. In medical practice, also the womb is often removed when ovaries are removed to meet the requirement (4). H. Tsutsui, “Ethical issues about transgenders and womb transplants”, GID Gakkai Zasshi, Vol. 12, Japanese Society of Gender Identity Disorder, 2019, at 87–94.
 - 4 Japanese courts have the power to decide on constitutionality of any acts and orders when they give rulings in ordinary cases. The Supreme Court is the last instance to decide on constitutionality (article 81 of the constitution). According to common understanding, the constitution does not provide a constitutional court to decide solely on constitutionality. Some parties involved in gender recognition case have raised issue of constitutionality.

JURISDICTION

Malaysia



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Malaysia has a dual system of justice applicable in matters of family and personal law. Secular or civil law governs non-Muslims and is applied in the civil courts whereas Islamic or Sharia (Syariah) law governs Muslims and is applied in the religious or Syariah courts. For the purposes of this questionnaire, save where expressly indicated, only the law governing non-Muslims will be discussed.

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Section 377A and 377B of the (Malaysian) **Penal Code**, (which applies to every person within Malaysia whether Muslim or non-Muslim) criminalises “*carnal intercourse against the order of nature*”, regardless of consent.

Section 377A reads:

“Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.”

Explanation - Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section.”

Section 377B reads:

“Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.”

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

There is no express law (governing non-Muslims) that criminalises gender identity or gender affirming treatment.

However, under Syariah law, male Muslims may face penalties for cross-dressing or posing as a woman in public for immoral purposes. For example, **Section 28 of the Syariah Criminal Offences (Federal Territories) Act 1997** (which apply to Muslims in the Federal Territories of Kuala Lumpur, Putrajaya and Labuan) reads:

“Male person posing as woman

28. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.”

Since Islamic criminal law is a state matter under the Federal Constitution, each Malaysian state has its own version of Syariah criminal offences law. Many of these laws include provisions similar to Section 28, targeting cross gender expression or same-sex conduct.

3. If you have further comments on the matters raised in this section, please add them below.

The wordings of the sections 377A of the Penal Code and the Islamic criminal laws appear to be gender-specific, targeting only male persons.

Enforcement of these laws in Malaysia is often selective.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

A same-sex couple cannot marry. Section 68(d) of the Law Reform (Marriage and Divorce) Act 1976 (“LRA”), which is the primary legislation governing non-Muslim marriages and divorces in Malaysia, renders a marriage void if “*the parties are not respectively male and female*”.

5. Are foreign marriages of same-sex couples recognised?

Foreign same-sex marriages are not recognised in Malaysia.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is no lesser, non-marriage or civil union-type scheme for same-sex couples.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

De facto/cohabiting/live-in relationships are not recognised under Malaysian law, whether same-sex or opposite-sex. This means there are no legal rights or protections upon breakdown.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Section 3(4) of the LRA recognises customary marriages between natives of Sabah or Sarawak (the 2 East Malaysian states situated on the Island of Borneo) or any aborigine of Peninsular (West) Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless:

- a) he elects to marry under this Act;
- b) he contracted his marriage under the Christian Marriage Ordinance [*Sabah Cap. 24*]; or
- c) he contracted his marriage under the Church and Civil Marriage Ordinance [*Sarawak Cap. 92*].

After 1 March 1982, all non-Muslim marriages, including Chinese and Indian customary marriages, must be registered under the Act to be legally valid. However, section 4 of the LRA deems all marriages solemnised prior to 1 March 1982, if valid under any law, religion, custom or usage under which it was solemnised, to be registered under the LRA.

There is no recognised custom within any native/indigenous group in Malaysia that permits same-sex marriage.

9. If you have further comments on the matters raised in this section, please add them below.

There is no legal framework in Malaysia recognising or protecting same-sex unions or cohabitation. Legal reform is unlikely in the short, medium or long term due to political and religious sensitivities.

Parenting

10. Can more than two people be recognised as the parents of a child?

No, only a maximum of two people can be legally recognised as the parents of a child and they have to be male and female respectively.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The birth mother will automatically be named as the mother, whether or not the child is genetically hers. If the birth mother is married, then her husband will automatically be named as the child's father, without proof of paternity (Section 112 of the Evidence Act 1950).

A man who is not married to the birth mother can be named on the child's birth certificate as the child's father provided he acknowledges himself to be the father of the child and signs the Register of Births and Deaths together with the mother (Section 13, Births and Deaths Registration Act 1957).

There is no provision for choosing a parent on birth records, save in the case of a child born out of wedlock, where a person who acknowledges himself to be the father may have his name entered on the birth certificate as the father without proof of paternity.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes, adoption is possible under:

- a) The Adoption Act 1952 (for non-Muslims only), also known as “court adoptions”; and
- b) The Registration of Adoptions Act 1952, also known as “administrative adoptions”, which applies to both Muslims and non-Muslims.

Both these adoption statutes apply to Peninsular (West) Malaysia only. East Malaysia comprising the states of Sabah and Sarawak have their own adoption laws.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Unmarried individuals may adopt. However, for court adoptions, an adoption order will not be made where the sole applicant is a male and the child in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify, as an exceptional measure, the making of an order. What constitutes “exceptional circumstances” is not defined and there is currently no case law on point.

There is no explicit prohibition on classes of people who may adopt. However, whenever an application for an adoption order is made to the court, the court shall appoint a guardian *ad litem* of the child in respect of whom the application is made. The guardian *ad litem* will almost always be an officer from the Department of Social Welfare, Malaysia. It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the child and the applicant(s), and all other matters relevant to the proposed adoption, in order to safeguard the interests of the child. The guardian *ad litem* must in his investigation include in his report, amongst others, whether it is desirable for the welfare of the child that the court should be asked to make an adoption order. Given that Malaysia still holds a conservative view on what a traditional family should look like, i.e. a mother and a father who are married to each other, it is unlikely that the guardian *ad litem* would support an adoption by same-sex couples, transgender, non-binary or intersex people on moral/religious grounds.

Surrogacy

15. Is surrogacy legal?

There is currently no legislation in Malaysia that expressly provides for, or expressly prohibits, surrogacy arrangements. As far as I am aware, no cases have been brought before the courts in Malaysia testing the enforceability of surrogacy arrangements or agreements.

However, a *fatwa* (an Islamic religious ruling) was issued in 2008 by the National Council of Islamic Religious Affairs making surrogacy *haram* (forbidden) for Muslims.

Surrogacy agreements are usually set up through private agreements between the commissioning parent(s), and the surrogate. In this regard, the applicable law would be the (Malaysian) Contracts Act 1950. Surrogacy agreements will likely be rendered void as being immoral or against public policy under section 24(e) of the Contracts Act 1950.

16. Is commercial/compensated surrogacy legal?

Commercial/compensated surrogacy will likely be considered as being unlawful on public policy grounds.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No explicit law prohibits any classes of people from participating in surrogacy, but it is effectively inaccessible, particularly for unmarried couples, same-sex couples and transgender, non-binary or intersex people, who would face legal, moral and procedural barriers.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Parentage through foreign surrogacy is not recognised for same-sex couples who have become parents through surrogacy overseas. One parent may apply for declaratory orders, or orders granting him/her parental rights, but this will be to the exclusion of the other same-sex parent who will not be recognised as a co-parent.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

There is no legislation governing gamete and/or embryo donation in Malaysia. Thus, there is no clear legal framework on this issue. IVF using a married couples' own gametes are endorsed.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No, same-sex couples will not be recognised as parents.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Only the husband of a woman giving birth through IVF can be named in the child's birth documents as that child's parent, i.e. the father (see answer to question 11 above). If the couple is same-sex, civil, or cohabiting, the non-birthing partner will not be recognised as the child's other parent, though the male partner of the birth mother may be named as the father if he acknowledges himself to be the (illegitimate) child's father.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

As same-sex marriages are not permitted, no legal divorce process exists for such couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

No lesser non-marriage or civil union type schemes exist in Malaysia.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

No legal rights or claims arise from the breakdown of cohabiting or customary relationships, whether same-sex or heterosexual.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Same-sex couples are not treated as spouses for inheritance under the laws of intestacy.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, they can inherit via a will or bequest. This is the only reliable legal mechanism available for inheritance.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

There is no comprehensive anti-discrimination law in Malaysia on the basis of sexual orientation. In terms of gender, only the male and female genders are recognised in Malaysia.

30. Is gay conversion therapy banned?

No, it is not.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Legal gender change is possible but requires a court order. The applicant would need to seek a declaratory order from court and name the National Registration Department as a respondent.

There is no legislation requiring spousal consent, but a gender change would render the marriage void as the parties to that marriage would no longer be male and female respectively.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

There is no legislation on this. Parental consent would most likely be required for minors and legal or court intervention required prior to any such treatments.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No. Malaysian identity documents only allow binary genders, male or female. There is no option for "X" or "non-binary".

35. What happens to the status of the marriage/civil partnership when one party transitions?

If one party transitions, the marriage becomes same-sex and thus will be rendered void, as same-sex marriages are not permitted. Civil partnerships have no legal status to start with so there will be no legal impact if one party transitions.

36. Is changing gender a ground for divorce?

Changing gender is not a statutory ground for divorce, but it may lead to annulment. An order from court would be required to annul the marriage.

37. If you have further comments on the matters raised in this section, please add them below.

Both gender identity and same-sex relationships remain unrecognised in Malaysia and, in some cases, criminalised under Malaysian law. The legal landscape offers no protections and few pathways for recognition. Meaningful reform is unlikely in the foreseeable future.

JURISDICTION

Nepal



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Being homosexual or engaging in consensual homosexual sexual acts is not illegal.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender identity or gender affirming treatment is not illegal.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

There are no laws in place that recognize same-sex marriage. However, through court orders in individual cases, “*temporary recognition of marriage*” has been granted until proper legislation is enacted. The government has shown reluctance in forming such laws. In a few instances, same-sex marriages have been registered on a temporary basis.

A petition for the recognition and registration of same-sex marriage is sub-judice in the Supreme Court.

5. Are foreign marriages of same-sex couples recognised?

Generally, no, but after claims of ambiguity in law on this issue, a petition is pending in the Supreme Court seeking clarification (the same petition mentioned in the previous question also addresses this issue). Sections 699 and 700 of the Civil Code are relevant here.

- **Section 699:** Citizen of Nepal to follow the law of Nepal while concluding marriage abroad:
 - (1) A citizen of Nepal must comply with the legal requirements, qualifications, and conditions for marriage as specified by Nepali law when marrying abroad.
 - (2) The procedural formalities for such marriages are governed by the law of the country where the marriage takes place. However, if the marriage is conducted at a Nepali embassy or consulate, Nepali law applies.
 - (3) Any marriage that does not comply with subsections (1) and (2) shall not be recognized in Nepal.
- **Section 700:** Foreigners to follow the law of their country while concluding marriage in Nepal:
 - (1) In a marriage between two foreigners or between a foreigner and a Nepali citizen in Nepal, each person must meet the legal capacity, qualifications, and conditions specified by the law of their respective countries.
 - (2) The procedural formalities for such marriages are governed by Nepali law. However, if the marriage is conducted at a foreign embassy or consulate in Nepal, the laws of the respective foreign country apply.

In a few instances, same-sex marriages conducted abroad have been recognized by court order after a petition was filed requesting such recognition

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There are no such schemes.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There are no such provisions. De facto/cohabiting/live-in relationships is not recognized at all.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes, customary marriage is recognized. There is no provision on recognition of customary marriage between same-sex couple.

9. If you have further comments on the matters raised in this section, please add them below.

Please check cases – *Sunil Babu Pant v. Nepal Government* (2007); *Suman Pant v. Nepal Government* (2017) and *Adhep Pokhrel and Tobias Volz. v. Department of Immigration* (2023)

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

There is no provision for choosing. The person giving birth is automatically the mother.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes, adoption is possible.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There are conditions for adoption, but they do not explicitly depend on a person's marital status, sexuality, or gender identity. However, since the law does not recognize same-sex couples as a "couple," it appears that same-sex couples are barred from adopting together.

- Civil Code, Section 172: Adoption may be effected: (1) The following persons may adopt a child:
 - (a) A couple who has not had a child even after ten years of marriage.
 - (b) An unmarried woman who is at least 45 years old, or a widow, divorcee, or judicially separated woman, provided she has no son or daughter.
 - (c) An unmarried man who is at least 45 years old, or a widower, divorcee, or judicially separated man, provided he has no son or daughter.

Surrogacy

15. Is surrogacy legal?

Surrogacy is only legal for infertile Nepali married couples, but illegal for single men or women, transgender couples, and foreign nationals. This was decided through a Cabinet decision of the government and upheld by the Supreme Court of Nepal.

16. Is commercial/compensated surrogacy legal?

No, not legal.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy is unavailable for single men or women, transgender couples, and foreign nationals.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

The law is silent on this.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

The law is silent on gamete and/or embryo donation.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

- Article 109 of the Nepali Civil Code states: *“Paternity of child born from artificial insemination to be of father: A child born from the use, with consent of the husband and wife, of artificial insemination system from semen of another person shall be considered to have been born from the married husband and his or her paternity shall be determined accordingly.”*
- The law seems to only provide this right for artificial insemination to married couples. Since same-sex couples are only recognised in select cases, they cannot co-parent legally. This lack of recognition would also extend to parentage through artificial insemination for same-sex couples.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

There is no specific law on IVF in Nepal, although Nepal does have many IVF clinics who primarily cater to married couples. Article 109 of the Nepali Civil Code would suggest that the IVF is legal for married couples alone.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Since same-sex marriage is not legally recognized in Nepal except in individual cases where the court has issued an order, there is no specific law governing divorce for same-sex couples. Consequently, there are no established legal provisions regarding finances or child custody in the context of same-sex divorce.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Not recognized.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

De facto/cohabiting/live-in relationship or customary marriage between a same-sex couple is not recognized.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

There is no legal provision specifically addressing inheritance rights for same-sex couples. Since same-sex marriage is not officially recognized, there are no established inheritance rights for same-sex partners. However, an ongoing petition on the recognition of same-sex marriage is expected to address this issue as well.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

There is no legal provision specifically addressing inheritance rights for same-sex couples. Since same-sex marriage is not officially recognized, there are no established inheritance rights for same-sex partners. However, an ongoing petition on the recognition of same-sex marriage is expected to address this issue as well.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, discrimination based on gender and sexual orientation is prohibited by law. Article 18 of the Constitution guarantees the right to equality and explicitly states that the state may take affirmative action to address issues faced by gender and sexual minorities. Article 42 of the Constitution recognizes the right to social justice as a fundamental right, which includes protections for gender and sexual minorities as well. Also, all other rights, including the right to housing, employment, and others, are governed by non-discrimination principles as a fundamental practice.

30. Is gay conversion therapy banned?

No. There are no laws banning such practices.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

- Although gender change is not legally recognized as an automatic right, there have been instances where adults have successfully legally changed their gender through a court order. This legal process typically involves filing a petition at the High court or the Supreme Court and changing gender information on official documents as per the order.
- Further, gender changes in official documents, including citizenship records, have been allowed in some cases after an individual undergoes gender-affirming surgery. To initiate the change, an individual may submit a petition to the Chief District Officer, who processes the request after receiving an order or referral

from the Office of the Prime Minister. Spousal consent is generally not required in these cases, although the process may involve various legal formalities and documentation.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Unsure.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes, the Citizenship has a third gender option.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The law is silent on this.

36. Is changing gender a ground for divorce?

There is no such ground for divorce in the law.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

People's Republic of China



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

- Homosexuality (between consenting adults) is legal in mainland China; there are no penalties for private, consensual same-sex activity. However, public sex and prostitution laws apply to everyone.
- Gender identity and gender-affirming care are not illegal, but are highly regulated.
- Legal recognition requires surgery, age, family consent, and a formal dysphoria diagnosis.
- Hormones are legal via prescription but banned online; unlicensed supply is punishable.
- Surgery is allowed but restricted to qualifying adults only.
- Forced conversion therapies are illegal; victims now can and are suing institutions.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No they cannot. It is not provided or recognized or protected.

5. Are foreign marriages of same-sex couples recognised?

No. Foreign same-sex marriages are considered contrary to China's public policy and are not recognized, even if validly registered abroad.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriage before 1 February 1994 is recognised, which requires the couple had already met the substantive requirements for marriage before the date. But it is only for opposite-sex couples.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person giving birth is automatically named as the mother, without flexibility in terms of gender identity or parental designation. The father is typically identified through marital presumption, biological paternity, or acknowledgment.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

An unmarried individual shall be at least forty years older than the adopted child if they are of different genders.

An adopter shall meet all the following conditions: (1) having no child or only one child; (2) being capable of raising, educating, and protecting the adoptee; (3) not suffering from any disease that is deemed medically unfit to be an adopter; (4) having no criminal record unfavorable to the healthy growth of the adoptee; and (5) reaching the age of thirty.

Surrogacy

15. Is surrogacy legal?

Altruistic surrogacy (non-commercial, e.g., by a relative) exists in a legal gray area, but it is not protected or formally permitted by law.

16. Is commercial/compensated surrogacy legal?

Commercial surrogacy is illegal and banned by the Ministry of Health since the early 2000s. Facilitating or profiting from surrogacy (e.g., via agencies) is subject to administrative and possible criminal penalties.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

See above.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

The legal parentage of children born via overseas surrogacy to same-sex couples is not automatically recognized. In practice only one parent is likely to be legally acknowledged, with the other facing significant hurdle.

Assisted reproductive treatment

- 19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?**

Yes it is legal. Chinese law does not recognize the parental relationship between the donor and the child. The information of the donor and the child is kept confidential from each other. It is prohibited to make donation to a same-sex married couple or an unmarried individual and has to be heterosexual married couples.

- 20. Are same-sex couples who have a child through artificial insemination recognised as the parents?**

No. It is prohibited to provide artificial insemination services to same-sex couples in China.

- 21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?**

It is illegal to provide IVF to same-sex couples. The person who gives birth is the mother.

Relationship Breakdown

- 22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?**

Same sex marriage is not recognized or permitted.

- 23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?**

Not applicable.

- 24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?**

No claims are available. De facto/cohabiting/live-in relationship is not legally recognised and protected in China. Only customary marriage before 1 February 1994 is recognised with the same effect as registered marriage between opposite-sex couples.

- 25. If you have further comments on the matters raised in this section please add them below.**

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes. Same sex couples do not have the same inheritance right as spouses in registered marriages.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No. China does not have comprehensive anti-discrimination laws specifically protecting people based on sexual orientation or gender identity (including transgender, intersex, or non-binary individuals). Some limited protections exist under broader gender equality laws, but explicit protections are generally lacking.

30. Is gay conversion therapy banned?

No, gay conversion therapy is not explicitly banned in China. Despite being widely discredited and considered unethical by medical and psychological organizations, such practices continue in certain settings due to a lack of comprehensive legal prohibition.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

No, except for medical reasons such person need to be at least 18 years old and have full civil capacity, Have a diagnosis of gender dysphoria or gender identity disorder by qualified psychiatrists, Undergo psychological counseling and hormone therapy over a period of time (usually at least 1 year), have undergone sex reassignment surgery (SRS) in a licensed medical institution, and provide medical documentation confirming the surgery and a certificate of eligibility for gender change issued by the hospital or relevant authority.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No. Gender-affirming treatments for minors in China are extremely limited and heavily restricted. Puberty blockers and gender reassignment surgery are generally not available to minors.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The marriage does not automatically become invalid or revoked. The parties have to go through divorce process or face the challenge of uncertainty as to the recognition of opposite-sex marriage.

36. Is changing gender a ground for divorce?

Yes, changing gender can be considered a valid ground for divorce in China under other circumstances making it difficult to continue the marriage. The grounds for divorce are:

1. one spouse commits bigamy or cohabitates with another person;
2. one spouse commits domestic violence or maltreats or deserts a family member;
3. one spouse habitually commits acts such as gambling, drug abuse, or likewise, and refuses to correct such behavior despite of repeated warnings;
4. the spouses have been separated for no less than two full years due to marital discord;
5. other circumstances exist under which mutual affection no longer exists between the spouses.

Changing gender could be deemed as under ground #(5).

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Russian Federation



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

It could be interesting to mention that the Criminal codes of the Soviet Russia of 1922 and 1926 did not mention homosexuality. But in March 1934, during the Stalin's times an article was added classifying being homosexual as a crime. This legal provision remained in place until 1993, when homosexuality as a criminal offence was excluded from the Russian Criminal Code. Article 121(part 1) was excluded from the Russian Criminal Code on May 27th 1993 and although homosexual act as such ceased to be a crime in Russia, mentioning about it as of a component of the crime in Articles 132, 133, 134 of a new Criminal Code of the Russian Federation adopted in 1996 and as amended on October 25th 2024 remained: «*Homosexual acts (sodomy), lesbianism or other acts of a sexual nature with the use of violence or the threat of its use against the victim or other persons or taking advantage of the helpless state of the victim shall be punishable by imprisonment for a term of three to six years*». Federal Law on the Protection of Children from the Propaganda of Homosexuality

On June 30th 2013 Federal Law No. 135-FZ "On Amendments to Article 5 of the Federal Law "On the Protection of Children from Information Harmful to Their Health and Development" and Certain Legislative Acts of the Russian Federation in Order to Protect Children from Information Promoting the Denial of Traditional Family Values" was adopted. By this law Article 6.21 of the Code of the Russian Federation on Administrative Offenses was supplemented with the content against the so-called "*propaganda of non-traditional sexual relations among minors among minors, expressed in the dissemination of information aimed at forming non-traditional sexual attitudes in minors, the attractiveness of non-traditional sexual relations, a distorted idea of the social equivalence of traditional and non-traditional sexual relations, or the imposition of information about non-traditional sexual relations that arouses interest in such relations*".

If these actions do not contain a criminally punishable act it "*shall entail the imposition of an administrative fine on citizens in the amount of four thousand to five thousand rubles; on officials – from forty thousand to fifty thousand rubles; on legal entities – from eight hundred thousand to one million rubles, or administrative suspension of activity for up to ninety days*". The actions provided for in Part 1 of Article 6.21, committed by a foreign citizen or stateless person, if these actions do not contain a criminally punishable act "*shall entail the imposition of an administrative fine in the amount of four thousand to five thousand rubles with administrative expulsion from the Russian Federation or administrative arrest for up to fifteen days with administrative expulsion from the Russian Federation*".

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender affirming or changing treatment is now illegal in Russia.

On July 14th 2023 the Law banning transgender transition in Russia (also the law banning gender reassignment) was adopted by the State Duma, a legislative body, then approved by the Federation Council on July 19, 2023, and after being signed by President, came into force on July 24, 2023.

This Law introduces amendments to the Federal law “On the Fundamentals of Health Protection of Citizens in the Russian Federation”, as well as to the law “On Acts of Civil Status” and the [Family Code](#), adding a ban on transgender transition (“gender change” in the terminology of the authors).

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No, same-sex marriages are forbidden in the Russian Federation.

5. Are foreign marriages of same-sex couples recognised?

No, they will not be recognized as same-sex marriages are forbidden in Russia.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No any lesser, non-marriage status (civil union-type scheme or any other similar schemes) for same-sex couples.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

In Russia the term “de facto marital relations” with legal consequences was introduced with the adoption of the Code of Laws on Marriage, Family and Guardianship [of the RSFSR](#) in 1926. Until 1944, running a joint household and living together were considered sufficient conditions for recognizing a de facto marriage as “real” – with all the ensuing rights and obligations.

By the Decree of the [Presidium of the Supreme Soviet of the USSR](#) of July 8, 1944, de facto marital relations were deprived of legal force. Persons who were in them were given the opportunity to register the marriage, indicating the period of de facto cohabitation. If such registration was impossible because one of the de facto spouses died or went missing at the front during [the Second World War](#), then by the Decree of the Presidium of the Supreme Soviet of the USSR of November 10, 1944, the other de facto spouse was granted the right to apply

to the court with a statement on recognition of his (her) spouse as the deceased or missing spouse on the basis of previously existing legislation.

But the current [Family Code of the Russian Federation](#), as well as the [Marriage and Family Code](#) of the RSFSR of 1969, do not contain the terms “de facto marriage” or “de facto marital relations”. To designate persons who are or have been in extramarital relations for some time, the phrases “persons who are not married to each other” and “living a family life” are used here.

According to the current [Family Code of the Russian Federation](#), unregistered cohabitation of a man and a woman does not give rise to marital rights and obligations, although [the rights of children](#) born in marriage do not differ from the [rights of children born out of wedlock](#). And it concerns only a man and a woman relationships as same-sex couple marriages are forbidden in Russia.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No, they are not recognised officially.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No, it is not possible in the Russian Federation under applicable law.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person giving birth automatically named as the mother except the surrogacy cases where the parents could be different as a person giving birth would be a surrogate woman. But surrogacy is permitted for married couples or for a single woman exceptionally.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

The adoption is possible for the parents who have Russian citizenship or for the foreign citizens from the countries with whom Russia has bilateral agreements. Russia has such agreements with Italy, France, Spain and Israel.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Article 127 of Family Code of Russian Federation as amended by Federal Law of 20.04.2015 names classes of persons entitled to be adoptive parents. It is possible to be adoptive parents for [adults](#) of both sexes, with the exception of:

- 1) persons recognized by the court as incompetent/disabled or of limited capacity;
- 2) spouses, one of whom has been recognized by the court as incompetent/disabled or of limited capacity;
- 3) persons deprived of parental rights by a court or restricted in parental rights by a court;
- 4) persons removed from the duties of a guardian (trustee) for improper performance of the duties imposed on them by law;
- 5) former adoptive parents, if the adoption was cancelled by the court due to their fault;
- 6) persons who, due to health reasons, cannot adopt a child. [The list](#) of illnesses in the presence of which a person cannot adopt a child, take him/her under guardianship, trusteeship, or take him/her into a foster or patronage family, is established by the Government of the Russian Federation. Medical examination of persons wishing to adopt children left without parental care is carried out within the framework of [the program](#) of state guarantees of free provision of medical care to citizens in [the manner](#) established by the federal executive body authorized by the Government of the Russian Federation;
- 7) persons who, at the time of adoption, do not have an income that would provide the adopted child with [the subsistence minimum](#) established in the constituent entity of the Russian Federation in which such persons reside;
- 8) persons who do not have a permanent place of residence, except for persons belonging to the indigenous peoples of the Russian Federation, leading a nomadic and (or) semi-nomadic way of life and having no place where they permanently or predominantly reside, in the event that they adopt a child from among persons belonging to the indigenous peoples of the Russian Federation;
- 9) persons who have or have had a criminal record, who are or have been subject to criminal prosecution (except for persons whose criminal prosecution has been terminated on rehabilitating grounds) for crimes against the sexual inviolability and sexual freedom of the individual, as well as for crimes against life and health, against the freedom, honor and dignity of the individual (except for illegal hospitalization in a medical organization providing psychiatric care in inpatient settings, and slander), against the family and minors, against public health and public morality, against public safety, peace and security of mankind, except for the cases provided for in [subparagraph 10](#) of this paragraph;

- 10) persons from among the persons specified in [subparagraph 9](#) of this paragraph, who have a criminal record or have been subject to criminal prosecution for crimes against life and health, against freedom, honor and dignity of the individual (except for illegal hospitalization in a medical organization providing psychiatric care in inpatient settings, and slander), against the family and minors, against public health and public morality, against public safety, peace and security of mankind, related to crimes of minor or moderate severity, if the court recognizes such persons as posing a danger to the life, health and morality of the adopted child. When making a decision on the adoption of a child by such a person, the court shall take into account the circumstances of the act for which such a person was subject to criminal prosecution, the period of time that has passed since the commission of the act, the form of guilt, the circumstances characterizing the personality, including the behavior of such a person after the commission of the act, and other circumstances in order to determine the possibility of ensuring the full physical, mental, spiritual and moral development of the adopted child without risk to the child's life and health;
- 11) persons who have a criminal record for serious and especially serious crimes that are not related to the crimes specified in subparagraph 9 of this paragraph;
- 12) persons who have not undergone training in the manner established by [paragraph 6](#) of this article (with the exception of close relatives of the child, as well as persons who are or were adoptive parents and in respect of whom the adoption has not been cancelled, and persons who are or were guardians (trustees) of children and who have not been removed from the performance of the duties assigned to them);
- 13) **persons in a union concluded between persons of the same-sex, recognized as a marriage and registered in accordance with the legislation of the state in which such marriage is permitted, as well as persons who are citizens of the said state and are not married;**
- 14) **persons who have changed their gender.**

(clause 14 introduced by Federal Law of 24.07.2023 N 386-FZ)

2. When making a decision on the adoption of a child, the court has the right to deviate from the provisions established by [subparagraphs 6](#) (if the person wishing to adopt the child lives with him or her by virtue of an already established family relationship), [7](#) and [12 of paragraph 1](#) of this article, taking into account the interests of the child being adopted and circumstances worthy of attention.
3. The provisions established by [subparagraphs 7](#) and [12 of paragraph 1](#) of this article do not apply to the stepfather (stepmother) of the adopted child.
4. **Persons who are not married to each other cannot jointly adopt the same child.**
5. If there are several persons wishing to adopt the same child, preferential rights are granted to the child's relatives, subject to mandatory compliance with the requirements of [paragraphs 1](#) and [4](#) of this article and the interests of the child being adopted.
6. In order to facilitate the psychological, pedagogical and legal training of persons wishing to take into their family a child left without parental care, their training is carried out according to a program approved by the executive authorities of the constituent entities of the Russian Federation.

[The requirements for the content](#) of the training program, [the procedure](#) for organizing and implementing activities to prepare individuals who wish to take into their family a child left without parental care, and [the form of](#) the certificate of completion of such training on the territory of the Russian Federation shall be approved by the federal executive body authorized by the Government of the Russian Federation.

The organization of training for individuals wishing to take into their family a child left without parental care is carried out by guardianship and trusteeship authorities at the expense and within the limits of funds allocated for these purposes in the budget of a constituent entity of the Russian Federation.

Foreign citizens, stateless persons or citizens of the Russian Federation permanently residing outside the territory of the Russian Federation who wish to take into their family a child left without parental care and who is a citizen of the Russian Federation may submit documents on completion of the relevant training in the territory of the state in which they permanently reside, taking into account the subject matter and in a volume no less than that provided for by the requirements for the content of the training program for persons wishing to take into their family a child left without parental care, specified in [the second paragraph](#) of this clause.

In the event that foreign citizens, stateless persons or citizens of the Russian Federation permanently residing outside the territory of the Russian Federation who wish to take into their family a child left without parental care have not undergone the appropriate training in the territory of the foreign state in which they permanently reside, the said training shall be conducted in the territory of the Russian Federation in the manner established by this paragraph.

Surrogacy

15. Is surrogacy legal?

Yes, surrogacy is legal in the Russian Federations. There are some limitations established by Family Code and other Federal laws in regards to surrogacy.

Surrogacy is regulated by Family Code of Russian Federation and [Federal Law of 21.11.2011 N 323-FZ \(as amended on 08.08.2024, as amended on 26.09.2024\) "On the Fundamentals of Health Protection of Citizens in the Russian Federation" \(as amended and supplemented, entered into force on 01.09.2024\).](#)

Article 55 of this Federal Law indicates how it is being used the assisted . reproductive technologies in the Russian Federation.

Under Part 3 of Article 55 a man and a woman, whether married or not, have the right to use assisted reproductive technologies if they have mutual informed voluntary consent to medical intervention. The right to use assisted reproductive technologies in the form of surrogacy does not extend to a man and a woman who are not married. A single woman also has the right to use assisted reproductive technologies if she has informed voluntary consent to medical intervention.

(as amended by Federal [Law](#) of 19.12.2022 N 538-FZ)

Part 4 of Article 55: when using assisted reproductive technologies, choosing the sex of the future child is not allowed, except in cases of the possibility of inheriting sex-related diseases.

Part 5 of Article 55: citizens have the right to cryopreservation and storage of their reproductive cells, reproductive organ tissues and embryos at their own expense and other means provided for by the legislation of the Russian Federation.

16. Is commercial/compensated surrogacy legal?

Under Part 6 of Article 55 of Federal Law of 21.11.2011 N 323-FZ (as amended on 08.08.2024, as amended on 26.09.2024) sex cells, reproductive tissues and human embryos may not be used for commercial purposes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Classes of people who are eligible to participate in surrogacy:

- Citizens between the ages of eighteen and thirty-five, physically and mentally healthy, and who have undergone a medical genetic examination have the right to be donors of reproductive cells. When using donor germ cells and embryos, citizens have the right to receive information about the results of the medical and medical-genetic examination of the donor, his race and nationality, as well as his external data.
- Surrogacy is the gestation and birth of a child (including premature birth) under a surrogacy agreement concluded between **a surrogate mother (a woman carrying a fetus after the transfer of a donor embryo) and the potential parents whose reproductive cells were used for fertilization**, for whom gestation and birth of a child are impossible for medical reasons (hereinafter referred to as the **potential parents (genetic mother and genetic father)**) and **who are married to each other, or a single woman whose reproductive cells were used for fertilization and for whom gestation and birth of a child are impossible for medical reasons** (hereinafter referred to as **a single woman (genetic mother)**). [The procedure](#) for establishing potential parents as the genetic mother and genetic father, as well as a single woman as the genetic mother, is determined by the Government of the Russian Federation (Part 9 of Article 55).

(as amended by Federal [Law](#) of 19.12.2022 N 538-FZ)

(see text in previous [edition](#))

- **A surrogate mother** may be a woman between the ages of twenty and thirty-five, who is a citizen of the Russian Federation, has at least one healthy child of her own, has received a medical certificate of satisfactory health, and has given written informed voluntary consent to medical intervention. A woman in a marriage registered in the manner established by [the legislation](#) of the Russian Federation may be a surrogate mother only with the written consent of her spouse. A surrogate mother may not simultaneously be an egg donor.
- **One of the potential parents (genetic mother or genetic father) or both potential parents (genetic mother and genetic father) or a single woman (genetic mother)** specified in [Part 9](#) of this article must have citizenship of the Russian Federation.
- **Unmarried single man, unmarried couples, same-sex couples, transgender, non-binary or intersex people cannot be the so-called potential parents in surrogacy.**

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No, it cannot be recognised.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Please, see the answers in the previous clauses above.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Please, see above the answers 15 and 17.

These questions are not applicable as the answers to the previous questions are negative in relation to same-sex couples who are forbidden in this jurisdiction:

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

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23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-inrelationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

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25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

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27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

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28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

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30. Is gay conversion therapy banned?

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31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

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33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

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34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

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35. What happens to the status of the marriage/civil partnership when one party transitions?

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36. Is changing gender a ground for divorce?

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37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Singapore



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Being a homosexual is not illegal / a crime in Singapore, however, for a long time, Singapore used to retain a criminal provision s377A in its Penal Code to criminalize sex between men.

The bill to repeal Section 377A was introduced on 20 October 2022, passed by Parliament after a two day debate on 29 November 2022, assented to by President Halimah Yacob on 27 December 2022 and published in the government Gazette on 3 January 2023 the date that Section 377A was officially repealed.

It is no longer a criminal offence to engage in consensual sex between adult men.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Singapore legalised gender-affirming surgery as early as 1973 and allows its citizens to reflect the change in their sexual status once the sexual reassignment process has been completed. A person's legal gender is the gender as per their National Registration Identity Card and not Birth Certificate.

3. If you have further comments on the matters raised in this section, please add them below.

Gender reassignment surgery has always been offered by the public hospitals for those seeking medically necessary care. But it has not been part of any subsidy scheme.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No. Section 12 of the Women's Charter, the primary legislation governing marriages and divorces in Singapore provides that marriages solemnised in Singapore or elsewhere between persons who are not male and female respectively at the date of the marriage, are void. Singapore has not legalised same-sex marriages.

5. Are foreign marriages of same-sex couples recognised?

No, Singapore does not recognise foreign marriages of same-sex couples. They can be considered as common law spouses for visa related issues.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is no such status. *USA v USB* SGCA 57 [2020] makes clear that the court disregards any relationship before marriage when determining marital asset or contributions.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No, they are not. Whilst women's charter governs marriages and concept of direct and indirect contributions matters in a breakdown, these concepts do not affect the property division when a same-sex couple split. Instead, the legal concept of equity and trust is more important in these cases when determining beneficial or legal ownership of properties which would be done in accordance with general commercial law principles.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Singapore only recognises marriages solemnised and registered in accordance to the Women's Charter (Administration of Muslim Law Act for muslims) post 1967. Whilst parties can still hold a customary ceremony, the marriage is only valid if it has been solemnized and registered according to the women's charter.

This means even if a same-sex couple customarily marry, the marriage is not recognised as they are unable to solemnize and register under the Women's Charter.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

The short answer is in most cases no. Parents are 1) biological parents (legitimate/illegitimate) and 2) legally adoptive parents (who then step in the shoes of the biological parents and are recognised as the full legal parents of the child. However in some cases, 3) step-parents may also be recognised to have responsibility for a child's reasonable expenses where the step-parent is deemed to have accepted the child as a member of the family. (section 70 of WC)

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The birth mother is automatically named as the mother. The father if known will be listed as the other parent of the child. It is not possible for a person to be named as a parent of the child at their choosing.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Gay couples are ineligible to adopt formally as parents, but one gay person can adopt a child if he/she meets the adoption requirements. Given the changes to the adoption legislation since 2024, it is extremely difficult for single parents whether straight or gay to adopt their children who have been conceived via surrogacy. Joint adoption applications can only be made by a heterosexual married couple.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not available in Singapore but is not illegal in the sense that a parent who has a child conceived from surrogacy overseas in a jurisdiction where surrogacy is legal, will not be found to have committed any criminal offence in Singapore. If done overseas, the intended parents must apply to adopt the child and follow strict requirements including an application to court.

16. Is commercial/compensated surrogacy legal?

See above.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No. A biological parent must apply to adopt his/her own biological child who is conceived via surrogacy. In *UKM v AG*, we acted for the successful gay father who was allowed to adopt his biological child who had been conceived in USA via surrogacy. However as mentioned, the Adoption Act 2022 which has replaced the old Adoption Act 1939 means that it is now practically impossible for a single parent to adopt his or her own biological child who was conceived via surrogacy. Same sex couples are not allowed to jointly adopt a child and the Court in Singapore has declined to even grant custodial orders in favour of a spouse/ partner in a same-sex relationship.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and embryo donation is *legal* in Singapore, but it is only for married couples. Same-sex couples or any unmarried individual, gay or straight, are not legally able to utilise gamete and embryo donation procedures.

a) Legality of gamete and embryo donation:

In Singapore, gamete and embryo donation is legal, but subject to certain restrictions. The important legal considerations is that the donors must be altruistic and not receive monetary compensation in exchange for their sperm or egg. Additionally, once there are 5 live birth events, the remaining embryos will be disposed of. A family may appeal to the Ministry of Health to use the same donor so that their child can have a related sibling.

b) Requirements needed to terminate parental relationship between donor and child:

In Singapore, the Status of Children (Assisted Reproduction Technology) Act 2013 (SCARTA) applies to children born as a result of a fertilisation procedure. In relation to parental relationships, Part 2 of SCARTA will apply. Part 2 of SCARTA accounts for how the courts will determine parenthood in cases involving ART.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No they are not as same-sex marriage is not recognised in Singapore. If done overseas, it will be treated in a similar manner as surrogacy.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Not applicable as it is not possible here. For straight married couples, the process is as above.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Not applicable as same-sex marriage or unions are not recognised in Singapore.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Not applicable. Please see answer to question 7 as well.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Not applicable.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Not recognised under inheritance act unless married. Can be provided for under Will.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The Tripartite Guidelines on Fair Employment Practices, which has been in place for some time, provides guidelines for fair employment practices, including prohibiting discrimination based on sexual orientation and gender identity. While not legally binding, the TGFEPP serves as a strong recommendation for employers to adopt fair employment practices.

The new Workplace Fairness Act also disallows discrimination in employment decisions however, it only provides for gender and does not include sexual orientation and identity.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

They have to undergo sexual reassignment surgery. Spousal consent is not required however if the spouse changes sex to be of the same-sex as the other spouse, the spouse may file for divorce or apply to have the marriage nullified on the basis of Section 12 of the Women's Charter.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

See 32.

36. Is changing gender a ground for divorce?

Yes, it is very likely to be a fact relied on for divorce. There is only one ground for divorce in Singapore, an irretrievable breakdown of the marriage. It is very likely that changing gender without the other spouse's consent would be construed as unreasonable behaviour which is a fault based fact to show an irretrievable breakdown of the marriage.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Thailand



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Homosexuality is not a criminal offense under Thai laws.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Individuals are free to express their gender identity in Thailand. No laws govern how individuals shall express themselves. This also applies to the gender affirming treatment or surgery. However, to undergo the treatment or surgery, consultation with professionals such as psychiatrist, gynaecologist, and plastic surgeon is required to ensure safety and to comply with the Medical Council of Thailand Regulations on Medical Ethics Regarding Health Care for Gender Affirmation, B.E. 2567 (2024).

If the gender affirmation treatment was conducted in violation of the Regulation, the service provider may be warned by the Medical Council, or the medical license may be suspended or revoked.

3. If you have further comments on the matters raised in this section, please add them below.

Under the Thai Constitution B.E. 2560 (2017), particularly Section 27, unjust discrimination on the grounds of gender or sexual diversity is prohibited.

However, despite Thailand's openness to gender diversity, members of the LGBTQIAN+ community still face challenges in the criminal justice system. For example, transgender individuals who are imprisoned in facilities that do not align with their gender identity, posing safety and dignity concerns. Additionally, the legal definition of rape under Sections 1(18) and 276 of the Thai Criminal Code leads to unequal treatment, such as in cases where a woman assaults another woman, which may not be classified as rape but only as indecent sexual assault.

Therefore, further reforms in Thailand's criminal laws are needed to ensure equal protection and justice for all genders.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Thailand has recently enacted the Same-sex Marriage Act and is effective in January 2025. Therefore, same-sex couples can legally register their marriage in Thailand.

The registration of marriage can be done at the district office in Thailand or the Embassy of Thailand in foreign country.

5. Are foreign marriages of same-sex couples recognised?

Under the Civil and Commercial Code (CCC), Section 1459, and the Thai Conflict of Laws Act, Section 20, Foreign marriage of same-sex couples is recognised in Thailand. In case of marriage registration abroad, if one spouse is Thai, the couples can record their marital status in Thailand as per the Family Registration Act.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Thailand does not have a civil partnership registration for both same-sex couples and heterosexual couples.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Same-sex couples and heterosexual couples can cohabit or establish de facto relationship in Thailand. However, the legal obligation will not be established between them, unlike when the couple registered the marriage. With marriage registration, the matrimonial property regime will be established, as well as the entitlement to divorce, the request for spousal support or maintenance, or compensation in case of adultery, for instance.

Instead, by de facto relationship, the parties can claim the property through a joint ownership principle.

In a de facto relationship, if both parties decide to end the relationship, they can simply separate without needing to register the separation or go to court, regardless of gender or the reason for the separation.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

According to Thai laws, wedding ceremony does not establish legal marriage between the spouses unless there is a marriage registration. However, if the customary marriage is recognised by the law of the country where it takes place, then Thai laws would recognise such marriage (Section 1459 CCC).

9. If you have further comments on the matters raised in this section, please add them below.

In Point No. 5, it should be noted that if foreign couples, regardless of gender identity, would like to register the marriage in Thailand, the law of their nationality must allow same-sex marriage, as per the Thai Conflict of Laws Act, Section 19. If the law of either party does not allow same-sex marriage, the Thai district office reserves its discretion not to proceed with the registration.

Parenting

10. Can more than two people be recognised as the parents of a child?

Thailand is a monogamous society. Therefore, only two people can be parents to the child. This can be indicated from Book 5, Chapter 1 regarding parents in the Civil and Commercial Code, where it states about the father, the mother, and the child.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In Thailand, there are two main classifications of parents:

1. Legal parents

1. By marriage registration – If the parents are legally married and the child is born during the marriage, both parents automatically assume joint custody.
2. Child legitimization – For the unmarried couple, the father legitimizes the child by registering or requesting the court.
3. Intended parents through surrogacy – Please see Point No. 19 below.

As legal parents, they are entitled to exercise the following parental rights:

- determine the child's place of residence;
 - punish the child in a reasonable manner for disciplinary purposes, but shall not be a torture, physical or mental abuse, or misconduct manner;
 - require the child to do work as is suitable with to their ability and status in life; and
 - demand the return of the child from any person who unlawfully detains them.
- 2. Biological parents** – For unmarried couples, the mother automatically assumes sole custody. If the mother later registers the marriage with the biological father, she would then share custody with him. On the other hand, without proceeding with marriage registration, a biological father does not have custody rights until he has legally legitimized the child. Additionally, a biological parent who is merely a donor in a surrogacy holds no parental rights. Please see Point No. 19 below.

Aside from child custody, when a child is born, the parents may jointly decide on the child's first and last name, including whether the child will carry the father's or the mother's surname. In practice, it is common for the child to bear the father's surname.

12. If you have further comments on the matters raised in this section, please add them below.

Although same-sex marriage is now legally recognized in Thailand, the laws governing parental relationships still need reformation. Specifically, Book 5, Chapter 2 of the Thai Civil and Commercial Code, which addresses the legal relationship between parents and children, still uses binary terminology by referring to only the father and the mother. Therefore, there remains ambiguity on how legal practitioners will interpret and apply these provisions in the context of same-sex spouses and their children.

Adoption

13. Is adoption possible?

Both heterosexual spouses and same-sex spouses can adopt the child, under Book 5, Chapter 4, of the Civil and Commercial Code.

The CCC and the Child Adoption Act, B.E. 2522 (1979) (Child Adoption Act) allow the spouses and unmarried individuals to legally adopt a child.

If a couple legally registers their marriage, regardless of gender, they may jointly adopt a child under Thai law. However, in the case of unmarried or cohabiting couples, although adoption is still permitted, the adopted child will be legally recognized as the child of only the individual who undertakes the adoption.

If the child is a minor (a person under 20 years of age), the Child Adoption Act applies. For cross-border adoptions, the Hague Adoption Convention and Conflict of Laws Act will be applied.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

As mentioned in Point No. 13, both spouses and unmarried individuals, regardless of gender, are eligible to adopt a child under Thai law. However, one of the eligibilities of adoptive parents is age requirements as stipulated in Section 1598/19 of the Civil and Commercial Code. Namely, a person who is not less than twenty-five years of age may adopt another as his or her adopted child; provided, however, that such person must be at least fifteen years older than the person to be adopted.

Surrogacy

15. Is surrogacy legal?

Surrogacy is permitted under the Protection of a Child Born by Medical Reproductive Technology Act, B.E. 2558 (2015) (Surrogacy Act). Surrogacy agreements are permitted if the intended parents are:

- Thai nationals who register their marriage in either Thailand or a foreign country.
- A Thai national whose marriage to a foreign national has been conducted at least three years before the surrogacy.

If surrogacy is carried out in compliance with the Surrogacy Act, the child will be considered a legitimate child of the intended parents.

16. Is commercial/compensated surrogacy legal?

Commercial surrogacy is prohibited under Chapter 5, of the Surrogacy Act.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Currently, the Surrogacy Act is limited to the heterosexual spouses. Therefore, unmarried couples are ineligible to undergo surrogacy.

However, the amendment to the Act is under consideration to extend the right to access surrogacy and IVF to same-sex spouses, in order to align with the recent same-sex marriage legislation. The amendment also includes discussions on whether foreign spouses, regardless of gender, will be eligible to have a child through surrogacy under Thai law.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Thailand is currently in the process of amending several laws concerning spousal rights to align with the same-sex marriage legislation. In legal matters involving a foreign element, the Thai Conflict of Laws Act shall apply. In this context, parental rights are governed under Sections 29–30 of the Act.

However, this Act has not been substantially revised for a long time and still employs binary gender terminology. This could lead to interpretive challenges, as legal practitioners might apply the law differently.

Consequently, it remains uncertain whether a child born via surrogacy abroad to same-sex couples as intended parents would be legally recognized as such under Thai law.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Under the Surrogacy Act, medically assisted reproductive technologies, namely artificial insemination and surrogacy, are permitted exclusively for heterosexual spouses.

Gamete donation is lawful when carried out in accordance with Chapter 2 of the Surrogacy Act and the regulations, procedures, and conditions established by the Medical Council of Thailand.

In the case of artificial insemination, the procedure involves the transfer of gametes, either from both spouses or a combination of one spouse and a donor, into the wife's sex organ.

For surrogacy, the gametes used may be from those of both spouses or a combination of one spouse and a donor. The fertilized embryo is then transferred into the surrogate mother's sex organ, and the surrogate must provide written consent to act solely as a carrier.

According to Chapter 4, Section 29 of the Surrogacy Act, a child born through either artificial insemination or surrogacy shall be deemed the legitimate child of the lawful husband and wife who intended to have the child.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

As addressed in Point No. 17, only heterosexual spouses are permitted to seek assistance with artificial insemination and surrogacy.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Child born from artificial insemination such as IVF, is recognized as a child of the spouses. According to the Civil and Commercial Code, a child born to a mother who is not married to a father shall be deemed to be the legitimate child of such female unless otherwise provided by law. If the mother registers the marriage with the biological father and the child is born in wedlock, the child is deemed the legitimate child of both parents.

For a child born through IVF, since the Surrogacy Act has not yet been amended to recognize same-sex spouses or cohabiting couples, the child will be legally recognized as the legitimate child of the female who gives birth.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Same-sex marriage is permitted under Thai laws. Therefore, divorce process and the claim for financial support are not different between same-sex spouses and heterosexual spouses.

There are two types of divorce in Thailand.

- **Administrative divorce (consensual or uncontested divorce)** – Spouses who registered their marriage in Thailand can opt to mutually agree to divorce without going through a court proceeding by registering a consent divorce at the district office.
- **Contested divorce** – If the spouses cannot reach the consensual divorce, and there are grounds for divorce listed Section 1516 of the Civil and Commercial Code, they can file the contested divorce with the Family Court. It is important to note that irreconcilable/irretrievable differences are not grounds for divorce under Thai law.

If there is foreign element in the divorce, the Conflict of Laws Act, Sections 26 – 27, will also apply to each case.

For child custody, due to the current binary terminology in Book 5, Chapter 2 of the Civil and Commercial Code, it is unclear whether the law will create differences for child custody involving same-sex spouses. However, considering the purpose of the Same-sex Marriage Act, the child custody process should remain indifferent for both heterosexual and same-sex spouses.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Thailand does not have a concept of civil partnership registration, referring to Point No. 6 – 7. Therefore, couples are free to separate for any reason.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Thailand does not have a concept of civil partnership registration, referring to Point No. 6 – 7.

Regarding financial claims, while de facto relationships are commonly practiced, they do not carry the same legal obligation as formally registered marriages. In other words, in the case of a de facto relationship or civil partnership, if the relationship breaks down, the parties cannot claim financial support from each other. In the event of separation, couples, regardless of gender, may seek property division under the principle of co-ownership, if any.

With respect to child custody, there are differences between heterosexual and same-sex couples. In heterosexual relationships, if the parents are unmarried and the father has not completed the child legitimization, custody is vested solely in the mother.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

With the enforcement of the Same-sex Marriage Act, same-sex spouses are entitled to the same inheritance rights as heterosexual spouses.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes. Prior to the enactment of the same-sex marriage legislation in Thailand, same-sex couples frequently utilized wills for property management. Following the same-sex legislation, same-sex spouses or couples still retain the option to execute wills if they desire.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Section 15 of the Labour Protection Act sets minimum standards for employee protection, including a prohibition against gender discrimination. However, just between male and female employees. The Labour Protection Act itself has not yet adopted non-binary terminology due to its enforcement for many years without substantial amendments. However, we believe that the Thai Labour law generally aims to protect employees regardless of gender. Furthermore, it is quite common that many workplaces have already established their own internal regulations to further enhance gender equality.

30. Is gay conversion therapy banned?

As previously mentioned, Thailand is open to gender diversity. So, gay conversion therapy is rarely found in Thailand. Consequently, there is no law to ban or support such therapy.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

While gender-affirming treatment allows adults to gender transition, Thailand's naming laws still restrict individuals to binary titles (Mr. or Ms.). This means transmen are still referred to as Ms., and transwomen as Mr. The law on name titles is currently undergoing reformation.

Further answer can be seen in Point No. 2 above.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Regulations on Medical Ethics Regarding Health Care for Gender Affirmation, B.E. 2567 (2024) governs the gender-affirming treatment.

A legal minor under Thai law is a person who is under 20 years old.

Gender-affirming treatment through medication is available to a legal minor. For those under 18 years old, consent from the custodians is required, while minors who are 18 years old can provide their own consent.

Gender-affirming treatment through surgery as listed in the Regulations (10 specific treatments), minors aged 18 but under 20 years old must have consent from their custodians.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Thailand has no concept of non-binary identification.

35. What happens to the status of the marriage/civil partnership when one party transitions?

As Thailand's law on name titles remains unamended, a spouse who undergoes gender transition would still require to maintain the binary name title assigned at birth. So, it does not affect marital status.

36. Is changing gender a ground for divorce?

It is possible to be a ground for divorce, if the other spouse claims that such gender transformation causes grave mental distress, constitutes extreme psychological abuse, severe detriment to their relationship, or physical incapability to engage in sexual intercourse. Nevertheless, the court reserves the authority to assess the sufficiency of such claims for divorce.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Austria



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

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3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Eingetragene Partnerschaft None

7. **Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**
-

No.

8. **Is customary marriage recognised? If so, is it recognised between same-sex couples?**
-

No.

9. **If you have further comments on the matters raised in this section, please add them below.**
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Parenting

10. **Can more than two people be recognised as the parents of a child?**
-

No.

11. **What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**
-

A mother is the woman who has given birth to a child. Therefore, the mother of the child is automatically the person who gives birth. A mother/father cannot be referred to based on the will of the birthing person. In Austria, surrogacy is still prohibited.

12. **If you have further comments on the matters raised in this section, please add them below.**
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Adoption

13. **Is adoption possible?**
-

Yes.

14. **Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**
-

A person can adopt a child if they have the capacity to make decisions. Generally, spouses (or registered partners) may only adopt jointly. Exceptions are permitted if the child being adopted is the biological child of the other spouse, if one spouse is unable to adopt due to not meeting the legal requirements regarding decision-making capacity or age, if their whereabouts have been unknown for at least a year, if the spouses have been

living separately for at least three years, or if similar and particularly important reasons justify the adoption by only one of the spouses.

Furthermore, individuals entrusted with the care of the assets of the child to be adopted by court order may not adopt as long as they are not released from this obligation. They must provide an account and demonstrate the preservation of the entrusted assets before adoption.

All other individuals, regardless of gender or sexual orientation, are eligible to adopt.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

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18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

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Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

The determination of the sperm donor as the biological father for non-medically assisted reproduction is excluded if the person who is married to or in a registered partnership with the mother has consented and the third party (sperm donor) knowingly provided their sperm to achieve the pregnancy. There is no distinction made between same-sex or different-sex married or registered partnership couples.

For same-sex individuals who are not married or in a registered partnership, as well as for cohabiting couples (regardless of whether they are same-sex or different-sex), this does not apply. In this case, the sperm donor can be recognized as the father if he provides his sperm for “home insemination” within a cohabiting relationship.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Medically assisted reproduction is permitted in a marriage, registered partnership, or cohabiting relationship, as well as when a pregnancy is to be achieved for one of two women living in a registered partnership or cohabiting relationship. The mother of the child is the woman who has given birth to the child.

The second legal parent is the other person who is married or in a registered partnership with the mother at the time of the child's birth, who has not died as a spouse or registered partner earlier than 300 days before the child's birth, or who has acknowledged parenthood before or after the child's birth, or whose parenthood has been legally established. The acknowledgment of parenthood is recognized through a personal declaration in a domestic public or publicly notarized document.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The mother of the child is the woman who has given birth to the child. The parenthood of the same-sex or different-sex spouse (or registered partner) is recognized if, at the time of the child's birth, they were married to (or in a registered partnership with) the mother and have consented to medically assisted reproduction using the sperm of a third party in the form of a notarized document. It can no longer be claimed that the child conceived with the sperm of the third party does not descend from the mother's husband. Therefore, in the case of marriage or registered partnership, there is no distinction between same-sex and different-sex couples.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

If a same-sex cohabiting relationship fails, there is no obligation for maintenance payments between the former partners. Assets acquired during the cohabitation can be "divided" upon dissolution of the partnership according to the principles of enrichment law. However, only extraordinary contributions made with the expectation of the continued existence of the cohabitation and whose benefit outlasts the cohabitation (e.g., building a shared house) are refundable.

If joint custody of children arising from the cohabitation is maintained, it must be arranged in which household the children will primarily be cared for, as well as the contact rights of the non-custodial parent and the child support payments to be made. There is no distinction between same-sex and different-sex couples.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

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33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No case on this matter is known, nor legislation in Austria. So the question can only be answered “theoretically.”

A competent child can only give consent to medical treatment themselves – unless proven otherwise, decision-making capacity is presumed for minors aged 14 and older. If a child lacks the necessary decision-making capacity, the consent of the person responsible for their legal representation in care and education – namely the parents – is required. Although the parents’ consent to medical treatment can be replaced by the court under certain circumstances, this applies only to the consent of one parent. If both parents (or the sole custodial parent) refuse treatment, it is not possible for the court to replace their consent; the court cannot enter into the treatment contract on behalf of the child. Instead, the court would need to withdraw custody in such cases if the refusal of treatment would endanger the child’s well-being.

However, if a competent minor consents to treatment that is usually associated with severe or lasting impairment of physical integrity or personality, the treatment may only be carried out with the consent of the person responsible for their legal representation in care and education. This applies, according to case law, particularly when impairment is caused by medication, especially psychotropic drugs, that typically lasts longer than 24 days.

Neither a minor nor their parents can effectively consent to medical measures for sterilization or castration. Such interventions may only be performed on adults. Gender-affirming surgeries or puberty blockers are likely comparable to such interventions.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

In Austria, the third gender option in passports is recorded with an “X.” For the birth of children who are not clearly male or female, it is up to the midwife or doctor to enter “inter,” “divers,” or “open” as the gender designation, which is then included in the birth certificate, or to indicate “no information.”

A change between the designations “inter,” “divers,” “open” and “no information” can be requested at any time without justification and without a professional assessment. A change from “open” or “no information” to “inter,” “divers,” or “open” is possible upon request without justification at any time.

A change from “male” or “female” to “inter,” “divers,” “open,” or “no information” is only possible upon request with an additional professional assessment. A change from “inter,” “divers,” “open,” or “no information” to “male” or “female” is possible upon request with an additional professional assessment.

35. What happens to the status of the marriage/civil partnership when one party transitions?

A gender transition after marriage does not retroactively result in a non-marriage or the invalidity of the marriage; it can only lead to annulment of the marriage if the transsexual inclination existed at the time of marriage, or it can lead to divorce. Legally, a gender transition has no impact on a cohabiting relationship.

36. Is changing gender a ground for divorce?

This question has not yet been clarified by Austrian courts. However, if the gender transition occurs against the will of the other spouse, who does not consent to the transition and perceives this situation as detrimental to the marriage, it can be assumed that a gender transition would constitute grounds for divorce.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Denmark



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can marry by a civil or religious ceremony. However, a priest can be exempted from officiating at or conferring a religious blessing on a same-sex marriage without having to give any grounds.

5. Are foreign marriages of same-sex couples recognised?

Yes. Generally, marriages contracted abroad are recognised in Denmark if the marriage is valid in the state where the marriage took place and if formal conditions are fulfilled, for example ordre public considerations must be respected.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No, the scheme registered civil partnership was revoked in 2012. Since 2012, the registered civil partnerships have had the opportunity to convert their partnership into a formal marriage.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There are no real legal consequences of cohabitation. Heterosexual couples and same-sex couples are treated equally.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriage does not exist in Denmark.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No, Danish law does not accept more than two parents.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Generally, parents are registered with the gender they have used to reproduce with.

The person who gives birth to a child is as a main rule registered as the mother (*mater est* rule). However, if a trans man who changed his legal sex gives birth, he will be registered as the child father. The other parent will be registered as the father or co-mother. A trans woman who is partner to a person who gives birth can similarly be registered as co-mother if she had changed her legal sex.

12. If you have further comments on the matters raised in this section, please add them below.

With regard to surrogacy, the Danish Parliament is expected to pass new legislation that make it easier for a non-biological co- parent to be registered as the legal parent in surrogacy case from 2025 (both altruistic and compensated international surrogacy). The new legislation is also the result of the ECHR case *K.K. and Others v. Denmark*. This will break with the fundamental *mater est* rule. The new legislation will make co-paternity possible for homosexual fathers from the child's birth.

Adoption

13. Is adoption possible?

Same-sex couples are able to adopt a child in Denmark under the same conditions as opposite-sex couples. With regard to international adoption, other states rarely accept same-sex couples to adopt a child, which make it difficult for same-sex couples to adopt from another country. At the moment, international adoptions are not possible due to a national ban against the (sole) adoption agency in Denmark.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

It is possible to apply as a single person. If one applies with a partner, it is required that the adoptive parents lived together some time (generally the last 2.5 years).

Surrogacy

15. Is surrogacy legal?

Surrogacy is not in itself prohibited. However, it is a criminal offence for the intended parents to receive help from an intermediary (surrogacy agency, friend, etc.) to get in contact with the surrogate. It is also a criminal offence to advertise for a surrogate (for example by social media). The intermediary's business is likewise prohibited.

16. Is commercial/compensated surrogacy legal?

Previously, the non-biological parent was not able to be registered as the legal parent if the child was born through compensated surrogacy. Consequently, compensated surrogacy was considered prohibited.

ECHR's judgment in *K.K. and Others v. Denmark* changed the authorities' point of view on compensated surrogacy and made

registration of the non-biological parent as a legal parent possible. The Danish Parliament is expected to pass new legislation that will formalize a new parent registration process for surrogacy families from 2025 and make it easier for the intended parents to be registered.

Independent from the parent registration issue, it is a criminal offense for the intended parents to receive help from an agency etc. to find a surrogate and to advertise for a surrogate, cf. question 19. The criminal bans applies regardless if the surrogate receives compensation or not.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

According to the upcoming legislation, it is a condition that at least one of the parents are genetically connected to the child. If none of the intended parents are able to deliver genetic material, they cannot be registered as the child's legal parent. A single parent can also be registered if the parent is genetically connected to the child.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

If the previously mentioned legalisation is adopted, the intended same-sex couples can apply the authorities to recognise the non-biological parent's parentage established abroad. The couple must present documentation; 1) proving that at least one of the intended parents is genetically linked to the child, 2) a notarised statement from the surrogate that confirms the transfer of the parentage after the birth, 3) the surrogate agreement, and 4) the birth certificate. Additionally, the best interest of the child must be observed – though the presumption is that the registration will be in the best interest of the child.

The new legislation also make it possible for intended parents to be registered on the basis of a national surrogacy agreement with a Danish surrogate. In that case, a number of conditions must be fulfilled, e.g. the Danish surrogate is not allowed to receive compensation.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

People who are in the need of gametes can start a family with help from an egg or sperm donor under certain circumstances. Double donation (i.e. either egg or sperm originate from the intended parent) is at the moment only possible if there is a medical reason and one of the donors are non-anonymous. The official requirements for same-sex couples are the same as for opposite- sex couples.

If the donor has donated through the public health care system, the donor will as a main rule not be recognised as the legal parent. A sperm donor can, however, be registered if he gives his explicit consent.

According to a bill, lesbian couples also get the possibility to use the ROPA method from 2025 (donation of egg to a female partner).

Indented parents who use surrogacy cannot receive assisted reproductive treatment in Denmark and have to go abroad (with the surrogate) regardless of if the case concerns altruistic or compensated surrogacy.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

According to a recent change in legislation, co-motherhood will be registered automatically if a married lesbian couple receive artificial insemination in line with opposite-sex couples. This also applies if an insemination took place outside the health care system. Cohabiting partners must fulfil a declaration as a condition for registration.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

See question 24.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The same rules applies to a non-married same-sex couple as to a non-married opposite-sex couple.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Only compensation claims which have a very limited scope. It is the same for opposite-sex couples.

See question 27.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

The general rules applies to same-sex couples. The testator is free to dispose of their estate by will with the exception of the legitimate portion on spouse and issue.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The discrimination laws in Denmark protect among others discrimination based on sexual orientation, gender identity, gender expression and gender characteristics. Consequently, both trans people, intersex people and non-binary people are protected from discrimination.

30. Is gay conversion therapy banned?

There does not exist a direct ban on conversion therapy in Denmark. However, conversion therapy can be prohibited under other provisions, e.g. prohibition against re-education journeys, violence, duress and threats.

31. If you have further comments on the matters raised in this section, please add them below.

The same discriminations grounds applies to provisions in the criminal code that criminalise hate speech and make hate crimes an aggravating circumstance.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

A person can legally change its sex according to the person's gender identity. The person must send in an application and declare that the change arise from a discrepancy between the sex assigned at birth and the gender identity. Six months after the application is submitted, the person must as a main rule confirm the wish of changing the legal sex (the period of reflection).

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Gender-affirming treatment – hormones treatment – is also available for people under the age of 18 in the Danish health care system. However, a multi-disciplinary team decides on a case-by-case basis if hormones can be prescribed.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

The local councils can allow a person to be designated X in the passport, if they submit a written statement that the designation is based on a feeling of belonging to the other gender, that the person is intersex or does not identify as either male or female or if the person has changed its legal sex.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The legal status of the marriage continues. If the spouse wants to terminate the marriage, they have to apply for separation/divorce.

36. Is changing gender a ground for divorce?

No, a spouse cannot divorce based on the other spouse's legal change of sex.

37. If you have further comments on the matters raised in this section, please add them below.

A person's legal name must reflect its legal sex. However, some names are unisex. Consequently, a trans person can be forced to change their name if they desire to apply for legal change of sex.

JURISDICTION

England & Wales



Contributor Name	David Allison
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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No, provided there is consent to treatment.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. The differences relate largely religious organisations. Section 2 Marriage (Same Sex Couples) Act 2013 exempts religious organisations from any requirement to conduct marriages for two people of the same-sex. It also amends the Equality Act 2010 (which prohibits discrimination on the basis of sexual orientation to allow religious organisations to discriminate).

Also there is no requirement to consummate a same-sex marriage (unlike an opposite-sex marriage) and therefore the marriage cannot be nullified on the basis of non-consummation which an opposite-sex marriage can.

5. Are foreign marriages of same-sex couples recognised?

Yes, provided they are valid within the jurisdiction where the marriage took place.

There might be difficulties if one or both did not have capacity to enter into the relationship under their personal law being the law of their domicile – see <https://www.flip.co.uk/civil-partnership-same-sex-marriage-capacity-and-recognition-of-foreign-relationships/>

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes. The Civil Partnership Act 2004 introduced civil partnerships for same-sex couples only. It was intended to provide something akin to marriage for same-sex couples before same-sex marriage was possible. The Civil Partnership (Opposite-sex Couples) Regulations allowed opposite-sex couples to register a civil partnership from 31 December 2019.

Unlike many other jurisdictions, civil partnership in England & Wales provides the same rights and responsibilities as marriage.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No. The English court does not recognise de facto or common-law relationships for same-sex or opposite-sex couples in most circumstances. This is despite various attempts to introduce legislation and various recommendations for reform including from the Law Commission. There are no financial claims that exist on the breakdown of a de facto or common law relationship that arise solely as a consequence of the relationship. Claims may be made on behalf of children and/or in relation to a particular asset (such as a home) where the claimant can establish an interest under a constructive or resulting trust. This is a significant problem – the latest British Social Attitudes survey found that more than half of those interviewed believed that they would acquire rights as common law spouses. Cohabitants do have certain rights on the death of their partner under S.1 (1A) Inheritance (Provision for Family and Dependents) Act 1975. Cohabitants are also recognised as a couple for claiming state benefit.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The woman who gives birth will always be the child's mother. This includes women who give birth through artificial insemination.

S.33 Human Fertilisation and Embryology Act 2008 defines the mother as: The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm.

S.35 & 36 of the 2008 Act provides that where a woman who undergoes artificial insemination is married to a man the husband is the father unless it is shown he did not consent. Where the woman is unmarried another man may be regarded as the father provided the agreed fatherhood conditions are met. Broadly this requires the man's consent. No other man can be regarded as the father. S.42 and 43 make equivalent provisions for same-sex female couples that provide for the non birth mother to be the other parent.

Where artificial insemination is done informally away from a licensed clinic, the sperm donor will be the father.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

No, only reasonable expenses may be paid to the surrogate mother. However, the fact that a sum or sums greater than required for reasonable expenses is paid will not prevent the court from making a parental order (the order that gives the commissioning parent status as parents of the child) in favour of the commissioning parents.

The surrogacy Arrangements Act 1985 creates criminal offences for persons who profit from initiating or negotiating surrogacy arrangements.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No. Prior to The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018, only couples could apply for a parental order. It is now possible for single applicants to apply.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No. All commissioning parents who wish to bring their child to England must obtain a parental order from the English court. Otherwise the surrogate mother will be regarded as the mother and if she is married her husband will be the child's father.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes. There is no parental relationship between a donor of gamete and/or embryo and a child born following donation. S.33 Human Fertilisation and Embryology Act 2008 defines the mother as: The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes. Where a female same-sex couple have a child through artificial insemination at a licensed clinic, s.42 Human Fertilisation and Embryology Act 2008 provides for the woman's wife or civil partner to be the other parent. If the couple are not married or in a civil partnership, the second female will be regarded as the other parent if the agreed female parenthood conditions were met (s.43 HFEA 2008). This effectively requires consent of the second female parent.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The woman's husband will be the child's father as will a male civil partner in an opposite-sex civil partnership – s.35 HFEA 2008. If the mother is married to or in a civil partnership with a woman then the other woman will be the other parent – s.42 HFEA 2008.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

There are no differences.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Civil Partnership in England & Wales is equivalent to marriage. The dissolution process and the claims that can be made are the same.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

The English court does not recognise de facto or common-law relationships for same-sex or opposite-sex couples in most circumstances. This is despite various attempts to introduce legislation and various recommendations for reform including from the Law Commission. There are no financial claims that exist on the breakdown of a de facto or common law relationship that arise solely as a consequence of the relationship. Claims may be made on behalf of children and/or in relation to a particular asset (such as a home) where the claimant can establish an interest under a constructive or resulting trust.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes. The Equality Act 2010 makes discrimination based on certain characteristics unlawful. The characteristics include gender reassignment and sexual orientation. The gender reassignment characteristic applies if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex (S.7). The decision in *Taylor v Jaguar Land Rover Ltd* confirmed that gender fluid and non- binary people are protected under this provision.

30. Is gay conversion therapy banned?

No. The current UK government has promised to outlaw conversion therapy. This was a promise that the last government also made but then back-tracked by saying that banning conversion therapy practices related to gender identity was complex and required further consideration.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

An adult can change their gender if they are granted a gender recognition certificate by the Gender Recognition Panel. The panel is a branch of the courts and tribunal service.

S.2 (1) S.2 (1) Gender Recognition Act 2004 provides that on an application for a gender recognition certificate the Gender Recognition Panel must grant the application if satisfied that the applicant:

- a) has or has had gender dysphoria;

- b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,
- c) intends to continue to live in the acquired gender until death; and
- d) complies with the requirements imposed by and under section 3.

The s.3 requirements are for a report from a doctor or registered psychologist practising in the field of gender dysphoria and a statutory declaration from the applicant that he or she has lived in the acquired gender for at least 2 years.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

In theory a “Gillick competent” child can consent to treatment and parents may consent on behalf of a child who is not Gillick competent.

However, the National Health Service has stopped prescribing puberty blockers to children under 16 following the Cass review. There is also a temporary ban on private prescriptions brought in by the last government and extended by the current government.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No. All birth certificates in England & Wales identify the individual as either male or female.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Provided the spouse consents the couple remain married. Otherwise, the marriage must be annulled before a full gender recognition certificate can be issued.

36. Is changing gender a ground for divorce?

No. Since April 2022 the only legal ground for divorce is that the marriage has irretrievably broken down.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Germany



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, it is not illegal. There are no penalties.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

In Germany it has been possible to legally change one's gender since 1981. This was regulated by the Transsexuals Act (TSG). In 2018, the "third option" was introduced, which makes it possible to choose "diverse" or "none" as the gender entry in addition to "male" and "female".

A significant step was the adoption of the Self-Determination Act (SBGG) in April 2024, which makes it easier for trans, intersex and non-binary people to change their gender entry and first names. This law will largely come into force on November 1, 2024.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex marriage has existed in Germany since October 1, 2017. On this day, the "Marriage for All" law came into force, which allows same-sex couples to get married and have the same rights and obligations as heterosexual couples.

5. Are foreign marriages of same-sex couples recognised?

It depends. Marriages, which were closed in the EU, are complete recognised. From Non-EU Countries it depends on the country. Since the legalization of same-sex marriage in Germany on October 1, 2017, the country has established a framework that acknowledges marriages conducted abroad, provided they comply with the legal requirements of the jurisdiction where they were performed. The recognition process is guided by German civil law, which stipulates that a marriage is valid if it was legally conducted according to the laws of the country where it took place. Therefore, as long as both parties meet the legal requirements for marriage in that country, their marriage will be recognized in Germany.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

The legal differences between a marriage and a registered civil partnership are small, but there are some differences:

- In a marriage, both partners can adopt a child together. In the case of a registered civil partnership, only successive adoption is possible, in which only one partner initially adopts the child and the other partner can later seek adoption.
- In a marriage between a man and a woman, the husband is automatically recognized as the legal father of a child if the couple is married at the time of birth. This is not the case with registered civil partnerships; A stepchild adoption must take place here. A marriage is divorced, while a registered civil partnership is dissolved.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No, there are no legal differences between a same-sex or opposite relationship during the existence, but there are Differences in Treatment upon Breakdown.

In the event of a breakup, de facto partners generally do not have the same property rights as married couples. Married couples typically benefit from the community of accrued gains (*Zugewinnngemeinschaft*), which means that any increase in wealth during the marriage is shared equally upon divorce. In contrast, de facto partners may need to rely on general contract law or other legal principles to resolve property disputes, which can lead to less favorable outcomes.

In the event of a breakup, de facto partners generally do not have the same property rights as married couples. Married couples typically benefit from the community of accrued gains (*Zugewinnngemeinschaft*), which means that any increase in wealth during the marriage is shared equally upon divorce. In contrast, de facto partners may need to rely on general contract law or other legal principles to resolve property disputes, which can lead to less favorable outcomes.

Unlike married couples who may be entitled to spousal support (alimony) after a divorce, de facto partners do not have an automatic right to such support. Any claims for financial support would need to be established through contractual agreements or specific legal claims based on need.

For couples with children, custody arrangements are typically determined based on the best interests of the child, but de facto partners may face additional challenges compared to married couples regarding parental rights and responsibilities. Same-sex couples in de facto relationships may find it more complex to establish legal parentage unless they have taken specific legal steps (e.g., adoption).

In short, while de facto relationships for same-sex couples are recognized in Germany, they lack the legal protections and benefits afforded to marriage. There are no significant differences in how same-sex and opposite-sex de facto relationships are treated; both face similar limitations concerning property rights, alimony, and child custody upon relationship breakdown.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

A marriage in Germany is only recognized if it was concluded by the state. Traditional marriages through rites or customs have no legal effect/recognition.

9. If you have further comments on the matters raised in this section, please add them below.

No.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

It can be chosen at the time of the birth. If it's not chosen, it will be named to the mother, it is determined by the legal framework surrounding parenthood and naming conventions. The person giving birth is automatically recognized as the mother of the child. This is a legal designation that does not require any additional steps or declarations. The mother's name will be recorded as such on the birth certificate. For the biological father to be recognized legally, he must acknowledge paternity. This can be done through a formal acknowledgment process, typically at the time of birth registration. If the parents are married, the husband is automatically recognized as the father unless otherwise stated.

12. If you have further comments on the matters raised in this section, please add them below.

No.

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No, the only restriction is the age. The partners have to be 25, or at least if one is 25 or above, the other has to be 21.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

-

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

It depends. If there is a genetic connection, it can be recognized.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Sperm donation is permitted in Germany and is often used in reproductive medicine.

Egg donation is prohibited in Germany. The Embryo Protection Act does not allow another woman's egg to be inserted into a woman after artificial insemination.

Embryo donation is permitted in Germany under certain conditions. Surplus embryos created during artificial insemination can be donated if they are no longer needed for family planning.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Due to the fact, that surrogacy is prohibited, it depends on the sex of the parents.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The German Civil Code (*Bürgerliches Gesetzbuch, BGB*) provides the foundation for determining parental rights and parentage, particularly in relation to IVF and assisted reproductive treatments. Section 1591 talks about maternity and states that the woman who gives birth is recognized as the legal mother. Section 1592 talks about paternity and states that the biological father can be recognized as the legal father through acknowledgment or a judicial ruling, depending on the circumstances. Section 1592a states that in the case of same-sex marriages, the non-biological partner is automatically recognized as the second legal parent at the time of the child's birth if the couple is married. The second-parent adoption is not automatically available in Germany for unmarried heterosexual couples. The biological father must legally acknowledge the child to become the legal father. In cases of unmarried same-sex couples the non-biological partner must go through a formal adoption procedure to obtain legal parental rights.

The BVerfG, Judgment of 19. February 2013 (1 BvR 1279/12), reinforced the equality principle for same-sex couples, particularly in regard to parental rights and the recognition of the non-biological parent in cases of IVF and assisted reproduction.

Before same-sex marriage became legal in 2017, same-sex couples who were in a civil union (*Eingetragene Lebenspartnerschaft*) were treated similarly to married heterosexual couples in terms of legal parentage.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

In Germany, civil unions were legally recognized as a form of legal union for same-sex couples before the legalization of same-sex marriage in 2017. The legal grounds for dissolving a civil union include irretrievable breakdown of relationship, if the partners have lived separately for a year. This is similar to divorce proceedings. Claims regarding property and asset division, alimony, pension and custodial rights can be made. The law governing divorce is primarily found in the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), specifically under Part 8 (Family Law). The dissolution process for same-sex civil unions was largely the same as for opposite-sex unions, though adoption rights and custody issues were historically a bit more complex for same-sex couples due to the need for second-parent adoption. After 2017, with the legalization of same-sex marriage, same-sex couples are treated equally to heterosexual couples in all areas of divorce law.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

The legal rights and financial claims on the breakdown of a de facto relationship or customary marriage differ significantly from those available to a married couple. Cohabiting couples, whether same-sex or opposite-sex, do not have the same automatic financial or custodial rights unless they explicitly agree to them or enter into a legal arrangement such as a cohabitation agreement or second-parent adoption. In a breakdown of a de facto relationship or customary marriage, there is no automatic division of property and there are no spousal maintenance obligations. The difference is that for same-sex cohabiting couples, second-parent adoption is the process for non-biological parents to obtain parental rights, which is legally available and necessary if the couple has children. The rights of same-sex and opposite-sex cohabiting couples are generally the same in terms of financial claims upon separation

25. If you have further comments on the matters raised in this section please add them below.

No comments.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

No comments.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, German law does prohibit discrimination on the basis of gender, including transgender, intersex, and non-binary identities, as well as sexual orientation. This is primarily based on principles of equality and non-discrimination enshrined in the German Constitution. Article 3 of the German Constitution guarantees the principle of equality and non-discrimination.

Germany is also subject to the EU Charter of Fundamental Rights and the EU directives on anti-discrimination. These laws prohibit discrimination based on sexual orientation and gender identity, further strengthening

protections for LGBTQ+ individuals in Germany. The EU Anti-Discrimination Directive (2000/43/EC and 2000/78/EC) has been implemented in German law, enhancing protections in employment and ensuring that individuals cannot be discriminated against on the basis of sexual orientation or gender identity.

General Equal Treatment Act, is Germany's primary anti-discrimination law. It came into effect in 2006 and is designed to protect individuals from discrimination in various areas such as employment, housing, public services, and education. Section 2 of AGG prohibits discrimination on the basis of gender identity and sexual orientation. Sections 19-22 prohibit discrimination at the workplace.

30. Is gay conversion therapy banned?

In 2020, the German parliament passed a law "*Gesetz zum Schutz vor Konversionsbehandlungen*" banning gay conversion therapy for minors. Under the law, advertising or offering conversion therapy will be prohibited for children up to the age of 18. Violators can be fined up to up to €30,000 (\$33,000) or sentenced to up to one year in prison. Germany has made it illegal to offer or perform conversion therapy for adults if they are coerced, pressured or manipulated into it.

31. If you have further comments on the matters raised in this section, please add them below.

No comments.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Germany recently passed the self declaration act in 2024, whereby people aged 14 and older will be able to change their first name and gender entry by making a declaration to the registry office. For minors over the age of 14, they will need their parents' or legal representatives' consent. In the case of children under the age of 14, the parents would need to submit the necessary declaration to the registry office. Before the self-declaration law came into effect, individuals who wanted to change their gender in official records had to go through a court process. The court procedure required medical and psychological reports, post which the court could decide whether to grant approval for legally changing the gender or not.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

While the Self-Determination Law allows adults to change their gender marker without needing medical or psychological assessments, the law does not cover minors in terms of gender identity or gender-affirming treatments.

The law governing gender-affirming treatments for minors, including puberty blockers, hormone replacement therapy (HRT), and gender-affirming surgeries, is shaped by a combination of medical guidelines, legal provisions around informed consent, and ethical standards.

Under German law, the ability of minors to provide informed consent for medical treatments is governed by the German Civil Code.

16-17-year-olds can provide informed consent in Germany for medical treatment if they are deemed competent to understand the nature and consequences of the procedure. This includes hormone therapy but may not automatically extend to surgeries, which often require court approval, particularly for irreversible interventions.

Thus, gender-affirming treatments such as puberty blockers or hormone therapy, require parental consent for individuals under 18. Surgical interventions are generally not performed on minors under 18 unless there is court approval and the minor is 16 or 17 and the parents and the medical professionals agree.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes. The legal recognition for the third gender option came through in 2017 when the Federal Constitutional Court ruled that the previous law, which only allowed “male” or “female” as gender options on birth certificates, violated constitutional rights. The decision led to the introduction of the Third Gender Law, which came into effect in 2018. This law allows for an entry of “diverse” in the birth register for individuals who do not identify as strictly male or female.

35. What happens to the status of the marriage/civil partnership when one party transitions?

No change.

36. Is changing gender a ground for divorce?

No, a divorce needs in Germany no ground. But its discussed whether the the change of the sex could shorten the law, that the partners have to wait a year.

37. If you have further comments on the matters raised in this section, please add them below.

No comment.

JURISDICTION

Greece



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex couples can marry in Greece since 2024 (Law 5089/2024). Although the new law legalises same-sex civil marriage, it does not interfere with the freedom of the Greek Orthodox Church or any other religion recognised in Greece to allow or disallow same-sex religious marriage. Greek Orthodox Church does not allow same-sex religious marriage

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes (it is called cohabitation agreement) since 2015. The dissolution of a cohabitation agreement is easier than that of a marriage. Cohabiting couples have the same succession rights as married couples. However, when concluding the cohabitation agreement, either party can waive their inheritance rights.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No. Informal cohabitation involving individuals of the same or different gender without a cohabitation agreement is not subject to any particular legal provision.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The woman who gives birth to a child, is the child's legal mother. By way of exception to this rule, in the event of surrogacy, which is permitted in Greece, the law provides that the intended mother, after the signing of a surrogacy agreement and the court's approval, is considered as the legal mother of the child although another woman (the surrogate) gives birth to the child.

Paternity is established in principle by the birth of the child during the marriage or the cohabitation agreement (or within 300 days from the dissolution of the marriage or the cohabitation agreement). Hence, the man who is the husband or the registered partner at the time of birth is the legal father.

In case of a child born out of wedlock or without a cohabitation agreement, paternity is established by the acknowledgment of the child.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

By recognising same-sex marriage, the law extended adoption rights to same-sex spouses. This means that same-sex spouses have full adoption rights. According to Greek law adoptive parents can be married or unmarried individuals. But adoption by more than one person is permitted only if the ones who adopt are married. Thus, by the recognition of same-sex marriage, it is possible for same-sex spouses to jointly adopt a child and for a spouse to adopt the child of their same-sex spouse. Non-binary gender is not legally recognised in Greece.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Only altruistic surrogacy is permitted in Greece. The surrogate can only be reimbursed for her reasonable expenses, namely the medical expenses and any lost income during pregnancy.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Same sex couples and unmarried men are prohibited from seeking medically assisted reproduction through a surrogate in Greece, despite the fact that surrogacy has been legislated and permitted in Greece since 2002.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. Parentage of same-sex couples who have become parents through surrogacy overseas is recognised in Greece provided it has been registered in public documents or court decisions of the third state.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and embryo donation is legal in Greece. Donors of genetic material, although biologically connected to the child, have no legal link to the child. Donors are anonymous.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The written consent of the assisted individuals to the procedures of assisted reproduction is required. The individuals wishing to have a child by using the methods of medically assisted reproduction and having given their written consent to the use of genetic material of a donor are considered as the legal parents of the child. A man's notarial consent to his partner's artificial fertilization is equivalent to voluntary acknowledgment of paternity. Methods of medically assisted reproduction are not open to same-sex couples.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

A cohabitation agreement can be dissolved in the following ways:

- By an agreement concluded in person by the cohabitants before a notary public;
- Where one cohabitant wishes to terminate the relationship, by a unilateral declaration before a notary public, on the condition that, an invitation for consensual dissolution of the cohabitation agreement has been served on the other cohabitant, and a period of at least three months has elapsed from the date of service;
- By law, where the cohabiting partners get married.

There are no differences between dissolution of same-sex as opposed to opposite-sex unions.

The financial claims that can be made on dissolution of a cohabitation agreement are the same as those that can be made in divorce: claim for maintenance and claim for the participation to the acquisitions (division of property).

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

In the absence of a cohabitation agreement, a same-sex couple cannot make financial or custody claims.

In case of an opposite-sex couple, if paternity of a child born out of wedlock or outside a registered partnership (cohabitation agreement) has been acknowledged, claims in relation to custody, contact right and to child maintenance would be available.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes. Law 4443/2016 prohibits discrimination in employment on the basis of sexual orientation, gender identity and sex characteristics. Law 5089/2024 extends the prohibition of discrimination to social protection, social benefits, education and access to goods and services. Law 4285/2014 criminalizes hate speech and violence based on sexual orientation and gender identity.

30. Is gay conversion therapy banned?

Gay conversion therapy for minors is banned in Greece since 2022. Adults can undergo conversion therapy with their consent.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

An adult can legally change their gender. Legal gender recognition is effected by virtue of a court decision following an application and a declaration made in person before the court.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

A minor intersex person who has reached the age of 15 may undergo medical procedures and treatments, such as surgical or hormonal, for the total or partial change of sex characteristics only with their free consent and the consent of the individuals who exercise their parental care or custody.

If the intersex minor is under 15 years old, the above medical procedures and treatment are prohibited, unless a court's permission has been granted. In this case, the hearing is held behind closed doors and the court's decision is not subject to legal remedies.

Permission is granted by the court following:

- a) an opinion of an interdisciplinary committee which is freely assessed by the court,
- b) an in-person hearing of a representative of the above committee and c) an in-person hearing of the minor by the judge. Permission may be granted only for medical procedures or treatments that cannot be postponed until the minor has reached the age of 15 and do not cause any other future, irreversible, or significant complications to the health of the minor.

Exceptionally, this permission is not required when the medical procedure or treatment is necessary to prevent a risk to the life or health of the minor and cannot be postponed until the court's decision is issued.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No. Gender-neutral names can be used on IDs and birth certificates, but one can only legally identify as male or female.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The status does not change since same-sex marriage and same-sex registered partnership are allowed in Greece.

36. Is changing gender a ground for divorce?

Under Greek law, each spouse can pursue a divorce if both:

- the relationship has broken down irretrievably for reasons that refer either to the respondent or to both spouses;
- the continuation of the marital relationship has become unbearable for the petitioner.

Although gender change does not, by itself, affect the validity of the marriage, and although there is no case law on this issue, it is expected that changing gender would constitute a ground for divorce.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Finland



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Homosexuality or consensual homosexual acts are not illegal. In fact, Finland is a relatively progressive country in terms of LGBTQ+ rights.

Homosexuality was decriminalized in Finland in 1971. Registered partnerships for same-sex couples were introduced in 2002, providing some rights similar to those of married couples. Same-sex marriage was legalized in 2017, granting same-sex couples the same rights as heterosexual couples, including adoption rights.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender identity is generally respected and protected under the law, and gender-affirming treatment is legal. However, there are specific legal and medical frameworks that regulate gender recognition and access to gender-affirming care.

Finland's transgender rights framework has improved lately and in early 2023 Finnish Parliament passed a new law called the Act on Legal recognition of Gender. The new law allows adult individuals to apply to change their legal gender through self-determination without sterilization or medical procedures.

Gender-affirming medical treatments, such as hormone replacement therapy and surgeries, are legal in Finland, but access is regulated through the healthcare system.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can legally marry in Finland since 2017. Same-sex married couples enjoy the same legal protections and obligations as opposite-sex couples. This includes rights related to property, inheritance and immigration.

Before the legalization of same-sex marriage, Finland allowed so called registered partnerships for same-sex couples. These partnerships granted most of the same rights as marriage but did not include adoption rights or the ability to take a shared surname automatically. After the legalization of marriage, the formation of new registered partnerships stopped, but existing partnerships are still valid. Couples in a registered partnership can choose to convert their partnership into a marriage.

A married same-sex couple has equal rights to parenthood, though there are some nuances in how parenthood is recognized, particularly for female couples. If a child is born to a same-sex female couple through fertility treatment, the non-birth mother is automatically recognized as the second parent. However, for male couples, surrogacy is not permitted in Finland.

Since the legalization of same-sex marriage, joint adoption of children is allowed for same-sex couples.

5. Are foreign marriages of same-sex couples recognised?

Yes, Finland recognizes foreign marriages of same-sex couples. If a same-sex couple marries in a country where same-sex marriage is legal, their marriage is recognized as valid in Finland. This applies regardless of whether the couple consists of Finnish citizens or foreigners. Before the legalization of same-sex marriage in Finland in 2017, Finland recognized foreign registered partnerships or civil unions as equivalent to its domestic registered partnerships (introduced in 2002). These could be converted into marriage in Finland after 2017 if the couple wished.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Not anymore. While Finland once had a civil union-type status (registered partnerships) for same-sex couples, it has since moved to full marriage equality. Registered partnerships granted almost all the same rights as marriage, but with a few important distinctions, especially concerning adoption and surname rights.

Since 2017, same-sex couples can marry and enjoy the full legal benefits of marriage. Couples who had entered into a registered partnership before the law changed could keep their partnership status, but they were also given the option to convert their partnership into a marriage through a simple administrative process. While registered partnerships were very similar to marriages, there were a few key differences. One of the significant differences was in adoption rights. Couples in registered partnerships were not initially allowed to jointly adopt children. They could only adopt the biological or adopted child of their partner through stepchild adoption.

In a registered partnership, the partners did not automatically have the right to take a shared surname, which is an automatic right in marriage. They could only change their surname through a separate application process.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Cohabiting relationships for same-sex couples are legally recognized and treated the same as opposite-sex cohabitation (avoliitto/samboende). The parties must have lived in a shared household for at least five years or have, or have had, a joint child or joint parental responsibility for a child to be covered under the Act on the Dissolution of the Household of Cohabiting Partners (26/2011), which outlines property division and some legal protections in the event of a relationship breakdown. However, compared to marriage, cohabiting partners do not enjoy the same rights concerning inheritance and maintenance.

Same-sex and opposite-sex de cohabiting partners are treated equally under Finnish law, with no differences in legal status or treatment upon the breakdown of their relationship.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriage is not recognized under Finnish law. Finland only recognizes marriages that are conducted through official legal channels, such as civil or religious ceremonies, and registered with the relevant authorities. The marriage must be formally registered with the Digital and Population Data Services Agency (Digi- ja väestötietovirasto) to be legally recognized.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

As of now, Finnish law does not allow for more than two legal parents to be recognized for a child at the same time. This applies to both biological and adoptive relationships. As it stands, Finnish law does not recognize more than two parents for a child, whether biological or adoptive. The Finnish Parenthood Act (700/1970) provides the basis for determining parental status and rights. Under this act, only two parents can be recognized at a time. Changes to the law would be necessary to allow for more than two legal parents.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In Finland, the legal status of a parent upon a child's birth is primarily determined by the biological relationship to the child and the legal definitions set forth in Finnish law.

The person giving birth is automatically recognized as the mother of the child under Finnish law. This status is conferred regardless of the circumstances of the birth, including whether the birth occurs in wedlock, a registered partnership, or outside of such relationships.

The father's legal status is not automatically granted. For a father to be established as such, he must acknowledge paternity voluntarily or be established as the biological father.

Finnish law recognizes the concept of parents in a more gender-neutral way, especially in recent legal reforms that focus on parental rights and responsibilities (Parenthood Act 775/2022).

Parenthood can be established before the birth of the child at the maternity clinic. The non-birthing partner does not automatically have parental status if the birth mother is not married to a man at the time of the child's birth. The parenthood of the child's father or other mother must be recognized and confirmed separately.

If there is any dispute about paternity, the issue may also be resolved through DNA testing or court proceedings.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes, adoption is legally possible in Finland and is governed by the Finnish Adoption Act (22/2012), which outlines the procedures, requirements, and types of adoption available. Adoption can occur both for domestic children and international cases.

Domestic Adoption involves the adoption of a child who is a Finnish citizen and is typically arranged through social welfare authorities or licensed adoption agencies. Finns can also adopt children from other countries. The process is regulated to ensure compliance with both Finnish law and the laws of the country from which the child is being adopted. There are three adoption service providers operating in Finland and they are currently licensed with a total of eight countries. These countries are South Africa, China, Thailand, Colombia, India, the Philippines, Bulgaria and the Czech Republic. International adoptions often involve additional legal requirements.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In Finland, the eligibility criteria for adoption are designed to ensure that all prospective parents can provide a stable and nurturing environment for a child. The Adoption Act outlines specific requirements and restrictions, but it does not explicitly disqualify individuals based on marital status, sexual orientation, or gender identity.

There are no legal prohibitions against transgender, non-binary, or intersex individuals adopting. Finnish law does not discriminate based on gender identity or expression.

Both married heterosexual couples and married same-sex couples can adopt children. Spouses can in most cases only adopt together during the marriage. Spouses can adopt alone when it is a child of a spouse. Single individuals are also eligible to adopt.

Surrogacy

15. Is surrogacy legal?

In Finland, surrogacy is a complex legal issue. Before the Act on Assisted Fertility Treatments (2006/1237) entered into force in Finland, there were no national laws regulating the matter. Surrogacy was therefore not legalized as a method of treating involuntary infertility in Finland, nor, on the other hand, was it prohibited by law.

As of now, surrogacy is not legally permitted under Finnish law and is made impossible in practice through the law. Section 8 of the Act on Assisted Fertility Treatments also prohibits the provision of assisted fertility treatment in cases where there is reason to believe the child will be given up for adoption.

16. Is commercial/compensated surrogacy legal?

No. However, the surrogacy arrangements performed in Finland before 2007 were altruistic, which is considered somewhat more acceptable than commercial surrogacy. A court is more unlikely to confirm an adoption, particularly if compensation has been paid. However, in practice, the principle of the best interests of the child sometimes overrides this.

In cases where a child is born through surrogacy abroad, Finnish law does not automatically recognize the intended parents as the child's legal parents. This creates complications in establishing legal parenthood for intended parents, particularly if they are not biological parents. Intended parents may need to go through a legal process to establish parenthood, often requiring adoption procedures after the birth of the child. This process can be lengthy and complicated.

There have been ongoing discussions in Finland regarding the legalization and regulation of surrogacy, particularly in light of increasing demand from couples facing infertility issues and same-sex couples wishing to have children. However, no significant legislative changes have been implemented as of now.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy in general is not legal in Finland. The prohibition of surrogacy and the ethical concerns surrounding the practice contribute to a challenging environment for all parties interested in surrogacy arrangements.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

While surrogacy is prohibited domestically and largely unregulated, Finnish authorities still have legal processes in place to address parenthood in cases where surrogacy occurs abroad. However, further legal steps are typically required for the recognition of parentage.

Finnish law does not recognize surrogacy arrangements, meaning the legal mother is considered to be the woman who gave birth to the child (i.e., the surrogate).

A non-biological parent in a same-sex couple must go through additional legal procedures, typically by adoption, to be recognized as a legal parent in Finland. A biological parent (if one partner provided sperm) can usually be recognized as the legal parent with less complications.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and embryo donation are regulated under the Act on Assisted Fertility Treatments (1237/2006). Both gamete and embryo donation are permitted under Finnish law. The Act stipulates that donations must be made voluntarily and non-remunerated (except for legitimate expenses incurred).

In Finland, opposite-sex couples, female couples and women who wish to have children alone can receive fertility treatment. In same-sex female couples the non-birthing partner can be recognized as the legal parent if they consented to the fertility treatment.

Male couples are not covered by the law on fertility treatment, since surrogacy arrangements are not legal and the Mater semper certa est principle (meaning a woman who has given birth to a child is considered the mother of the child) is firmly established.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

In Finland, the legal recognition of same-sex couples as parents through artificial insemination is governed by the Act on Assisted Fertility Treatments (1237/2006) and the Parenthood Act (775/2022).

The Parenthood Act allows the non-birthing partner in a same-sex female couple to be recognized as the second legal parent if both consented to the fertility treatment. This law allows both women in a same-sex female couple to be registered as legal parents without the need for further adoption procedures. This applies to children conceived through assisted reproduction using donated sperm. This recognition applies equally to married and unmarried same-sex couples.

For same-sex male couples it is more complicated since the female giving birth is automatically considered the mother of the child. This kind of fertility treatment for male couples becomes practically impossible under the law, since surrogacy is not legal in Finland.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

This is regulated in the Parenthood Act (775/2022), which states that if the mother who gave birth to the child (birth mother) had received assisted fertility treatment referred to in section 1 of the Act on Assisted Fertility Treatments (1237/2006) and the child was born as a result of the treatment, the father of the child is the person who, in agreement with the birth mother, had consented to the treatment.

If treatment was provided to a female couple or to the birth mother alone, the father of the child is the person whose sperm was used in the treatment if, prior to the provision of the treatment, the person had consented to the establishment of paternity.

If treatment was provided to the birth mother alone, consent may also be given after the provision of the treatment in agreement with the birth mother.

If the birth mother had received assisted fertility treatment, the woman who, in agreement with the birth mother, had consented to the treatment can be established as the second mother of the child in addition to the birth mother.

Maternity cannot, however, be established if the child already has two legal parents or if a father can be determined or established for the child.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Same-sex marriages are treated the same as opposite-sex marriages under the law, including in the divorce process. There are no differences in terms of the division of assets, finances, or custody of children between same-sex and opposite-sex couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Registered partnerships were available for same-sex couples prior to the legalization of same-sex marriage in 2017. Although new partnerships can no longer be registered, existing ones remain valid unless converted into marriages.

The dissolution of a registered partnership is governed by the provisions of the Marriage Act on divorce and shall have the same legal effects as the dissolution of marriage, with no differences between same-sex and opposite-sex relationships, unless otherwise provided in the Act on Registered Partnerships (950/2001).

Financial claims (such as the division of property, spousal support, etc.) are treated the same as in marriages. Finnish law applies the principle of equal sharing of assets unless there are prenuptial agreements or special circumstances. Partners can also make spousal maintenance claims if necessary, though this is relatively rare.

Child custody and related matters are determined just as in marriages. Both partners in a registered partnership are treated as parents if they were both legally recognized as such.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Same-sex couples and opposite-sex couples in cohabiting relationships have the same rights when it comes to financial and custody matters, but there are some key differences depending on the legal status of the relationship.

However, the Act on the Dissolution of the Household of Cohabiting Partners (26/2011) provides some protection. When a cohabiting relationship ends, partners can claim compensation for joint property or investments if they have contributed significantly to the other partner's property during the relationship.

Custody and parental rights depend on whether the cohabiting couple has legal parenthood. In opposite-sex relationships, the male partner is automatically recognized as the legal father if the couple is married, but for unmarried couples, paternity must be acknowledged. For same-sex female couples, the non-birth mother must adopt the child (in the case of artificial insemination or surrogacy) to gain legal parental status. In cases where the non-birth mother has legally adopted the child, she will have equal custody and visitation rights as the birth mother. For same-sex male couples, adoption is usually the only path to parenthood.

In the case of divorce, the custody process for same-sex and opposite-sex married couples is the same. Both parents, if they have legal parental rights, have equal standing to claim custody, visitation, and child support. Courts will make decisions based on the best interests of the child.

Both same-sex and opposite-sex cohabiting partners do not have the same automatic financial protections as married couples. They must rely on the cohabitation law for property disputes and have no spousal support rights.

In conclusion, marriage usually offers stronger financial protections than cohabitation. Legal parenthood defines questions regarding children, independently of marriage or cohabitation.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes. Same as opposite-sex couples.

Cohabiting partners that are not are not legally married have no right of inheritance unless they have separately prepared for this through a will between them. If there is no will, the property is distributed to the statutory heirs in accordance with the Code of Inheritance. A will can ensure that certain property, for example a shared home, is inherited by the partner.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, Finnish law prohibits discrimination based on gender (including transgender, intersex, and non-binary persons) and sexual orientation.

According to the Constitution no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

The Non-Discrimination Act (1325/2014) prohibits discrimination on several grounds, including gender, sexual orientation, and gender identity. It mandates equal treatment in various areas, such as employment, education, and access to services.

Under the Finnish Criminal Code (39/1889), crimes based on sexual orientation and gender identity are explicitly recognized. The law mentions increasing the punishment for crimes motivated by prejudice against these groups.

The Equality Act (609/1986) also focuses on promoting equality between genders and prohibits direct and indirect discrimination in various contexts, including the workplace.

30. Is gay conversion therapy banned?

No specific legislation banning conversion therapy has been enacted in Finland. The country has seen significant movement towards prohibiting conversion therapy practices. The Finnish Parliamentary Ombudsman has strongly advocated for a comprehensive ban on all forms of conversion therapy, including those that are consensual and those targeting minors.

In 2024, a proposal for a formal ban on conversion therapy was put forward, building on a citizens' initiative.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Finland, adults can legally change their gender in accordance with the current legal framework established by the Act on Legal Recognition of Gender. The act, which came to force in 2023, improved the realization of the right to self-determination. The eligibility criteria for legal gender recognition no longer includes medical examination or diagnosis or infertility.

The person must submit a written application to the Digital and Population Data Services Agency. The person applying must be of age, a Finnish citizen or resident in Finland and write a statement confirming that they feel that they permanently belong to the sex to be confirmed. In the case of gender confirmation, the personal identity number/ social security number will change.

No spousal consent is required for changing your gender legally.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Gender-affirming treatments for minors, including puberty blockers, are available but under strict guidelines. There is not a specific age limit set for the initiation of gender-affirming hormone treatments, but starting hormone therapy before the age of 18 is relatively rare. The situation is always assessed on an individual basis and a doctor's referral is required.

The assessment period for gender identity for individuals under 18 years of age is conducted in specialized psychiatric units that focus on gender identity issues. During the assessment period, a multidisciplinary team will determine how long the teenager has experienced gender conflict and how it manifests itself. The teenager's parents are also consulted.

The assessment period can take several years. The minimum age for it is 13 years and for younger children gender conflict is treated in child psychiatry clinics.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Currently, Finnish law does not allow for non-binary or third-gender classifications on identity documents. Individuals can legally change their gender to male or female.

35. What happens to the status of the marriage/civil partnership when one party transitions?

When one party in a marriage or civil partnership transitions, the legal status of the union remains intact. The marriage or partnership does not automatically dissolve due to a gender transition.

36. Is changing gender a ground for divorce?

In Finland, changing one's gender is not a ground for divorce. Divorce does not require a specific reason. Couples can file for divorce without needing to prove fault or justify their decision.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

France, Paris



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Homosexuality and consensual homosexual acts have been legal since the law of August 4, 1982, which decriminalized relations between adults over the age of 15, the age of sexual consent. While the French Penal Code had already decriminalized homosexual acts in 1791, homosexuality was not formally recognized, and homosexuals could still be prosecuted for other offenses. Under the Vichy regime, penalties for homosexual acts were reinstated by decree. It was only in 1981 that homosexuality was removed from the list of mental illnesses, and full decriminalization was finally achieved in 1982.

However, any sexual relationship, whether homosexual or heterosexual, involving minors under the age of 15 is deemed to be sexual assault or abuse and is subject to severe penalties, regardless of the minor's apparent consent. When these relationships occur within an incestuous context, the penalties are even harsher, reflecting the gravity of the abuse of power and the betrayal of familial bonds they represent.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender identity is legally recognized, and since the enactment of Law No. 2016-1547 of November 18, 2016, individuals have the right to change their legal gender without undergoing surgery or sterilization. **Gender-affirming treatments**, such as hormone therapy and surgery, **are legal and accessible** to those who seek them. Recent debates have focused on minors' access to hormone treatments following the Senate's adoption of a bill, although no legal restrictions have been implemented yet.

However, since 2022, "conversion therapies" aimed at altering sexual orientation or gender identity have been banned, with penalties of up to two years in prison and a €30,000 fine.

3. If you have further comments on the matters raised in the section, please add them below.

No.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples have the right to marry. Following months of protest, the law enacted on May 17, 2013, known as the “*Loi Taubira*” – named after the deputy who spearheaded it – introduced marriage equality, granting same-sex couples the same rights as opposite-sex couples. There are no legal distinctions between the two, both types of marriages come with the same obligations and protections, including inheritance rights, adoption (a contentious issue at the time), and tax and social benefits. Since the enactment of the law, more than 70,000 same-sex marriages have been celebrated in France.

5. Are foreign marriages of same-sex couples recognized?

Yes, same-sex marriages conducted abroad are acknowledge in France, as long as they were held in a country where such unions are legal. To be recognized, the marriage must meet the validity requirements of the country where it took place. If not, additional procedures may be needed, and there is a risk that the French administration may not recognize the marriage.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes, the PACS (“*Pacte Civil de Solidarité*”), introduced by Law No. 99-944 on November 15, 1999, **provides legal recognition for civil unions** between both same-sex and opposite-sex partners. While the PACS grants recognition to same-sex couples, the rights it offers are more limited than those associated with marriage. For instance, the PACS does not provide for joint parentage, equal inheritance rights, the use of a partner’s surname, or eligibility for a survivor’s pension. It also does not alter the civil status of the partners. However, it does allow for greater flexibility in the management of assets and financial arrangements.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognized? If so, are there any differences in the treatment of opposite same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Cohabitation (“*concubinage*”), defined as a *de facto* union based on a stable and shared life between two individuals, was officially recognized in 1999 under Article 515-8 of the French Civil Code, largely in response to demands from same-sex couples. Before this recognition, the French Supreme Court systematically denied same-sex couples cohabitee status, refusing rights such as access to travel benefits for partners (Soc, July 11, 1989), lease continuation after a cohabitee’s death (Civ, 3rd, December 17, 1997) or eligibility for social benefits. Law No. 99-944 on November 15, 1999, marked a major step forward by officially equal rights for all forms of partnerships.

While cohabitation does not require formalization, it can be proven with a certificate of cohabitation or an attestation of shared residence, which some local authorities issue to support administrative processes.

However, cohabitation rights remain limited compared to marriage or a PACS, offering no financial compensation upon separation. Custody, visitation, and child support follow standard family law, regardless of the parents’ sexual orientation.

8. Is customary marriage recognized? If so, is it recognized between same-sex couples?

In France, **customary marriage holds no legal recognition**, whether it involves same-sex or opposite-sex couples.

9. If you have further comments on the matters raised in this section, please add them below.

No.

Parenting

10. Can more than two people be recognized as the parents of a child?

No, in France, the legal framework for parentage **allows only two individuals** to be recognized as the parents of a child. The law does not permit more than two people to be listed as parents on official civil status records. Parentage can be established through biological ties, adoption, or legal acknowledgment, but it remains strictly limited to two parents.

However, French law provides for **delegation of parental authority**, which allows one or both parents to transfer part or all of their parental authority to a third party, such as a stepparent or another individual with a close relationship to the child. This measure, outlined in Article 377 of the French Civil Code, is typically granted by a family court judge and is often used in blended families where a stepparent plays a significant role in the child's upbringing. While this does not create a legal parent-child relationship or affect the two-parent limit, it extends certain parental rights and responsibilities to the designated third party.

11. What is the status of a parent upon the child's birth – for example the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person who gives birth is automatically recognized as the mother on the child's birth certificate, while the other parent is recorded based on the specific circumstances of the parentage (e.g., father or second mother in the case of a same-sex female couple).

In the case of a child conceived through medically assisted reproduction ("*procréation médicalement assistée*" "PMA") in a female couple (married or not), dual maternity will be established. Both mothers must jointly recognize the child, before birth, in front of a notary. Upon the child's birth, the joint recognition must be submitted to the civil registrar during the birth declaration.

12. If you have further comments on the matters raised in this section, please add them below.

Co-parenting allows individuals – often not in a couple – to share parental responsibility for a child. This arrangement is particularly relevant for same-sex couples who wish to raise a family outside of traditional adoption or medically assisted reproduction. However, in France, there is no specific legislation regulating co-parenting, creating a significant legal gap.

To address this, legal professionals recommend establishing **co-parenting agreements** that outline the logistics of child-rearing, including custody, residence, and parental responsibilities. These agreements can be validated by a

family court judge, ensuring their enforceability and compliance. However, if disputes arise, the judge will always make decisions based on the **best interests of the child**, which may lead to a reassessment of the agreements depending on the specific circumstances at that time.

Adoption

13. Is adoption possible?

Yes, adoption is possible. Full adoption grants the child the same rights as a biological child and severs legal ties with the biological family, while simple adoption maintains these ties while creating a new legal bond with the adoptive parents. Procedurally, full adoption is stricter and requires **prior approval** from the child welfare service. This involves a thorough social and psychological evaluation to ensure the adoptive parents meet the necessary conditions.. In both cases, the adoption is finalized through a judicial decision.

The issue also arises in cases of surrogacy performed abroad without a foreign judicial decision, in order to establish legal parentage through adoption. If the foreign birth certificate mentions both the surrogate mother and one of the male partners, the other partner may pursue a simple adoption of the child, provided the surrogate mother has given her consent. However, if the foreign birth certificate does not include the surrogate mother and only lists one of the male partners, the other partner may proceed with a full adoption of the child.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Since the law of February 23, 2022, adoption can be pursued not only by single individuals and legally married couples but also by PACS partners and cohabiting couples. Therefore, **there are no legal restrictions based on marital status, sexual orientation, or gender identity** that make someone ineligible to adopt. However, specific conditions must still be met.

Whether for joint or individual adoption, adopters must be over 26 years old and have an age difference of at least 15 years with the adoptee. For couples, proof of at least one year of cohabitation is required. In the case of individual adoption, spousal consent is needed if the adopter is married. When adopting a partner's child, marriage is not mandatory, and there is no minimum age requirement or proof of cohabitation needed. However, a ten-year age difference between the adopter and the adoptee remains necessary.

However, the reality is that the adoption process in France remains long and complex. While there are no official statistics, it is estimated that around 200 children, whether born in France or abroad, have been entrusted to same-sex couples since 2013. As a result, many couples opt for alternative solutions due to the lengthy adoption timelines. Since the legalization of **assisted** reproductive treatment for female couples in France, they can now use this option to start a family. Before its legalization, many female couples had already sought assisted reproductive treatment in neighboring countries like Belgium and Spain. On the other hand, male couples, who do not have access to assisted reproductive treatment, often turn to options like co-parenting or surrogacy. While surrogacy remains illegal in France, it is allowed in some countries where it is properly regulated.

Surrogacy

15. Is surrogacy legal?

No, surrogacy is not legal, as it is explicitly prohibited by French law, which considers it contrary to the principles of the inalienability of the human body and the rules of filiation. French criminal law does not specifically prohibit surrogacy; it primarily focuses on sanctioning the intermediary who facilitates the arrangement between the childless couple and the surrogate mother.

16. Is commercial/compensated surrogacy legal?

No, commercial/compensated surrogacy is not legal in France, as Article 16-7 of the French Civil Code explicitly prohibits any surrogacy arrangement, whether commercial or altruistic. Furthermore, French law prohibits the promotion and encouragement of surrogacy, including the restriction or blocking of online content that advocates for such practices.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not applicable.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognized? If so, are further steps required?

Although surrogacy is illegal, case law has progressively evolved to address the recognition of children born through surrogacy abroad. Firstly, French courts permitted the recognition and registration of the biological father as the parent if the foreign birth certificate was valid (Cass. Ass. Pl. July 3, 2015). The intended parent could adopt the child under the rules for simple adoption of a spouse's child (Civ. 1st, July 5, 2017), and this was later extended to include full adoption (Court of Appeal of Paris, September 19, 2018). The Court of Cassation subsequently allowed the transcription of foreign birth certificates recognizing the intended mother (Cass. Ass. Pl. October 4, 2019), and later the intended father (Civ. 1st, December 18, 2019). The Bioethics Law of 2021 limited this recognition to biological parents, requiring intended parents to go through an adoption process. Nevertheless, the Court of Cassation confirmed that legally established parentage abroad could be recognized, even without a biological link (Civ. 1st, October 2, 2024).

Upon returning to France, parents can seek either the direct transcription of the foreign birth certificate into the French civil status registers, typically reviewed by the Public Prosecutor given the unique nature of the situation, or an *exequatur* procedure to recognize the decision establishing parentage based on a surrogacy agreement, during which the judge will ensure there was no fraud and that French public policy is respected. If no foreign court decision is available, because the country where the surrogacy took place does not permit such a ruling, filiation will be established through adoption.

Assisted Reproductive Treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, gamete and embryo donation are legal but are strictly regulated to ensure the process remains non-commercial and properly controlled. These regulations apply uniformly, regardless of the recipient's marital status or sexual orientation.

The Bioethics Law of August 2, 2021, partially lifted donor anonymity. Children born from donated gametes/embryos can now, upon reaching adulthood, access non-identifying information and their identity. Donors must agree to this potential disclosure at the time of the donation. However, the law maintains a clear separation between donor status and parental obligations: donors have no parental rights or responsibilities, and children cannot claim any rights from them.

20. Are same-sex couples who have child through artificial insemination recognized as the parents?

Yes, same-sex couples who have a child through artificial insemination are legally recognized as parents. The Bioethics Law of August 2, 2021, expanded access to medically assisted reproduction ("*procréation médicalement assistée*" "PMA") to include all women, encompassing same-sex female couples and single women. In these cases, both partners in a same-sex female couple are legally recognized as parents. The non-biological mother can establish her parentage through a joint declaration of consent prior to the procedure or through subsequent legal processes. This ensures that both partners share full parental rights and responsibilities for the child.

Since 2021, demand for medically assisted reproduction has surged, especially among female couples and single women. In 2022, 15,000 such requests were recorded. To address this rise, the government allocated €7.3 million in 2021 and €5.5 million in 2022. Despite this, waiting times remain high – 14 months for sperm donation, 23 months for egg donation.

21. If a person gives birth to a child following treatment at an IVF clinic, how is the parentage of the spouse recognized? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

When a person gives birth following treatment at an IVF clinic, the parentage of the spouse or partner is determined by the legal framework for parental recognition.

- For married couples, regardless of sexual orientation, the spouse is automatically recognized as the second parent, thanks to joint consent provided before the IVF procedure. This applies equally to both same-sex and opposite-sex marriages.
- For PACS partners or cohabiting relationships, the non-biological partner must undertake additional legal steps to establish parentage. This may include a joint declaration of consent before the IVF procedure or an official acknowledgment of parentage at the civil registry. These steps are necessary to ensure that the non-biological partner is legally recognized as a parent.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

In France, there are **no differences** in the divorce process for same-sex couples compared to opposite-sex couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognized, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

For both same-sex and opposite-sex couples, a PACS (civil union) can be dissolved by mutual consent, with both partners required to submit or send a joint declaration to the local civil register (such as a court clerk or civil officer at the town hall) or to the notary who registered it. A PACS can also be dissolved unilaterally by one partner, who must notify the other through a bailiff, with a copy sent to the local civil register or notary who recorded the union. Additionally, the PACS is automatically dissolved if either partner marries or if one partner dies.

Upon dissolution, each partner reclaims their personal property and belongings, while shared assets are divided between them. Unlike a divorce, a judge is not automatically involved; the partners themselves are responsible for settling their rights and obligations (Article 517-7 of the French Civil Code). Only when the partners cannot reach an agreement does a judge step in to determine the financial and patrimonial consequences of the separation. Additionally, a partner may request the court to grant them the right to remain in the shared residence, while the other partner may seek compensation for this arrangement. The landlord can be involved in this process, and the judge considers these claims with regard to the social and family interests of the parties (Article 1751-1 of the French Civil Code).

24. If a de facto/cohabiting live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Since customary marriages are not legally recognized, when a cohabiting relationship between same-sex or opposite-sex cohabitee ends, each cohabitee retains personal ownership of their individual property. However, financial claims can arise if common pecuniary interests exist. Cohabitees may request the judge to resolve these shared financial interests. Case law recognizes that there can be a form of “partnership” between cohabitee that must be liquidated, provided the conditions of Article 1832 of the French Civil Code – such as contributions, mutual association, and the intention to share profits and losses – are met (Com. June 30, 1970). Additionally, a claim of unjust enrichment may be made, allowing an aggrieved cohabitee to seek compensation if they have contributed through work or assets to the enrichment of the other cohabitee (Civ. 1st, Dec. 8, 1987). Each cohabitee has the right to reclaim their personal property after the relationship ends.

25. If you have further comments on the matters raised in this section, please add them below.

No.

26. Are same-sex couples treated differently for inheritance?

No, same-sex couples who are married are treated the same as opposite-sex married couples for inheritance purposes.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, same-sex couples can inherit property through alternate arrangements such as wills or bequests. These arrangements allow partners to designate each other as beneficiaries. However, while married couples benefit from full inheritance rights and tax exemptions, partners or cohabitants may be subject to inheritance taxes.

28. If you have further comments on the matters raised in this section, please add them below.

No.

Discrimination in Employment/Housing/Benefits/Other

29. Does the law prohibit discrimination on the basis of gender (including transgender/ intersex/non-binary) or sexual orientation? If so, how?

Yes, French law explicitly prohibits discrimination based on gender, including transgender, intersex, and non-binary identities, as well as sexual orientation. This is enforced through key legal texts, such as the French **Penal Code** (from Article 225-1 to Article 225-4), which prescribes fines and potential prison sentences for discriminatory acts, and the French **Labor Code**, which bans discrimination in all stages of employment, from hiring to termination. Compliance is ensured through inspections and oversight by relevant authorities, with violations resulting in legal sanctions. Victims of discrimination can pursue legal action in civil or criminal courts to seek remedies, including financial compensation or corrective measures. Additionally, awareness campaigns and training programs are conducted to foster understanding and adherence to anti-discrimination laws within workplaces and public institutions.

30. Is gay conversion therapy banned?

In France, the law of January 31, 2022, prohibits conversion therapy aimed at changing or suppressing sexual orientation or gender identity, recognizing it as medically unfounded and harmful to mental and physical health. Penalties include up to two years in prison and a €30,000 fine, which can increase to three years in prison and a €45,000 fine if the victim is a minor or a vulnerable person. If a parent is convicted, the court may consider revoking parental authority. Medical professionals engaging in such practices also face potential bans from practicing for up to ten years.

31. If you have further comments on the matters raised in this section, please add them below.

No.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In France, **an adult can legally change their gender with court approval**, and **spousal consent is not required**, even if the individual is married. The process involves submitting an application to the court and providing evidence that the individual consistently identifies with their chosen gender. This evidence may include proof from their social and professional life, witness statements, name changes on various documents, or personal declarations.

The court reviews this information to ensure the request is genuine and consistent with the individual's identity. Importantly, medical interventions, such as surgeries or hormone treatments, are not a prerequisite for legal gender change. Once approved by the court, the individual's civil status records, such as their birth certificate, are updated to reflect the new gender.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

In France, gender-affirming treatments are **available to legal minors but are strictly regulated**. Puberty blockers can be prescribed to minors experiencing gender dysphoria, but this requires a thorough medical assessment and parental consent. A multidisciplinary team of healthcare professionals typically conducts evaluations to ensure that the treatment is appropriate and in the best interest of the minor.

For surgical procedures, the requirements are more rigorous. These treatments are generally reserved for adults, with rare exceptions for older minors. In such cases, parental consent is required, along with comprehensive medical and psychological evaluations to assess the minor's maturity and understanding of the procedure's implications. Legal and ethical oversight ensures that these interventions are conducted with the utmost consideration for the minor's well-being and long-term health.

Recent discussions have centered around minors' access to hormone treatments, especially following the Senate's passage of a bill on the matter.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No, in France, identity documents, such as birth certificates and passports, **do not currently allow for a non-binary or "X" gender marker**. French law only recognizes male and female gender markers on official civil status records.

35. What happens to the status of the marriage/civil partnership when one party transitions?

When one partner in a marriage or civil union (PACS) transitions, **the legal status of the union remains unchanged**. Article 61-8 of the French Civil Code states that a change in the reference to sex in civil status records does not affect obligations towards third parties or established filiation.

Since the law of May 17, 2013, gender difference is no longer required for a valid marriage. Therefore, a person who transitions can remain married to their spouse, even if this results in a same-sex marriage, regardless of changes to their civil status. For PACS, which is available to both same-sex and opposite-sex couples, the partnership also remains valid after a gender transition.

36. Is changing gender a ground for divorce?

No, changing gender is not a ground for divorce in France.

37. If you have further comments on the matters raised in this section, please add them below.

No.

JURISDICTION

Iceland, Reykjavik



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Not illegal.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Not illegal.

3. If you have further comments on the matters raised in this section, please add them below.

Conversion therapy of sexual orientation or gender identity is illegal.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex marriage is legal and not different from other marriages.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Not anymore.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

Cohabiting same-sex couples have the same right as opposite-sex couples.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

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- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

No.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

The law states that if a (trans) man births a child he is the child's father. If the birthing parent is has non-binary gender marker they are named the child's parent.

- 12. If you have further comments on the matters raised in this section, please add them below.**

Despite the law, the system still has some issues with implementing this, e.g. in the case of two mothers, sometimes the non-birthing parent is automatically marked as the child's father, in the school system for example.

Adoption

- 13. Is adoption possible?**

Yes.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

No.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

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17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

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18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Surrogacy is illegal.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Embryo donation is legal through a clinic, but has to meet conditions in laws on IVF to be able to donate. If parents decide not to go through a clinic, there is no punishment but the parent whose gamete is not involved is not recognized as parent.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Yes, recognized.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No difference.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

No difference.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Not different from opposite-sex couples.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, law on equal rights and equal standing 150/2020 prohibit discrimination on the basis of gender, as in men, women and people with neutral gender marker or on the basis of multiple discrimination. (<https://www.althingi.is/lagas/nuna/2020150.html>). Law on equal rights outside and inside labour market which states that

discrimination based on gender, gender identity, sexual orientation or sexual characteristics (among other things) is prohibited. 85/2018 and 86/2018 <https://www.stjornarradid.is/verkefni/mannrettindi-og-jafnretti/jafnretti/um-jafnretti-kynjanna/>.

30. Is gay conversion therapy banned?

Yes, all conversion therapies based on sexual orientation and gender identity are banned (law 19/1940 with later changes in 2024)

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

An adult can change their gender and name through Registers Iceland, online, for free. Spousal consent is not required.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, puberty blockers are available to legal minors with parental consent through the national hospital with the monitoring of a health professional.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing happens.

36. Is changing gender a ground for divorce?

Not stated specifically.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Luxembourg



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes and there are no differences to opposite-sex marriages.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes, a “*pacs*” (*pacte civil de solidarité*) is possible, the biggest difference being that there is no mandatory provision regarding the property regime, the parties can agree on something but don’t have to (and generally do not choose one).

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

De facto couples are not recognised as such.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

Only civil marriages are recognised.

- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

No.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

The person giving birth is automatically named as the mother.

- 12. If you have further comments on the matters raised in this section, please add them below.**

A reform bill was already proposed in 2013, then modified in 2017, but is now at a standstill.

Adoption

- 13. Is adoption possible?**

Yes.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

Up until now, only married couples can adopt a child, but a legislative reform is on the way which should make single parent/unmarried couples adoptions possible.

Surrogacy

15. Is surrogacy legal?

Luxembourg has no legislation regarding surrogacy.

16. Is commercial/compensated surrogacy legal?

N/A.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

N/A.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

There seems to be a change of politics, as recently surrogate parents were recognised without further actions, this being confirmed by a recent Court of Appeal case.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

As for surrogacy, Luxembourg doesn't have any specific legislation regarding ART. Only male gamete donation are medically performed in Luxembourg.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No, only the person giving birth is recognised as the mother, the other parent needs to go through an adoption process.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Only the husband/male partner can recognise the child borne by the mother.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The “*pacs*” can be dissolved either by mutual consent, or else unilaterally by notification through a baillif by one of the partners. The partners might claim alimony, but this is done very rarely, and very rarely given. As there is probably no agreement regarding common assets, all claims are dealt with by a civil court and treated as for persons that have had no romantic relationship. There is no difference regarding same-sex couples.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

No alimony claims are possible between de facto couples, and the splitting of assets is done in the same way as for persons that have had no romantic relationship.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, Luxembourg prohibits discrimination (both direct and indirect) based on sexual orientation and “change of sex” (within the definition of sex) in employment, education, social security, healthcare, and the provision of goods and services. Whereas the Constitution more generally provides for an equal treatment of persons, article 11 speaks only of the equal treatment of women and men. Based on the different EU regulations the discrimination based on gender or sexual orientation is forbidden, and the criminal code prohibits discrimination based on these criterias (among others).

30. Is gay conversion therapy banned?

No, but not practised.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Since 2018 a bill regulates the procedure of legal sex changes. An adult person needs to submit an application to the Ministry of Justice to change their legal sex. No surgery, sterilization, divorce or other medical treatment is required. Minors even under the age of 5 can apply for a sex change with the consent of their legal guardians.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

The parents or legal guardians need to consent to any gender-affirming treatments, which are not regulated by law.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The marriage/civil partnership is not affected by the transition.

36. Is changing gender a ground for divorce?

No ground is needed in order to divorce in Luxembourg.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Malta



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Contributor Firm	Bisazza & Bisazza Advocates

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. Homosexuality or engaging in consensual homosexual acts is not illegal in Malta.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No, absolutely not.

3. If you have further comments on the matters raised in this section, please add them below.

N/A.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes – same-sex couples can get married in Malta. There is no distinction between homosexual and heterosexual couples in this regard.

5. Are foreign marriages of same-sex couples recognised?

Yes – foreign marriages of homosexual couples are recognized, just as foreign marriages of heterosexual couples are.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Malta offers three types of legal arrangements for couples, whether they're heterosexual or homosexual couples, who wish to formalise their relationship:

- a) Marriage,
- b) Civil Unions and
- c) Cohabitation (Registered Cohabitee).

In Malta, there is no difference between a Civil Union and Marriage.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

As per Chapter 614 of the Laws of Malta, both heterosexual and same-sex couples can opt-in to be legally recognized as registered partners (registered cohabitees). This Cohabitation Act is of relevance to other EU member states due to the EU Council Regulation 2016/1104, which implements enhanced co-operation between member states (Malta included) with regards to the applicable law, enforcements of decisions etc vis-à-vis registered partnerships.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Thanks to an agreement between the Holy See and the Republic of Malta on the recognition of civil effects to canonical marriages, Malta recognizes the civil effects of marriages celebrated according to the canonical norms of the Catholic Church from the moment of their celebration. It is only heterosexual couples that can get married with the Catholic Rite. Our Marriage Act (Chapter 255 of the Laws of Malta) also empowers the Minister responsible for the Public Registry to recognize marriage rites carried out according to other churches and religions (apart from the Catholic Religion). If a particular religion or church has been recognized by the Ministry, then it is possible to get married according to the rite of that particular religion.

9. If you have further comments on the matters raised in this section, please add them below.

N/A.

Parenting

10. Can more than two people be recognised as the parents of a child?

No – a child's birth certificate has two columns for the parents: "Parent 1" and "Parent 2" as opposed to the traditional designation of "Mother" and "Father".

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Malta has updated its birth certificates to use gender-neutral terminology. As stated above, as opposed to the traditional terminology “Mother” and “Father”, Maltese birth certificates now list parents as “Parent 1” and “Parent 2”.

12. If you have further comments on the matters raised in this section, please add them below.

Maltese government guidelines have been revised to ensure that official forms and records use inclusive language, reflecting our country's dedication to recognize diverse family structures.

Adoption

13. Is adoption possible?

Yes absolutely. Since 2014, same-sex couples enjoy the same parental rights as heterosexual couples including joint adoption.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non- binary or intersex people)?

In Malta, adoption is governed by our Civil Code (Chapter 16 of the Laws of Malta) and by the Adoption Administration Act (Chapter 495 of the Laws of Malta). While the law permits a broad range of individuals to adopt, including single persons, married couples, civil partners and same-sex couples, there are specific criteria that must be met. Failure to meet these criteria can render that particular individual or couple ineligible to adopt.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not regulated in Malta.

16. Is commercial/compensated surrogacy legal?

Vide above.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Vide above.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. Since surrogacy is not regulated in Malta, what is required for parentage to be recognized is a valid birth certificate. Once a valid birth certificate exists, then whether the couple became parents traditionally, through adoption, or through surrogacy is irrelevant.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Following amendments to the Embryo Protection Act, the donation of gametes under specific conditions is legalized. Apart from heterosexual couples, the revised law allows single women and lesbian couples to access assisted reproductive treatments including those involving donor sperm.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes, in Malta, same-sex couples who have a child through artificial insemination can be legally recognized as parents. Our Marriage Equality Act, has allowed same-sex couples to marry, granting them the same legal rights and responsibilities as heterosexual couples. These include parental rights. Moreover, as stated above, following amendments to the Embryo Protection Act removing previous discriminatory provisions, assisted reproductive technologies (including IVF) now also include single individuals and same-sex couples. This allows lesbian couples to have access to assisted reproductive technologies and, as a consequence, these may be able to be recognized as legal parents of children conceived through these methods.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

In Malta, there is a legal presumption that if a child is born in wedlock, the birth parent and her spouse are legally the child's parents, irrespective of the IVF treatment. Since nature dictates that a birth parent needs to be female, then this option is available to lesbian spouses. If a child is born out of wedlock following IVF treatment on the birth parent, then it is the birth parent who automatically obtains legal parenthood. If the child's father registers the child's birth jointly with the child's mother, then both are legally recognized as the child's parents.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

There is no difference whatsoever between the legal separation/divorce process between a heterosexual couple and a same-sex couple.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

There is no difference between the dissolution process of a civil union (which is identical to marriage) between a same-sex couple and a heterosexual one.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

De facto cohabitation is not recognized. If couples (whether hetero-sexual or same-sex) choose to regulate their relationship and opt-in to become registered partners at law, then the financial and custody claims depend on their particular circumstances – their sexuality (i.e. whether they are heterosexual or a same-sex couple) is completely irrelevant.

25. If you have further comments on the matters raised in this section please add them below.

N/A.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Homosexuality has no bearing on succession. What makes a difference is whether the couple (whether heterosexual or same-sex) are spouses, or not.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes. Moreover, in Malta, a spouse (whether in a same-sex or heterosexual marriage) has a right to a reserved portion. This is part of the system of forced heirship under Maltese succession law and limits how a testator can distribute their estate upon death, ensuring that certain close relatives – such as children and the surviving spouse – receive a guaranteed share.

28. If you have further comments on the matters raised in this section please add them below.

N/A.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

When it comes to gender and sexual orientation discrimination, Malta has relatively progressive employment laws, which are supported by both national legislation (including our Constitution) and European Union Directives.

30. Is gay conversion therapy banned?

Yes absolutely. In December 2016, Malta became the first European country to outlaw the practice through the Affirmation of Sexual Orientation Gender Identity and Gender Expression Act. Violators can face fines and imprisonment. In 2023, Malta strengthened this legislation by introducing harsher penalties for the promoting/advertising gay conversion therapy.

31. If you have further comments on the matters raised in this section, please add them below.

N/A.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes, in Malta adults can legally change their gender. A 2015 legislation known as GIGSEC (Gender Identity, Gender Expression and Sex Characteristics Act) was introduced, allowing the change of gender through a straightforward, self-determined process. The law emphasizes bodily autonomy and doesn't require any medical surgical or psychological interventions.

In brief, the steps to change gender legally in Malta are as follows:

- a) The individual must make a formal declaration of their gender identity in front of a Notary Public.
- b) The notary then enrolls the declaration as a public deed with the Public Registry. The Director of Public Registry then authorises changes to that person's birth certificate. As a consequence, this facilitates updates to other official documents.
- c) This process doesn't require proof of hormonal therapies, surgeries etc. No medical requirements (including psychiatric or psychological treatment) are needed.

It must be noted that for minors aged 16 plus, their legal gender can be changed through this notarial process, without the need for court involvement of parental consent. For minors under the age of 16, for adopted persons, as well as for refugees and asylum seekers there are special considerations in this regard.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

In Malta, the Gender Wellbeing Clinic (GWC) provides gender-affirming care for minors. This is a publicly funded service that offers comprehensive support for transgender and non-binary individuals. Minors are offered psycho-social support and puberty blockers, where the clinic refers patients to a paediatric endocrinologist at Mater Dei Hospital for consideration of puberty blockers. Medical Interventions for minors aged 16 and 17, especially if irreversible, are only considered after extremely thorough assessments, and in some cases may still require additional approvals. Medical interventions for minors under the age of 16 requires parental consent and in some cases, court authorisation. Legal Gender Recognition of minors under the age of 16 requires the parents to file an application to the Court of Voluntary Jurisdiction.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

As of July 2024, Malta has enacted legislation allowing non-binary individuals to be identified as such on birth certificates and other official documents.

35. What happens to the status of the marriage/civil partnership when one party transitions?

If one spouse transitions, then the marriage remains legally valid unless challenged by the other spouse.

36. Is changing gender a ground for divorce?

Yes, however not automatically and because of the change in gender per se. The other spouse, can definitely choose to bring this up, possibly under different aspects and/or grounds, allowing this to be a valid consideration for legal separation and/or annulment.

37. If you have further comments on the matters raised in this section, please add them below.

N/A.

JURISDICTION

Monaco



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Contributor Firm	Gardetto Law Offices

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Being homosexual or engaging in consensual homosexual sexual acts is not illegal in the Principality of Monaco.

Le fait d'être homosexuel ou de se livrer à des actes sexuels homosexuels consensuels n'est pas illégal en Principauté de Monaco.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so, what are the penalties?

Gender identity or gender affirming treatment are not illegal, because there is no law that prohibits them. However, the law does not provide for them.

L'identité de genre ou les traitements d'affirmation de genre ne sont pas illégaux, car aucune loi ne les interdit. Toutefois, ils ne sont pas prévus par la loi.

3. If you have further comments on the matters raised in this section, please add them below.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Monaco does not allow and does not recognise same-sex marriage yet.

Monaco n'autorise pas et ne reconnaît pas encore le mariage homosexuel.

5. Are foreign marriages of same-sex couples recognised?

The issue of the recognition of marriages between persons of the same-sex performed abroad is pending before the courts. Two men, of Monegasque and American nationality respectively, were legally married in the United States. They are now trying to have their marriage legally recognised in the Principality. A ruling by the Court of First Instance, followed by the Court of Appeal, granted their request. However, the Court of Revision cancelled the decision of the Court of Appeal and refused to allow the registration of this marriage in the Civil Registry, as it considers it to be contrary to Monegasque international public policy. The case has been submitted to the European Court of Human Rights.

La question de la reconnaissance des mariages entre personnes de même sexe célébrés à l'étranger est pendante devant les tribunaux. Deux hommes, respectivement de nationalité monégasque et américaine, se sont mariés légalement aux Etats-Unis. Ils tentent maintenant de faire reconnaître légalement leur mariage en Principauté. Un jugement du Tribunal de Première Instance, puis de la Cour d'appel, a fait droit à leur demande. Toutefois, la Cour de révision a annulé la décision de la Cour d'Appel et refusé la transcription de ce mariage sur les registres de l'état civil au motif qu'elle considère que cela serait contraire à l'ordre public international monégasque. L'affaire a été portée devant la Cour Européenne des Droits de l'Homme.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so, what are the significant differences (if any) from full marriage?

Monegasque law makers adopted a civil partnership known as a civil solidarity contract quite recently.

Le législateur Monégasque a adopté assez récemment un partenariat civil appelé contrat civil de solidarité.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No legal provision recognises or protects de facto unions.

In the event of break-up, there is no obligation between the two partners, whether they are of the opposite sex or the same sex.

Aucune disposition légale ne reconnaît, ni ne protège l'union libre.

En cas de rupture de la relation, le concubinage n'entraîne aucune obligation entre les 2 concubins, qu'ils soient de sexe opposé ou de même sexe.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriages are not recognised as such in Monaco.

Religious marriages can only be celebrated once a civil marriage has been concluded.

Any religious officiant who proceeds with the religious marriage ceremonies without having been provided with a marriage certificate previously received by the civil registrar will be committing an offence.

Le mariage coutumier n'est pas reconnu en tant que tel à Monaco.

Les mariages religieux ne peuvent être célébrés qu'une fois le mariage civil contracté.

Tout ministre d'un culte qui procédera aux cérémonies religieuses d'un mariage, sans qu'il lui ait été justifié d'un acte de mariage préalablement reçu par l'officier de l'état civil, commettra un délit.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

Monegasque Family Law lacks modernity, especially when it comes to LGBT rights. When we talk about “parental responsibility”, we can already exclude LGBT people, who are not considered, in the eyes of Monegasque law, as being able to form a family in the traditional sense. Articles of the Monegasque Civil Code explicitly state that a family is made up of a father and a mother, and the same applies to the rights and obligations deriving from this notion. Two LGBT individuals are therefore not recognized as parents of a child. In fact, homosexual marriage is neither authorized nor recognized and a LGBT couple cannot adopt children in Monaco. A decision of January 26th, 2023 led to some changes as it recognized shared parental authority of two men over two children.

Le droit de la famille monégasque manque de modernité, notamment en ce qui concerne les droits des LGBT. Lorsque l'on parle de « responsabilité parentale », on peut déjà exclure les personnes LGBT, qui ne sont pas considérées, aux yeux de la loi monégasque, comme pouvant former une famille au sens traditionnel du terme. Les articles du Code civil monégasque indiquent explicitement qu'une famille est composée d'un père et d'une mère, de même que les droits et obligations qui découlent de cette notion. Deux personnes LGBT ne sont donc pas reconnus comme parent d'un enfant. En effet, le mariage homosexuel n'est ni autorisé ni reconnu et un couple LGBT ne peut pas adopter d'enfants à Monaco. Une décision du 26 janvier 2023 a apporté une évolution en reconnaissant l'autorité parentale conjointe à deux hommes sur deux enfants.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Under Monegasque law, the person giving birth can only be designated as “mother”. She cannot choose to be designated “father” or “parent”. If the secrecy of the birth has been claimed, then no mention of this will appear in the civil registry record.

En droit Monégasque, la personne qui accouche ne peut être désignée que comme « mère ». Elle n'a pas la possibilité de choisir d'être désignée « père » ou « parent ». Si le secret de la naissance a été réclamé, alors aucune mention ne figurera à ce titre dans l'acte d'état civil.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Under Monegasque law, adoption is possible and can take two forms: full or simple. A full adoption annihilates the original filiation. Simple adoption allows the original filiation to continue, to which the new filiation is added. The adopted child can therefore inherit both from his or her biological parents and from his or her adoptive parents. But adoption by two persons of the same-sex is not possible.

En droit Monégasque l'adoption peut prendre deux formes : plénière ou simple. L'adoption plénière anéantit la filiation d'origine. L'adoption simple laisse persister la filiation d'origine, à laquelle vient s'ajouter la nouvelle filiation. L'adopté pourra ainsi hériter à la fois de ses parents biologiques que de ses parents adoptifs. Mais l'adoption par deux personnes du même sexe n'est pas possible.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In Monaco, individuals need to be married in order to be able to adopt. Unless authorized by the Prince, the adopter must be at least sixteen years older than the adopted child, this difference being reduced to ten years when the adopted child is the child of the adopter's spouse. Plenary adoption can only be requested jointly, after 5 years of marriage, by two spouses who are not legally separated, at least one of whom is 26 years old. It may, however, be requested by one spouse when it concerns a child of his or her spouse. However, the adoption cannot be granted if it is prohibited by the national law of one of the spouses. Adoptions of foreign nationals can never be granted if the adoptee's national law prohibits the adoption. The adoption duly granted abroad is fully effective in Monaco if it is not contrary to public policy. However, since Monaco does not allow and does not recognise same-sex marriage for LGBT individuals, they are not legally entitled to adopt as a couple.

A Monaco, il faut être marié pour pouvoir adopter. Sauf autorisation du Prince, l'adoptant doit avoir au moins seize ans de plus que l'adopté, cette différence étant réduite à dix ans lorsque l'adopté est l'enfant du conjoint de l'adoptant. L'adoption plénière ne peut être demandée que conjointement, après 5 ans de mariage, par deux époux non séparés de corps, dont l'un au moins est âgé de 26 ans. Elle peut toutefois être demandée par un seul époux lorsqu'il s'agit de l'enfant de son conjoint. Toutefois, l'adoption ne peut être prononcée si elle est interdite par la loi nationale de l'un des époux. L'adoption d'un ressortissant étranger ne peut jamais être prononcée si la loi nationale de l'adopté interdit l'adoption. L'adoption régulièrement prononcée à l'étranger produit tous ses effets à Monaco si elle n'est pas contraire à l'ordre public. Cependant, Monaco n'autorisant pas et ne reconnaissant pas le mariage homosexuel pour les personnes LGBT, celles-ci ne sont pas légalement autorisées à adopter en tant que couple.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not permitted in Monaco.

La gestation pour autrui n'est pas autorisée à Monaco.

16. Is commercial/compensated surrogacy legal?

Surrogate motherhood for commercial or remunerated purposes is illegal in the Principality.

Following two rulings in 2014 and 2019 by the European Court of Human Rights condemning France, the registration in French registers of the birth certificates of children born by surrogate motherhood abroad is now possible, as long as these birth certificates complied with the law of the concerned country.

In France, the registration of a surrogated child is limited to the biological parent. The non-biological parent must go through an adoption procedure. Although no case law exists in Monaco on this subject a similar solution would be possible.

La gestation pour autrui à des fins commerciales ou rémunérées est illégale en Principauté.

Suite à deux arrêts en 2014 et 2019 de la Cour européenne des droits de l'homme condamnant la France, la transcription sur les registres français des actes de naissance d'enfants nés par gestation pour autrui à l'étranger est désormais possible dès lors que ces actes de naissance étaient conformes à la loi du pays concerné.

En France, la transcription d'un acte d'état civil d'un enfant né d'une gestation pour autrui est limitée au seul parent biologique. Le parent non biologique doit faire l'objet d'une procédure d'adoption. Bien qu'il n'existe pas de jurisprudence en la matière à Monaco, une solution similaire pourrait être envisagée.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy is not permitted in Monaco, so nobody can do it.

La maternité de substitution n'est pas autorisée à Monaco, personne ne peut donc la pratiquer.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

The parentage of same-sex couples who have become parents through surrogacy abroad is not recognised in Monaco.

La filiation des couples de même sexe qui sont devenus parents au moyen d'une gestation pour autrui à l'étranger n'est pas reconnue à Monaco.

Assisted Reproductive Treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and/or embryo donation is not mentioned in MONACO law. The use of a sperm sample of a deceased person is not mentioned in Monaco law either.

Le don de gamètes et/ou d'embryons n'est pas légal à MONACO. L'utilisation d'un échantillon de sperme d'une personne décédée est interdite en France. Rien n'est mentionné dans la loi Monégasque.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

There is no legislation in Monaco concerning artificial insemination for same-sex couples.

Il n'y a aucun texte à Monaco concernant l'insémination artificielle pour les couples de même sexe.

21. If a person gives birth to a child following treatment at an IVF clinic, how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The answer is the same as mentioned above.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Same-sex marriage is not permitted under Monegasque law.

Le mariage entre personnes de même sexe n'est pas autorisé en droit monégasque.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The civil partnership contract is dissolved by the death of one of the partners, in the event of the marriage of one or both partners, or by a joint unilateral declaration in person before the notary who registered the civil partnership contract. The obligations arising from the "living-together contract" cease on the date of termination. The partners will then only be able to liquidate the rights arising from the contract that bound them. Termination of the "living-together contract" is enforceable against third parties from the day on which the registration formalities are completed. Damages may be awarded only in the event of a wrongful breach of contract. These rules apply equally to opposite-sex and same-sex couples.

Le contrat civil de solidarité est dissous par le décès de l'un des partenaires, en cas de mariage de l'un ou des deux partenaires, ou par une déclaration unilatérale conjointe en personne devant le notaire qui a enregistré le contrat civil de solidarité. Les obligations résultant du contrat de vie commune cessent à la date de la résiliation. Les partenaires ne pourront alors que liquider les droits qui découleront du contrat qui les liait. La résiliation du contrat de vie commune est opposable aux tiers à compter du jour où les formalités d'enregistrement sont accomplies. Seule une rupture abusive du contrat pourra donner lieu à des dommages et intérêts. Ces règles s'appliquent indifféremment aux couples de sexes opposés et aux couples de même sexe.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

None, but a recent Court decision of January 26th, 2023 recognized shared parental authority over two children by two men.

No financial claim is possible as the “living-together contract” does not create any maintenance obligation and each partner retains the administration, enjoyment and free disposal of his or her personal property.

Non, mais une récente décision de la Cour du 26 janvier 2023 a reconnu l'autorité parentale conjointe sur deux enfants par deux hommes.

Il n'y a aucune demande financière possible comme le contrat de vie commune ne crée aucune obligation alimentaire et que chaque partenaire conserve l'administration, la jouissance et la libre disposition de ses biens personnels.

25. If you have further comments on the matters raised in this section, please add them below.

Partners in a civil solidarity contract have mutual obligations.

The civil solidarity contract also has effects in terms of taxation of the estate, housing, social security, employment and work, health, civil law and civil procedure, criminal law and criminal procedure.

The conclusion of a civil solidarity contract has no effect on names, the transmission of Monegasque nationality, filiation, rules relating to parental authority and inheritance.

The effects in the Principality of Monaco of a contract relating to the organisation of joint life registered abroad may not exceed those of a civil solidarity contract under Monegasque law.

1. Contribution to the day-to-day needs of living together and debts

- The “living-together contract” does not create any maintenance obligations.
- The partners undertake to contribute to the day-to-day costs of living together (such as housing, furnishings and food). In principle, this contribution is proportional to their respective means, but the agreement may stipulate otherwise.
- The partners are jointly and severally liable to third parties for any debts contracted by either of

them for the day-to-day needs of their life together (even after termination of the “living-together contract”). However, this joint and several liability is excluded:

- for expenditures that are manifestly excessive;
- in the absence of the consent of both partners, for instalment purchases (credit) and loans that do not involve modest sums necessary for the day-to-day needs of their life together. There can be no derogation from this by agreement on the organisation of assets.
- Apart from the day-to-day requirements of living together, each partner remains responsible for his or her personal debts (contracted before and during the cohabitation agreement). There can be no derogation from this by agreement.

2. Partners' assets

- Each partner retains the administration, enjoyment and free disposal of his or her personal assets (acquired before and during the “living-together contract”).
- With regard to clothing, effects, linen and jewellery used for personal purposes, each partner retains exclusive ownership, without having to prove this.
- With regards to other assets, each partner may prove by any means that he or she has exclusive ownership. Where such proof is not provided, the asset is presumed to belong to each of them equally, with each partner being the manager of this joint ownership.
- These rules may not be departed from by an agreement on the organisation of property.

3. Succession and *inter vivos* gifts

- The partner is considered to be a third party to the other's estate. A partner who wishes to bequeath assets to his surviving partner must make a will.
- In the event of the death of one of the partners, and unless otherwise stipulated in a Will, the surviving partner who actually occupies, as his or her main residence, the dwelling belonging to them or wholly dependent on the estate, is entitled to one year of free use of the dwelling and the furnishings included in the estate that furnish it.
- Partners may also make a gift to pass on assets during their lifetime. An *inter vivos* gift made to the partner may be transferred to the donor's estate.
- It is the notary's responsibility to inform the partners that the “living-together contract” does not confer on them the status of heir by law, and about the general conditions for exercising their inheritance rights, particularly in testamentary matters.

4. In tax matters

- *Inter vivos* gratuitous transfers between partners in a “living-together contract” are subject to a proportional duty of 4%. If the “living-together contract” between the partners is terminated less than ten years after it was entered into for a reason other than the marriage of the partners or the death of one of them, the proportional duty of 4% is cancelled. The partners will then be subject, retroactively, to the proportional duty of 16% (corresponding to the duty on gratuitous transfers between non-relatives).
- Transfers of ownership or usufruct of immovable or movable property, including foreign securities of any kind, which take place by death between partners in a “living-together contract” are, for the net share received by the beneficiary, subject to the 4% rate.

5. Housing in the open sector

- In the event of the death of the leaseholder, the contract continues under the same conditions in favour of the surviving partner, unless the latter expresses a wish to the contrary.
- The lease for the main residential property is deemed to belong to one or other of the partners, provided that they have jointly informed the owner. In the event of termination of the “living-together contract”, this right may be awarded, in consideration of the social and family interests involved, by the court hearing any dispute relating to such termination.

Les partenaires d'un contrat civil de solidarité ont des obligations réciproques.

Le contrat civil de solidarité produit également des effets en matière fiscale de la succession, de logement, sociale et de sécurité sociale, d'emploi et de travail, de santé, civile et de procédure civile, pénale et de procédure pénale.

La conclusion d'un contrat civil de solidarité ne produit aucun effet sur le nom, la transmission de la nationalité monégasque, la filiation, les règles relatives à l'autorité parentale et aux successions.

Les effets en Principauté de Monaco d'un contrat relatif à l'organisation de la vie commune enregistré à l'étranger ne peuvent excéder ceux d'un contrat civil de solidarité de droit monégasque.

1. Contribution aux besoins courants de la vie commune et dettes

- Le contrat de vie commune ne crée pas d'obligations alimentaires.
- Les partenaires s'engagent à contribuer aux besoins courants de leur vie commune (tels que les frais liés au logement, à l'ameublement, à la nourriture). Cette contribution est en principe proportionnelle à leurs facultés respectives, mais il peut en être disposé autrement dans la convention d'organisation patrimoniale.
- Les partenaires sont solidaires à l'égard des tiers des dettes contractées par l'un deux pour les besoins courants de leur vie commune (même après la résiliation du contrat de vie commune). Toutefois, cette solidarité est exclue :

- pour les dépenses manifestement excessives ;
- en l'absence de consentement des deux partenaires, pour les achats à tempérament (crédit) et les emprunts qui ne portent pas sur des sommes modestes et nécessaires aux besoins courants de leur vie commune. Il ne peut y être dérogé par convention d'organisation patrimoniale.
- En dehors des besoins courants de la vie commune, chaque partenaire reste responsable de ses dettes personnelles (contractées avant et pendant le contrat de vie commune). Il ne peut y être dérogé par convention d'organisation patrimoniale.

2. Biens des partenaires

- Chaque partenaire conserve l'administration, la jouissance et la libre disposition de ses biens personnels (acquis avant et pendant le contrat de vie commune).
- S'agissant des habits, effets, linges et bijoux servant à l'usage personnel, chaque partenaire en conserve la propriété exclusive, sans avoir à en rapporter la preuve.
- S'agissant des autres biens, chacun des partenaires peut prouver par tous moyens qu'il en a la propriété exclusive. Lorsque cette preuve n'est pas rapportée, le bien est présumé leur appartenir pour moitié chacun, chaque partenaire étant gérant de cette indivision.
- Il ne peut être dérogé à ces règles par une convention d'organisation patrimoniale.

3. Succession et donation entre vifs

- Le partenaire est considéré comme un tiers par rapport à la succession de l'autre. Le partenaire qui souhaite léguer des biens au profit de son partenaire survivant, doit faire un testament.
- En cas de décès d'un des partenaires et sauf volonté contraire exprimée par testament, le partenaire survivant qui occupe effectivement à titre d'habitation principale, le logement leur appartenant ou dépendant totalement de la succession, a le droit pendant une année, à la jouissance gratuite du logement et des meubles meublants compris dans la succession qui le garnissent.
- Les partenaires peuvent également faire une donation pour se transmettre des biens de leur vivant. La donation entre vifs effectuée au profit du partenaire est rapportable à la succession du donateur.
- Il incombe au notaire d'informer les partenaires que le contrat de vie commune ne leur confère pas la qualité d'héritier par la loi, ainsi que sur les conditions générales d'exercice de leurs droits successoraux, notamment en matière testamentaire.

4. En matière fiscale

- Les mutations entre vifs à titre gratuit entre partenaires d'un contrat de vie commune sont assujetties au droit proportionnel de 4 %. Au cas où le contrat de vie commune liant les partenaires est résilié moins de dix ans après sa conclusion pour un motif autre que le mariage des partenaires ou le décès de l'un d'entre eux, le droit proportionnel de 4 % est remis en cause. Les partenaires seront alors

soumis, rétroactivement, au droit proportionnel de 16 % (correspondant aux droits de mutation à titre gratuit entre personnes non parentes).

- Les mutations en propriété ou en usufruit de biens immeubles ou de biens meubles, y compris les valeurs mobilières étrangères de quelque nature qu'elles soient, qui s'effectuent par décès entre partenaires d'un contrat de vie commune, sont, pour la part nette recueillie par l'ayant droit, assujetties au tarif de 4 %.

5. En matière de logement en secteur libre

- En cas de décès du titulaire du bail de location, le contrat se poursuit dans les mêmes conditions au profit de son partenaire survivant, sauf manifestation de volonté contraire de ce dernier.
- Le bail de location du logement d'habitation principal est réputé appartenir à l'un ou l'autre des partenaires, à la condition que ceux-ci en aient informé conjointement le propriétaire. En cas de résiliation du contrat de vie commune, ce droit pourra être attribué, en considération des intérêts sociaux et familiaux en cause, par la juridiction saisie de tout litige relatif à cette résiliation.

26. Are same-sex couples treated differently for inheritance?

The inheritance tax for assets located in Monaco is as follow:

- direct line between parents and children or between spouses: 0%
- between persons bound by a civil partnership contract: 4%
- between brothers and sisters: 8%
- between uncles, aunts, nephews and nieces: 10%
- between relatives other than the above: 13%
- between unrelated persons: 16%

However, as Monegasque law does not recognize the status of spouses of persons of the same-sex whose marriage has been validly celebrated abroad, the provisions of law 704 of June 5th, 1961 establishing the free transmission of inheritance between spouses are not applied.

Consequently, the inheritance of same-sex spouses is subject to the proportional rate set for non-relatives, i.e. 16% or 4% if they signed a civil solidarity contract.

Les taux d'imposition des successions sur les biens situés à Monaco sont les suivants :

- ligne directe entre parents et enfants ou entre époux : 0%
- entre personnes liées par un contrat de partenariat civil : 4 %
- entre frères et sœurs : 8 %
- entre oncles, tantes, neveux et nièces : 10 %
- entre parents autres que ceux mentionnés ci-dessus : 13%
- entre personnes non apparentées : 16%

Toutefois, le droit monégasque ne reconnaissant pas le statut de conjoint aux personnes de même sexe dont le mariage a été valablement célébré à l'étranger, les dispositions de la loi 704 du 5 juin 1961 établissant la libre transmission des patrimoines entre époux ne sont pas appliquées.

En conséquence, la succession des conjoints de même sexe est soumise au taux proportionnel prévu pour les personnes non parentes, soit 16 % ou 4 % s'ils ont signé un contrat civil de solidarité.

27. Can same-sex couples inherit property via alternate arrangements such as Wills, bequests, etc.?

Trusts, private foundations, civil companies (non-trading companies), and family offices are common practice in Monaco for estate planning.

Trust

Trusts can exist under two forms.

Foreign trusts are recognized and enforced according to the provisions of The Hague Convention of 1 July 1st, 1985 on the Law Applicable to Trusts and on their Recognition. This Convention expressly states that public policy may override their provisions.

Trusts can also be made in accordance with Law n°214 of February 27th, 1936, which allows nationals from jurisdictions where trusts exist to set up in Monaco inter vivos and testamentary trusts governed by a foreign law.

Civil Companies (non-trading companies-SCP)

Civil companies can be used to manage and invest personal assets, own real estate, shares or bank accounts.

Single and Multi-family offices

Single family offices are not specifically regulated. Their regime will depend on the form they choose to take.

Multi-family offices are subject to Law n°1439 of December 2nd, 2016.

Single family offices must be incorporated as a “*Société Anonyme Monegasque*” (“SAM”) under Monegasque government policy. It is also possible to manage and invest personal assets through a “*Société à Responsabilité Limitée*” (SARL) or a “*Société Civile Particulière*” (SCP).

Multi-family offices must take the form of an SAM.

Les trusts, les fondations privées, les sociétés civiles (sociétés civiles) et les family offices sont des pratiques courantes à Monaco en matière de planification successorale.

Le trust

Les trusts peuvent exister sous deux formes.

Les trusts étrangers sont reconnus et appliqués conformément aux dispositions de la Convention de La Haye du 1er juillet 1985 relative à la loi applicable au trust et à sa reconnaissance. Cette convention stipule expressément que l'ordre public peut prévaloir sur ses dispositions.

Les trusts peuvent également être constitués conformément à la loi n°214 du 27 février 1936 qui permet aux ressortissants de juridictions où les trusts existent de constituer à Monaco des trusts inter vivos et testamentaires régis par une loi étrangère.

Sociétés civiles (sociétés civiles-SCP)

Les sociétés civiles peuvent être utilisées pour gérer et investir des actifs personnels, posséder des biens immobiliers, des actions ou des comptes bancaires.

Bureaux unifamiliaux et multifamiliaux

Les bureaux mono-familiaux ne font pas l'objet d'une réglementation spécifique. Leur régime dépend de la forme qu'ils choisissent de prendre.

Les multi-family offices sont soumis à la loi n°1439 du 2 décembre 2016.

Les single family offices doivent être constitués en société anonyme monégasque (SAM), conformément à la politique du gouvernement monégasque. Il est également possible de gérer et d'investir des actifs personnels par le biais d'une « Société à Responsabilité Limitée » (SARL) ou d'une « Société Civile Particulière » (SCP).

Les multi-family offices doivent prendre la forme d'une SAM.

28. If you have further comments on the matters raised in this section, please add them below.

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Discrimination in Employment/Housing/Benefits/Other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The law does not expressly prohibit discrimination based on gender or sexual orientation, but Article 421 of the Criminal Code provides that:

*“The following shall be punished by the fine provided for in Article 29(4): (...) 5° those who, without having been provoked, commit a non-public insult against a person or group of persons on the grounds of their sex, disability, origin, **sexual orientation, actual or supposed membership or non-membership** of a particular ethnic group, nation or race, or actual or supposed membership or non-membership of a particular religion.”*

To this end, a General Recommendation dated June 17th, 2024 from the Monegasque High Commissioner for the protection of rights and liberties was published.

This is an article on discrimination on the grounds of sexual orientation and the need to guarantee equivalent social rights.

This general recommendation is the result of numerous referrals revealing the impossibility for people of the same-sex legally married abroad or bound by a “living-together contract” of benefiting from the reversionary pension in the event of the death of the affiliated spouse, as well as the recent loss of the benefit of the reversionary supplementary retirement pension following the adoption of law no. 1.544 of April 20th, 2023.

In its recommendation, the Office of the High Commissioner recalled that, in its most recent case law, the European Court of Human Rights has enshrined the positive obligation of States to comply with Article 8 of the Convention relating to respect for private life by offering these couples adequate legal protection opening up rights and obligations equivalent to those of heterosexual couples in similar situations, while avoiding any discrimination based on sexual orientation.

The High Commissioner pointed out that, according to the case law of the European Court, States Parties are not obliged to establish same-sex marriage in their domestic law, but their margin of appreciation in implementing their obligations is limited, varying in scope according to various factors and reserving it for the choice of legal forms of union offered to same-sex couples (marriage and/or civil union, contract, etc.).

The High Commissioner added that the European Court now rejects the ground of protection of the traditional family on the grounds of safeguarding the general interest, as it considers that there is no reason to consider that the legal recognition and protection of same-sex couples in stable relationships could, in itself, harm traditionally constituted families or compromise their future and integrity.

Accordingly, the Office of the High Commissioner considers that the Monegasque Government’s invocation of the concept of public policy to justify the non-recognition of same-sex marriage and its effects in terms of social rights is no longer admissible.

The Office of the High Commissioner considers that compliance with the positive obligations arising from the application of Article 8 of the ECHR, requiring that same-sex couples who are legally married or united by contract enjoy the same legal recognition and protection as heterosexual couples in the same situation, implies equivalent access to social rights.

In line with developments in the concept of public policy and its scope, particularly in the light of the latest decisions in national and European case law, and in order to avoid any unjustified discrimination against same-sex couples, the High Commissioner has therefore recommended that the competent authorities take appropriate regulatory and legislative measures to allow access to social rights, including survivor’s pensions, for couples legally married abroad or bound by a “living-together contract”, without discrimination on the grounds of their sexual orientation.

La loi ne prohibe pas expressément la discrimination fondée sur le genre ou l’orientation sexuelle, néanmoins l’article 421 du Code pénal prévoit que :

*« Seront punis de l’amende prévue au chiffre 4 de l’article 29 : (...) 5° ceux qui, sans avoir été provoqués, auront commis envers une personne ou un groupe de personnes, en raison de leur sexe, de leur handicap, de leur origine, **de leur orientation sexuelle, de leur appartenance ou de leur non-appartenance**, réelle ou supposée, à une ethnie, une nation ou une race déterminée, de leur adhésion ou non adhésion, vraie ou supposée, à une religion déterminée, l’injure non publique »*

Dans ce sens, une recommandation générale en date du 17 juin 2024 du Haut-Commissariat pour la protection des droits et libertés monégasque a été publiée.

Il s'agit d'un article sur la discrimination en raison de l'orientation sexuelle et la nécessité de garantir des droits sociaux équivalents.

Cette recommandation générale résulte de nombreuses saisines laissant apparaître l'impossibilité pour les personnes de même sexe légalement mariées à l'étranger ou liées par un contrat de vie commune, de pouvoir bénéficier, en cas de décès du conjoint affilié, de la pension de réversion, de même que la récente perte du bénéfice de la réversion de la pension de retraite complémentaire à la suite de l'adoption de la loi n°1.544 du 20 avril 2023.

Dans sa recommandation, le Haut Commissariat a rappelé que, dans ses jurisprudences les plus récentes, la Cour européenne des Droits de l'Homme consacre désormais l'obligation positive des États de se conformer à l'article 8 de la Convention relatif au respect de la vie privée en offrant à ces couples une protection juridique adéquate ouvrant des droits et des obligations équivalentes à celles des couples hétérosexuels se trouvant dans des situations similaires en évitant toute discrimination fondée sur l'orientation sexuelle.

Le Haut Commissariat a précisé que, selon la jurisprudence de la Cour européenne, les États parties n'ont pas l'obligation d'instituer dans leur droit interne le mariage entre personnes de même sexe, mais leur marge d'appréciation dans la mise en œuvre de leurs obligations est restreinte, faisant varier son étendue en fonction de différents facteurs et la réservant au choix des formes juridiques d'union offertes aux couples de même sexe (mariage et/ou union civile, contrat...).

Le Haut Commissariat a ajouté que le juge européen rejette désormais le motif de protection de la famille traditionnelle au titre de la préservation de l'intérêt général, car il estime que rien ne permet de considérer que la reconnaissance et la protection juridiques des couples homosexuels engagés dans une relation stable pourrait, en soi, nuire aux familles constituées de manière traditionnelle ou en compromettre l'avenir et l'intégrité.

Ainsi, le Haut Commissariat estime que l'invocation par le Gouvernement monégasque du concept d'ordre public pour justifier de la non reconnaissance du mariage entre personnes de même sexe et de ses effets en termes de droits sociaux n'apparaît plus recevable.

Le Haut Commissariat estime que le respect des obligations positives découlant de l'application de l'Article 8 de la CEDH, imposant que les couples de même sexe légalement mariés ou unis par un contrat bénéficient effectivement de la même reconnaissance et protection juridique que les couples hétérosexuels se trouvant dans la même situation, implique un accès équivalent aux droits sociaux.

En conformité avec l'évolution de la notion d'ordre public et de sa portée, notamment à la lumière des dernières décisions des jurisprudences nationale et européenne, et afin d'éviter toute discrimination injustifiée à l'égard des couples de même sexe, le Haut Commissariat a donc recommandé aux autorités compétentes de prendre les mesures réglementaires et législatives adéquates afin de permettre l'accès aux droits sociaux, dont la pension de réversion, pour les couples unis légalement à l'étranger ou liés par un contrat de vie commune, sans discrimination à raison de leur orientation sexuelle.

30. Is gay conversion therapy banned?

Monaco has no legislation on conversion therapy for homosexuals.

Il n'y a aucun texte à Monaco sur la thérapie de conversion des homosexuels.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

There is no law to change gender in Monaco.

Monaco's only breakthrough in this area was a court ruling of July 4th, 2022. Born female in 2000, a French-Monegasque woman applied on February 1st, 2022 to have her sex and first name, modified in the Civil Registry, invoking art. 8 of the European Convention on Human Rights. In support of her claim, she put forward several arguments: she had been aware since the age of 4 that she was male; her family and friends considered her to be male; in 2020, she initiated a physical transition process with the help of a psychiatrist; and in 2021, she obtained a change of her first name in the French Civil Registry. However, she considered that the fact that her Monegasque administrative documents did not reflect this reality would cause her moral and social prejudice in her daily life as well as in her future professional projects.

The first instance Court granted her request.

Il n'existe pas de loi sur le changement de sexe à Monaco.

La seule avancée de Monaco dans ce domaine a été une décision de justice du 4 juillet 2022. Née de sexe féminin en 2000, une Franco-Monégasque a demandé le 1er février 2022 la modification de son sexe et de son prénom, en invoquant l'article 8 de la Convention européenne des droits de l'homme. 8 de la Convention européenne des droits de l'homme. A l'appui de sa demande, elle avance plusieurs arguments : elle sait depuis l'âge de 4 ans qu'elle est de sexe masculin ; sa famille et ses amis la considèrent comme telle ; en 2020, elle entame un processus de transition physique avec l'aide d'un psychiatre ; et en 2021, elle obtient le changement de son prénom sur les registres de l'état civil français. Cependant, elle considère que le fait que ses documents administratifs monégasques ne reflètent pas cette réalité lui causerait un préjudice moral et social dans sa vie quotidienne ainsi que dans ses futurs projets professionnels.

La Tribunal de Première Instance a fait droit à sa demande.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Gender-affirming treatments are not permitted in Monaco.

Les traitements d'affirmation du genre ne sont pas autorisés à Monaco.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

There is no legislation on non-binary gender in Monaco. Consequently, this status is not recognised.

Il n'existe aucun texte sur le genre non-binaire à Monaco. En conséquence, ce statut n'est pas reconnu.

35. What happens to the status of the marriage/civil partnership when one party transitions?

As gender-affirming treatments are not permitted in Monaco, there is no impact on the status of the marriage/civil partnership.

Les traitements d'affirmation du genre n'étant pas autorisés à Monaco, il n'ont pas de conséquences sur le statut du mariage/partenariat civil.

36. Is changing gender a ground for divorce?

In Monaco, divorce can be granted in 4 cases:

1. for misconduct, when the alleged behaviour of the spouse constitutes a serious or repeated violation of the duties and obligations of marriage, making the continuation of life together unbearable;
2. on grounds of breakdown of common life, where the spouses have been living separate for three years at the time of filing the petition for divorce;
3. for a criminal conviction of the spouse for an offence that makes the continuation of the marital relationship unbearable, unless the petitioning spouse was aware of the offence before the marriage;
4. in the event of the spouse's illness, which, in terms of its severity and duration, dangerously compromises the family's stability.

While a gender change is not in itself a ground for divorce, it could be qualified as a serious breach of the marriage duties making joint life intolerable.

A Monaco, le divorce peut être prononcé dans 4 cas :

- 1° pour faute, lorsque les faits imputés au conjoint constituent une violation grave ou renouvelée des devoirs et obligations du mariage rendant intolérable le maintien de la vie commune ;

- 2° pour rupture de la vie commune, lorsque les époux vivent séparés de fait depuis trois ans lors de la présentation de la requête en divorce ;
- 3° pour condamnation pénale du conjoint sanctionnant une infraction qui rend intolérable le maintien du lien conjugal, à moins que l'époux demandeur n'ait connu l'infraction avant le mariage ;
- 4° pour maladie du conjoint dont la gravité et la durée sont de nature à compromettre dangereusement l'équilibre de la famille.

Si en soi, le changement de sexe n'est pas un motif de divorce, il pourrait être qualifié de violation grave des obligations du mariage rendant intolérable la vie commune

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

The Netherlands



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Criminal Law

1. **Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?**

No, it is not.

2. **Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?**

In the Netherlands, gender identity expression and gender-affirming treatments are fully legal, with no criminal or legal restrictions. Dutch law supports individuals' right to transition and access gender-affirming care, reflecting the country's progressive stance on LGBTQ+ rights. There are no penalties related to gender identity or gender-affirming treatments.

3. **If you have further comments on the matters raised in this section, please add them below.**

Relationship Status

4. **Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?**

Yes, same-sex couples can marry since 1 April 2001 and from 10 October 2012 in the caribbean part of the kingdom of the Netherlands.

5. **Are foreign marriages of same-sex couples recognised?**

Yes, regardless of same-sex or opposite-sex marriage the starting point is if we would recognise the marriage that the parties entered into.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

We have a civil union / registered partnership that is equal to a marriage. There is no difference from a (full) marriage. It is however relevant to determine if the Dutch civil union is recognised abroad. This is not always the case.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

We have no de facto relationships that we recognise. Our set of rules for cohabitation are beyond the scope of family law and mostly based on contract law. This is already a challenge for both opposite-sex as same-sex relationships that breakdown.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

We have no customary marriage in the Netherlands. In principle the question of recognition of a foreign marriage is based on the question if the marriage is officially recognised in the country of solemnisation.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No, not at this time. There are ongoing discussions and initiatives aimed at potentially expanding this to recognize up to four legal parents in certain situations, such as in multi-parent families.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

You can choose your child's surname: that of the mother, the duo mother or the father. From January 1, 2024, you can also give your child the surnames of both parents. You must have this recorded together at the civil registry. This can be done before birth.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes. Adoption is possible.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In the Netherlands, adoption laws are generally inclusive, allowing various types of individuals and couples to adopt. Unmarried individuals, unmarried couples, same-sex couples, and transgender, non-binary, or intersex people can all be eligible to adopt.

However, there are some requirements and considerations, such as age, financial stability, and background checks. It's important for potential adoptive parents to consult with a legal expert or an adoption agency for specific guidance tailored to their situation.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not fully legal in the Netherlands. While the practice itself is not prohibited, there are specific regulations that complicate the process. For example, commercial surrogacy is not allowed, and surrogates cannot be paid beyond reimbursement for expenses.

Additionally, the intended parents must go through a legal process to establish their parental rights after the birth, which can be complex. As laws and regulations can change, it's advisable to consult with legal experts or agencies specializing in family law for the most current information.

16. Is commercial/compensated surrogacy legal?

Commercial or compensated surrogacy is not legal in the Netherlands. While altruistic surrogacy is permitted, surrogates can only be reimbursed for actual expenses incurred during the process, such as medical costs. Any form of payment beyond this is prohibited. The legal framework is designed to protect the rights of all parties involved, but it can make the process more complex for intended parents and surrogates.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

In the Netherlands, there are no specific laws that outright ban particular classes of people from participating in altruistic surrogacy based on their marital status, sexual orientation, or gender identity. Unmarried individuals, unmarried couples, same-sex couples, and transgender, non-binary, or intersex individuals can potentially be involved in surrogacy arrangements.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes, the parentage of same-sex couples who have become parents through surrogacy overseas is generally recognized in the Netherlands. However, to ensure full legal recognition, further steps may be required, such as:

Establishing Parentage: If the couple is recognized as parents in the country where the surrogacy took place, they will typically need to provide documentation, such as a foreign birth certificate.

Registration: The couple should register the child's birth with the Dutch authorities, which may involve providing a translation of the foreign birth certificate and possibly a declaration of parentage.

Legal Confirmation: Depending on the circumstances, it might be advisable to seek a legal confirmation of parentage in the Netherlands to clarify rights and responsibilities.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, gamete and embryo donation are legal in the Netherlands. Here are some key points regarding the legal framework and requirements for terminating the parental relationship between the donor and the child:

Requirements for Termination of Parental Rights:

Anonymous Donations: In the Netherlands, gamete donations are typically anonymous, meaning the donor does not have parental rights or obligations. This applies to both sperm and egg donors.

Legal Documentation: For the parental relationship to be terminated, the donation must be formalized through a licensed fertility clinic. The clinic usually has processes in place to ensure that the donor waives any parental rights.

Consent: Both the donor and the recipient must provide consent, and the donation should comply with the guidelines set by the Dutch Health Council.

Differences for Same-Sex Couples:

Same-Sex Married Couples: Generally, the same legal framework applies, and the parental rights of donors are terminated in the same way as for heterosexual couples.

Same-Sex Unmarried Individuals: The same rules regarding anonymous donations and parental rights apply. However, if the couple or individual is not married, they may need to take additional steps to ensure legal recognition of their parental rights, depending on the circumstances of the donation and the specific arrangements made.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes, in the Netherlands, same-sex couples who have a child through artificial insemination can be recognized as the legal parents of the child. Here are some key points regarding parental recognition:

Married Couples: If both partners are married, the non-birthing partner is automatically recognized as a legal parent.

Unmarried Couples: If the couple is not married, the non-birthing partner may need to take additional legal steps, such as co-parenting agreements or adoption, to establish parental rights.

Donation Procedures: It's essential that the artificial insemination is conducted through a licensed fertility clinic, which helps ensure that all legal requirements are met, particularly concerning donor anonymity and parental rights.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

In the Netherlands, the recognition of parentage for a spouse following childbirth after IVF treatment depends on the marital status and relationship of the partners involved:

1. Married Couples:

If a person gives birth to a child following IVF treatment and is married, their spouse is automatically recognized as a legal parent of the child, regardless of whether they are the biological parent.

2. Same-Sex Couples:

For same-sex couples who are married, the non-birthing partner is also automatically recognized as a legal parent of the child.

If the couple is in a registered partnership (civil union), the same rules apply, and the non-birthing partner will be recognized as a legal parent.

3. Unmarried Couples (Cohabiting or Common-Law Relationships):

If the couple is not married or in a registered partnership, the non-birthing partner will need to take additional legal steps, such as formal adoption or a co-parenting agreement, to establish parental rights.

Important Notes:

The treatment must be conducted through a licensed IVF clinic for the legal recognition processes to apply properly.

Documentation from the clinic may be necessary to establish the legal parentage.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

In the Netherlands, the divorce process for same-sex couples is identical to that for opposite-sex couples, both in terms of finances and child custody. However, there are some unique considerations for same-sex couples, primarily regarding parental rights and custody, which can differ depending on how the couple formed their family. Here's how it breaks down:

1. Financial Aspects

Alimony and Property Division: Alimony (spousal support) and property division follow the same legal frameworks for both same-sex and opposite-sex couples. In the Netherlands, assets are typically split evenly if the couple married under the standard “community of property” regime, unless a prenuptial agreement specifies otherwise. Spousal support is also based on income, duration of marriage, and needs, without regard to gender or sexual orientation.

Pension Sharing: Dutch law stipulates that pensions accrued during the marriage are divided equally upon divorce. Same-sex spouses are entitled to the same pension-sharing arrangements as opposite-sex spouses.

2. Child Custody and Parental Rights

Biological Parentage and Legal Status: For opposite-sex couples, both parents usually have automatic legal rights to the children if they are biologically related. In same-sex marriages, legal recognition of parental rights can depend on how the family was formed.

Adoption or IVF: If one partner is the biological parent (through a sperm donor or surrogate), the other may need to go through a formal adoption process to gain full parental rights. In some cases, a legal co-parent may be automatically recognized, but this can depend on the specifics of the parentage, especially in lesbian couples where one mother may carry the child.

Step-parent Adoption: In male same-sex couples using surrogacy, adoption (often step-parent adoption) may be required for both partners to have legal parental rights.

Custody Arrangements: Once legal parentage is established, the process for custody determinations is the same as for opposite-sex couples. Courts in the Netherlands consider the child's best interests, the child's relationship with each parent, and stability when making custody and visitation arrangements.

3. International Considerations

Cross-Border Issues: Same-sex couples with children may face additional complexities if one partner is from a country that does not recognize same-sex marriages or the legal parentage of both parents. This can complicate custody and visitation if one parent moves abroad.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

In the Netherlands, an alternative to marriage known as a “registered partnership” is available to both same-sex and opposite-sex couples. This form of civil union grants almost the same rights and responsibilities as marriage but differs slightly in its legal process for dissolution and some implications in areas such as parental rights.

1. Dissolving a Registered Partnership

Mutual Agreement: If both partners agree to dissolve the partnership, it can be done without court intervention. Couples can go through a notary or a lawyer to formalize the dissolution with a written agreement, making this process quicker and less costly than a divorce.

Contested Dissolution: If there is a disagreement about ending the partnership or its terms, the dissolution must go through the courts, similar to a divorce process.

2. Claims Upon Dissolution

Financial Settlements: Similar to marriage, financial settlements are based on the “community of property” or specific terms of a prenuptial-like agreement, if any. Registered partners typically have shared property rights, meaning assets and debts acquired during the partnership are divided equally upon dissolution unless specified otherwise. This applies equally to both same-sex and opposite-sex partnerships.

Alimony: Registered partners may also claim spousal support (partner alimony) if one partner was financially dependent on the other. This claim is handled similarly to alimony in marriage dissolutions.

Pension Rights: Registered partners are entitled to a portion of each other’s pension accrued during the partnership, just as with married couples. This right applies to all partners, regardless of gender.

3. Parental Rights and Child Custody

Automatic Parental Rights: Unlike marriage, registered partnerships do not automatically grant both partners parental rights in certain cases. For opposite-sex couples, the male partner in a registered partnership is presumed to be the father of any child born to the female partner. For same-sex female couples, however, only the biological mother has automatic parental rights, meaning the non-biological mother must go through a legal adoption process to establish her parental rights.

Adoption or Formal Recognition: In same-sex male partnerships, neither partner is automatically recognized as a legal parent if a child is born during the partnership (such as through surrogacy), and they must also go through a formal adoption process.

Custody and Visitation: Once parental rights are established, custody and visitation rights follow the same rules as in marriage, with courts prioritizing the child’s best interests and considering factors such as stability and the child’s relationship with each partner.

4. Differences Between Same-Sex and Opposite-Sex Unions in Dissolution

Parental Recognition: The main difference in dissolution between same-sex and opposite-sex partnerships lies in the initial recognition of parental rights. As noted, opposite-sex partners may have automatic rights if they have biological children, while same-sex partners usually do not and must seek legal recognition of the non-biological parent's rights.

International Recognition: Registered partnerships may not be recognized in some other countries, which can complicate legal proceedings, especially if one partner is from or moves to a country where same-sex unions are not recognized. This can affect custody and visitation rights, which are generally granted equally under Dutch law once parentage is established.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

See above under 27)

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No. Since the legalization of same-sex marriage in 2001, same-sex couples have the same inheritance rights as opposite-sex couples. This includes the right to inherit property and assets upon the death of a partner without facing discrimination.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.

Yes. Same-sex couples in the Netherlands have the same legal rights to inherit property through wills and bequests as opposite-sex couples. They can create legally binding wills to specify inheritance arrangements and ensure their property is distributed according to their wishes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, the Netherlands has comprehensive laws prohibiting discrimination on the basis of gender, gender identity (including transgender, intersex, and non-binary identities), and sexual orientation. Dutch law provides protections through the Dutch Constitution, specific anti-discrimination laws, and several international human rights treaties. Here's an overview of these protections:

1. Dutch Constitution

Article 1 of the Dutch Constitution prohibits discrimination on any grounds, including gender and sexual orientation. While the Constitution doesn't explicitly mention gender identity, Dutch courts and lawmakers interpret "gender" broadly to include gender identity and expression. This constitutional protection applies to all areas of public life.

2. Equal Treatment Act (AWGB)

The General Equal Treatment Act (AWGB), passed in 1994, is the primary anti-discrimination law in the Netherlands and specifically prohibits discrimination on the grounds of gender, gender identity, gender expression, sexual orientation, and marital status.

Scope of Protection: The law applies to employment, housing, education, and public services, including healthcare and government services. It prohibits discriminatory hiring, firing, promotion practices, as well as discrimination in the delivery of services or access to facilities.

3. Transgender and Non-Binary Protections

In 2019, the Dutch government amended its interpretation of "gender" within the AWGB to explicitly cover gender identity and gender expression. This extension provides legal protections against discrimination specifically for transgender, non-binary, and intersex individuals.

Gender Marker Change: Since 2014, Dutch law allows transgender people to change the gender marker on their birth certificates without requiring surgery. This was a significant step in protecting the rights of transgender individuals to self-identify and has since included provisions for non-binary individuals who wish to leave their gender unspecified.

4. Labor Law and Workplace Protections

Labor Code: Dutch labor law prohibits workplace discrimination based on gender, sexual orientation, and gender identity, ensuring equal treatment in hiring, salaries, promotions, and working conditions. Employers are legally required to prevent harassment and provide a safe, inclusive environment for all employees.

Protection Against Harassment: The law specifically prohibits sexual and gender-based harassment, requiring employers to have procedures in place for reporting and addressing such incidents.

5. Criminal Law Protections

Hate Crimes: The Dutch Penal Code includes provisions against hate crimes motivated by gender, gender identity, or sexual orientation. Crimes committed with discriminatory motives are subject to enhanced penalties.

Incitement to Discrimination: Dutch law criminalizes incitement to discrimination and hatred based on sexual orientation, gender identity, and other protected characteristics, including through public speech and media.

6. International Treaties and EU Directives

As a member of the European Union and a signatory to several international human rights treaties, the Netherlands is also bound by EU directives that prohibit discrimination based on gender and sexual orientation, such as the EU Equal Treatment Directives and the Charter of Fundamental Rights of the European Union. These frameworks further reinforce national protections and support the rights of transgender, intersex, and non-binary individuals.

7. Recent Developments and Non-Binary Recognition

In recent years, the Dutch government has moved toward recognizing non-binary identities more explicitly in laws and administrative procedures, with active discussions on introducing a non-binary gender option in passports and identification documents. Additionally, recent court rulings have recognized non-binary and gender-neutral markers, which further underscores the country's progressive stance on gender identity rights.

Summary

The Netherlands prohibits discrimination on the basis of gender, gender identity, and sexual orientation through a robust combination of constitutional protections, specific anti-discrimination laws, and international commitments. These protections apply to nearly all areas of public and private life, aiming to create an inclusive, non-discriminatory environment for all individuals, including transgender, intersex, and non-binary people.

30. Is gay conversion therapy banned?

Yes, gay conversion therapy is effectively discouraged and widely condemned in the Netherlands, though there is currently no explicit ban. As of recent years, the Dutch Parliament has been actively exploring a direct legal ban on conversion therapy. In 2022, legislative initiatives were discussed that could result in a full legal ban, especially for minors, which may soon pass given the broad support among many political parties and advocacy groups.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes, in the Netherlands, an adult can legally change their gender marker with certain legal requirements but without the need for court intervention in most cases. Since 2014, the process for legally changing one's gender marker has become simpler, removing requirements for medical intervention or psychological evaluation, making it more accessible for transgender and non-binary individuals. Here's a breakdown of the process:

1. Legal Process for Gender Marker Change

Application at the Municipality: Adults wishing to change their gender marker can do so by applying to the municipality where they are registered. They do not need court approval but must follow a straightforward administrative process.

Medical or Psychological Requirements: Since the 2014 amendment to Dutch law, individuals are not required to undergo surgery, hormonal treatment, or psychological assessments to change their gender marker. Instead, they need only a statement from an expert (typically a physician or psychologist) affirming that they have a sustained conviction that their gender does not align with the marker on their birth certificate.

Expert Statement: An individual must obtain this declaration from a healthcare professional who affirms that the applicant is competent to make the decision and understands the consequences of the change. The expert statement is then presented to the municipality.

2. No Court Intervention or Spousal Consent Required

No Court Approval: Unlike in some other jurisdictions, Dutch law does not require individuals to go through the courts to change their gender marker, except in very rare cases where there may be a dispute regarding eligibility.

No Spousal Consent: Spousal consent is not required for a gender marker change. If the applicant is married, their marital status or the validity of the marriage remains unaffected. The marriage continues under Dutch law, regardless of the gender marker change of one spouse.

3. Effect on Other Documents and Records

Once the gender marker is changed in the Dutch population register, this change is reflected in official identification documents, such as passports, national ID cards, and any other government records. The new gender marker is then recognized in all aspects of Dutch civil law.

4. Legal Developments and Non-Binary Options

Non-Binary Recognition: Dutch courts have recognized non-binary identities, and there are ongoing discussions about adding a third gender or non-binary option in national identification documents. The Dutch government has taken steps to make non-binary and gender-neutral identification more accessible, though this is still in the development phase and not yet fully implemented nationwide.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, gender-affirming treatments are available to minors in the Netherlands, but access to these treatments, including puberty blockers and surgery, is regulated by age and requires various levels of parental consent or involvement, as well as medical evaluation and support from healthcare professionals.

1. Puberty Blockers for Minors

Eligibility and Assessment: Minors experiencing gender dysphoria can access puberty blockers starting from age 12. Before treatment, they undergo a thorough evaluation at a gender clinic, which includes assessments by psychologists, endocrinologists, and other specialists to confirm gender dysphoria and ensure the minor fully understands the implications.

Parental Consent: For minors under 16 years old, parental consent is required to begin puberty blockers. From age 16 onward, minors can typically consent to puberty blockers on their own if deemed competent by healthcare professionals. However, parental involvement and support are generally encouraged by healthcare providers.

2. Hormone Therapy for Adolescents

Eligibility and Consent Requirements: Hormone therapy (e.g., estrogen or testosterone) is generally available to minors from age 16 onward if they meet clinical guidelines, though this can vary depending on individual cases and evaluations. Parental consent is usually required for those under 16, whereas adolescents 16 and older can typically make this decision independently, provided they are evaluated as capable of understanding the treatment and its consequences.

Clinical Assessment: Like with puberty blockers, hormone therapy is only prescribed after a comprehensive psychological and medical evaluation. Mental health professionals play a key role in assessing the stability of the adolescent's gender identity and readiness for this next step in gender-affirming care.

3. Gender-Affirming Surgery

Age Restrictions and Parental Consent: In the Netherlands, gender-affirming surgeries are generally not performed on minors. Surgery is typically reserved for individuals 18 and older, as it is considered an irreversible intervention that requires full maturity and capacity for informed consent.

Exceptions in Rare Cases: In exceptional cases where there are compelling clinical reasons and robust parental support, surgical options might be discussed earlier, but these cases are extremely rare and subject to strict medical and ethical oversight.

4. Psychological and Family Support

Supportive Role of Mental Health Services: All minors seeking gender-affirming treatment are provided with psychological counseling and support services. Dutch healthcare emphasizes a holistic approach to ensure the well-being of the minor throughout their transition.

Parental and Family Involvement: In most cases, healthcare providers work closely with the family to provide guidance and address any concerns or questions about gender-affirming care for minors. This helps foster a supportive environment, which is viewed as critical for the minor’s overall well-being.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

As of now, the Netherlands does not yet offer a fully recognized non-binary or “X” gender option on all identity documents, such as passports and birth certificates, though steps are being taken to implement this. Here’s the current situation and the expected developments:

1. Current Status of Non-Binary Recognition

“X” Marker on Passports: Since 2018, Dutch citizens can request an “X” as a gender marker on their passport, but it’s only available through a court order. This means individuals must petition the court to change their gender marker to “X,” which has been granted in some cases for people identifying as non-binary.

Birth Certificates: As of now, Dutch birth certificates only list “male” or “female,” with no standard option for an “X” marker. However, recent legal decisions and advocacy efforts are pushing for change.

2. Future Legal Developments

Planned Legislative Reforms: In 2020, the Dutch government announced plans to create a non-binary or gender-neutral option for official identification documents, such as passports, to make the process more accessible and to remove the need for court involvement. This reform aims to allow people to self-select an “X” marker directly through administrative channels.

Timeline for Change: While no exact date has been set, the Dutch government’s commitment to implementing a gender-neutral option on documents is expected to be realized within the next few years, as discussions and policy drafting continue.

3. Legal Precedents and Court Rulings

Court Rulings Supporting Non-Binary Rights: In 2018, a Dutch court in Roermond ruled that a person could legally be recognized as neither male nor female, setting a legal precedent for non-binary recognition. This ruling encouraged further discussions and policy proposals to add a non-binary option on official documents.

35. What happens to the status of the marriage/civil partnership when one party transitions?

In the Netherlands, the legal status of a marriage or registered partnership remains unaffected if one party transitions. Dutch law allows individuals to change their legal gender marker without impacting their marital or partnership status, regardless of the original genders of the partners or the current legal definition of their relationship.

36. Is changing gender a ground for divorce?

No. The only ground for divorce in the Netherlands is irretrievable breakdown of marriage. This cannot be contested. Obviously, a spouse could feel that the marriage has irretrievably broken down by a gender change but it is not a ground for divorce as such.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Northern Ireland



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes with no differences. NI is now inline with the UK since the enactment of The Marriage (Same Sex Couples) and Civil Partnership (Opposite Sex Couples) (Northern Ireland) Regulations 2019 came into force on 13 January 2020

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Civil Partnership available but available to both same-sex and opposite-sex couples. See legislation quoted at question 8. The NI Assembly had collapsed when the Civil Partnership Act 2004 passed and that is why it was directly applicable here

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

There was a period where a couple could convert their civil partnership into a marriage. This commenced on 7 December 2020 and closed on 6 December 2023.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Person giving birth is the birth mother. No other title possible.

12. If you have further comments on the matters raised in this section, please add them below.

HFEA directly applicable.

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

No – In line with UK.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Parental Order would be required.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes must be done via a licenced clinic.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

The birth mother is recognised as the mother. If she is in a CP or marriage her partner will become a parent via presumed parentage however donor can challenge.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Treatment in licence clinic will have intended parents recognised and no difference arises from the type of relationship they are in.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

No.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Same procedures apply for a same-sex couple that would exist for a non-married/couple opposite-sex couple. Usually equity civil bill for the home and children order proceedings in respect of children.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes – NI is not the same as the England and Wales on this front. We do not have the Equality Act 2010. Instead we have s.75 of the Northern Ireland Act 1998 and various other regulations for each specific protected characteristic.

30. Is gay conversion therapy banned?

There is no legal ban. The Northern Ireland Assembly passed a motion in June 2024 calling for the ban on conversion therapy but nothing has advanced on a legislative front.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes The Gender Recognition Act 2004 is directly applicable to Northern Ireland.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

In theory yes. There is a gender identity service for legal minors but it is not resourced, has extensive wait lists and the recent UK ban on the provision of puberty blockers has recently been extended to NI by the Minister of Health.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

As in England and Wales spousal consent is required for Gender Recognition Certificate and marriage can remain in place.

36. Is changing gender a ground for divorce?

Gender is a ground for annulment or dissolution.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Poland



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

Since most of the LGBTQ+ related rights are (if at all) protected via court procedure, many aspects do depend on the discretionary decision of the judge.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No.

5. Are foreign marriages of same-sex couples recognised?

No. Yet there is a judgement of the European Court of Human Rights (*Formela et al. v. Poland*, 58828/12 and others, 19.09.2024), which obliges Poland to perform marriage act registration (which, NB does not constitute per se, marriage recognition). Another preliminary referral on the foreign marriage recognition to the Court of Justice of the European Union is pending (due 3.12.2024)

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No. in September the government put forward a Bill on Registered Partnerships, yet it is difficult to say whether it will be eventually turned into a law, and to what extent it will grant protection to LGBTQ+ families.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There is a certain, minuscule, degree of judicial recognition there of. It varies between different branches of law. and thus

1. under civil law, due to *Kozak vs Poland* (13102/02), later applied by the Polish Supreme Court, a de facto partner has a right to sub-enter the lease contract after the death of the lessee who was their partner
2. under criminal law, same-sex de facto partner is covered by the concept of vicinity which means that they have a right to refuse to testify against their partner in the criminal procedure and are entitled to spousal visits in prison.

The case of *Formela et al. vs. Poland* (cited above), in theory obliged Poland to grant to de facto same-sex couples the spousal benefits in social security and tax matters, but how it is going to be carried out remains to be seen.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

As above: it is an on-going process and things may change in the course of the next 12 months.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Due to the 2008 amendment to the Civil Code (art. 61–9) the person giving birth is the child's mother.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

No and yes, see below.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No and yet yes. Adoption under Polish law can only be carried out for the benefit of the child, and thus it is the discretionary decision of the family court, which ponders each case individually. Only a married couple may adopt together otherwise it must be a single individual.

Thus in theory one can imagine adoption by a single man or a woman, or a person in a informal relationship, but I have only heard about that happening in the case of single women, and mostly when they are related to the child.

Surrogacy

15. Is surrogacy legal?

It is in the grey sphere. It is not expressively forbidden, but almost impossible to carry out – see below.

16. Is commercial/compensated surrogacy legal?

Not really. It could be seen as punishable under art. 211a of the Criminal Code penalising individuals profiting from organised adoptions.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

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18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Not the parental rights of both of them, but in some cases, indirectly, of the Polish parent – when the birth certificates are registered in order to confirm Polish citizenship or/and to issue a Personal Identification Number (NIP), and that only thanks to the court decisions (Judgement of the Supreme Administrative Court of 2018 as well as a positive response of the Court of Justice of the European Union to a query of the Provincial Administrative Court in Cracow, yet no final judgment has been yet given).

Assisted reproductive treatment

- 19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?**

A frozen embryo is protected. It can only be given up for an anonymous donation.

- 20. Are same-sex couples who have a child through artificial insemination recognised as the parents?**

No.

- 21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?**

A legal presumption operates which establishes that the mother's spouse is the father of her child (*mater semper certa est pater est enim quem nuptiae demonstrant*) in the case of unmarried couples, the man can declare his parenthood at birth at the hospital, and then at the registration, thus recognising the child.

Relationship Breakdown

- 22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?**

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- 23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?**

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- 24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?**

The usual claims for the division of common property, actions for unjust enrichment/undue payment, as well as compensatory actions for the agency without authorisation (*negotiorum gestio*).

- 25. If you have further comments on the matters raised in this section please add them below.**

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes. Under law of succession they are aliens.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

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28. If you have further comments on the matters raised in this section please add them below.

Yes, they naturally can inherit under will from one another (and also by the means of bequests), yet then they are taxed as alien person (in the highest tax group).

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/ intersex/non-binary) or sexual orientation? If so, how?

Yes, actually Labour Law is the only one that, banning all types of discrimination (with a criminal sanction), names expressly sexual orientation.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Legal gender can only be adjusted via court decision, due to an ingenious decision of the Supreme Court from the 60s.

Gender identity is classed as one of the personality rights and thus under Arts 23 and 24 of the Civil Code any individual (incl a minor) is entitled to sue to halt the infringement of their rights. The problem is one needs to sue their parents.

The procedure is lengthy, yet nowadays it is usually successful already at the first hearing, though the court usually demands medical opinions. The court decision has got ex tunc effects, the individual has a claim to have all their documents corrected with the appropriate gender designation.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, under regular regulations of health treatment of the minors. Thus a minor needs their legal guardian's approval.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

In theory the marriage should be declared null and void from the beginning (since the legal gender recognition has got ex tunc effects, and the Polish law does not know a marriage between same-sex spouses), yet it has never happened. The courts usually demand prior divorce of the couple. In one case in which it did not happen, the legal gender recognition was even reversed.

36. Is changing gender a ground for divorce?

No, the divorce in the legal practice precedes legal gender recognition.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Portugal



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

According to Portuguese law, not only is being homosexual or engaging in consensual homosexual sexual acts perfectly legal, as discrimination by reason of sexual orientation is forbidden by the Portuguese Republic Constitution (article 13 (2)).

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

There are no criminal penalties regarding gender identity or for people who seek and consent to gender affirming treatments.

In August 2018, the right of gender identity and gender expression self-determination was legally recognized (Law no. 38/2018, of 7th August). Since then, not only discrimination by reason of gender identity and gender expression is legally prohibited, as the access to gender affirming treatment was made accessible.

Notwithstanding, the Portuguese medical doctor's code of ethics establishes requirements for the admissibility of gender affirming treatments, whose violation entails the professional and deontological responsibility of health professionals.

3. If you have further comments on the matters raised in this section, please add them below.

Sexual orientation and gender identity have special criminal protection. Thus, murder, physical harm, threat and coercion determined by hatred towards sexual orientation or gender identity has an aggravated punishment (articles 132(2), paragraph f), 144(2) and 155(1), paragraph 3), all of the Portuguese Criminal Code (CP)).

Furthermore, the participation or funding of organizations that incite or encourage discrimination against people because of their sexual orientation or gender identity is a criminal offense (article 240.º CP).

In January 2024, a criminal offense was introduced that punishes the submission of people to acts aimed at altering or repressing sexual orientation, gender identity or gender expression (article 176.º-C CP).

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex marriages are allowed since 2010, with the approval of Law no. 9/2010, of May 31st.

Today, there are no legal distinctions between same-sex and opposite-sex marriages (nor they would be allowed by the Portuguese Constitution). Accordingly, all legal provisions regarding marriage adopt gender neutral terms such as “spouses”.

5. Are foreign marriages of same-sex couples recognised?

Since in Portugal there are no differences between same-sex or opposite-sex marriages, all foreign marriages are recognized in Portugal, so long as properly registered in the spouses’ country/countries of nationality. If, on another hand, one of the members of the couple is a Portuguese national, the marriage will only produce legal effects once it has been duly registered within the Portuguese Civil Registry Office. Once again, there are no distinctions between same-sex or opposite-sex couples regarding this matter. The only issue that can be raised with foreign same-sex couples (and which wasn’t yet definitely answered by Portuguese authorities) is whether a foreign same-sex marriage can be recognized, despite legally invalid according to the law of the couple’s country(ies) of nationality.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

In 2001, before the admission of same-sex marriages, same-sex relationships could only benefit of a civil union-type scheme, called “*união de facto*” or de facto union, freely translated.

Notwithstanding, de facto unions are available to either same-sex or opposite-sex under the same grounds since its initial legal recognition. They are perceived not as a lesser status but rather as an alternative to marriage, which allows couples to live under the same conditions as married couples without the need to formally/legally register their relationship or change their civil status.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

De facto unions are protected in Portugal for both same-sex and opposite-sex partners, indiscriminately (Law no. 7/2001, of May 11th).

That being the case, there are no differences in the treatment of opposite-sex and same-sex de facto relationships, as there are no differences in the treatment of opposite-sex and same-sex marriages.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Portuguese Law does not admit customary marriage, all marriages are either civil or religious.

Notwithstanding, if a foreigner had a customary marriage and that marriage is recognized by their country of nationality, that marriage may also be recognized in Portugal, so long as the marriage does not contradict the Portuguese principles of *ordre public*.

9. If you have further comments on the matters raised in this section, please add them below.

Portuguese law adopts a strictly bilateral concept of marital relationships, meaning that marriage and de facto unions are only allowed between two people, and entering a bigamous marriage constitutes a criminal offense (article 247.º of the CP).

However, Law no. 6/2001 grants some rights to groups of two or more people living in a shared economy, which is verified in cases when a group of people share the same home and contribute to shared expenses, regardless of whether there exists an affective relationship between them.

Thus, under Portuguese law, polyamorous relationships cannot be recognized through marriage or de facto unions but may be granted some rights under a shared economy regime.

Parenting

10. Can more than two people be recognised as the parents of a child?

Portuguese law does not admit that a child has more than two parents, and foreign multiparental families aren't recognized, since biparentality is a principle of *ordre public* pertaining to filiation. As an example, children born through Medically assisted treatment can only have two parents (usually the beneficiaries). Likewise, adoption is also limited to either one person or a couple.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Although Portuguese law refers that *“regarding the mother, filiation derives from the fact of birth”* (article 1796 (1) CC), assuming a cisgender-centric language, the possibility of altering one's mention of sex is admissible since 2018, with the entry into force of Law no. 38/2018, of August 7th.

According to the understanding of the Civil Registry Office, despite the legal recognition of the right of gender identity's self-determination, it is not yet authorized by the Portuguese legislator a non-binary sex description (Juridical opinion of the Portuguese Institute of Registries and Notarial Acts no. P.º C.C. 27/2022 SJ-CC, of October 27th). Therefore, currently individuals may only be registered as male or female.

The filial status of the parent is automatically inscribed according to his registered sex. Thus, if the person who gives birth has promoted this alteration, they will automatically be inscribed as father of the child. On the other hand, if the alteration to the mention of sex is promoted after the child's birth, the child's birth certificate may be

updated, by request of both parents (during the minority of the child) or by request of the child, upon reaching adulthood.

12. If you have further comments on the matters raised in this section, please add them below.

An exception to the principle of genetic truth relates to surrogacies, as the child conceived under these terms would be considered the child of the beneficiaries and not of the person who gave birth. However, although foreseen in legislation, this medically assisted procreation technique is not yet properly regulated and therefore is still not available in Portugal.

In that sense, in practice, the establishment of filiation for same-sex couples has a few specialties when compared to opposite-sex couples, as medically assisted reproduction is only available to opposite-sex couples or female couples. Cisgender male couples, namely, may only have children together through adoption.

Adoption

13. Is adoption possible?

Yes, both national and international adoption are possible in Portugal, regardless of sexual orientation and gender or sexual identity, since the implementation of Law no. 2/2016, of February 29th, that *“eliminated discrimination in access to adoption, civil sponsorship and other family legal relationships”* (freely translated).

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There are no classes of people who are ineligible to adopt, although the law establishes different requirements for unmarried individuals and couples (singular adoption and joined adoption).

Thus, according to Article 1979 of the Portuguese Civil Code, in order to be eligible for joined adoption couples must be married or live-in a de facto relationship; both the marriage and the de facto relationship must have at least 4 years of duration at the time of the adoption.

There are also legal requirements based on age. As a rule, only people between 25 and 60 years old may adopt and the age difference between the adopter and the adoptee must be less than 50 years. However, in some exceptional cases, people over 60 or with an age gap superior to 50 years with the adoptee are allowed to adopt.

Portuguese law attributes the preparation, assessment and selection of prospective adopters to the discretion of “adoption teams”, composed of social security bodies with powers to intervene and direct the adoption proceedings.

Although there is a margin of subjectivity on the concrete selection of adopters, any form of discrimination based on gender, gender identity or sexual orientation by the adoption teams are illegal and article 14 of the Legal Regime of Adoption Procedure stipulates that the criteria and procedures must be standardized and publicized.

Surrogacy

15. Is surrogacy legal?

Law no. 32/2006, of July 26th, or Law on Medically Assisted Reproduction (LPMA), with the alterations provided for in Law no. 90/2021, of December 16th, established the legal admissibility of surrogate pregnancies, although solely gratuitously and only in exceptional cases where it is *“absolutely and definitively impossible for a woman to become pregnant”* (freely translated from article 8(2) LPMA), with many other restrictions.

However, the regulatory decree necessary for the effective implementation of this Law has not yet been approved, and it is uncertain whether it will be, especially since the most recent initiative to approve the regulatory decree was subject to a presidential veto.

Therefore, although legal in theory surrogacy remains unavailable in Portugal.

16. Is commercial/compensated surrogacy legal?

No, commercial/compensated surrogacy is forbidden (article 8(2) LPMA) and criminalized (article 39 LPMA).

Criminal charges for those who celebrate/profit commercial or compensated surrogacy contracts, including for the surrogate, depend on the role of the agent in the surrogacy agreement, as follows:

- Prison sentence up to two years or a fine up to 240 days for those who, as beneficiaries, resort to compensated surrogacy.
- Fine up to 240 days for those who, as surrogates, celebrate surrogacy agreements for a compensation.
- Prison sentence up to two years for those who *“promote, by any means, namely by direct invitation or through an intermediary, or by public advertisement”*, the celebration of compensated surrogacy agreements contracts (freely translated).
- Prison sentence up to five years for those who *“under any circumstances and by any means, derive economic benefit from the conclusion/promotion of surrogacy agreements, in particular by direct invitation, through an intermediary, or by public advertisement”* (freely translated).

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Given that surrogacy is not yet available in Portugal, no-one may access surrogacy regardless of gender identity or sexual orientation.

However, even if surrogacy becomes available in the future, article 6 (1) LPMA restricts the access to medically assisted reproduction techniques (including) surrogacy to women, heterosexual or female same-sex-couples.

This solution remounts to a time in which surrogacy wasn't admitted and, therefore, assisted reproductive treatments were dependent on the presence of a biological woman. After the surrogacy's introduction, the

legislator kept the exclusion of cisgender male same-sex couples, which seems to constitute a discrimination based on sex thus arisen.

Discrimination based on sex is forbidden by the Portuguese Republic Constitution, so it is likely that this subject will be analysed by the Portuguese Constitutional Court once surrogacy is properly regulated.

Until then, same-sex couples remain ineligible to participate in surrogacy, a situation that may also affect intersex and non-binary people, as well as transgender male couples, depending on the sex (male or female) with which they are registered in the Civil Registry Office.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Although surrogacy is not yet properly regulated and, therefore, unavailable in Portugal, the parentage of the beneficiaries of a surrogacy agreement as parents of the child is expressly admitted by Portuguese Law, at least for women, couples of women and opposite-sex couples.

Based on this understanding, the Portuguese Institute of Registries and Notarial Acts has already established that the parentage of an opposite-sex Portuguese couple, beneficiaries of an oversea surrogacy, is recognized and must be inscribed in the Portuguese Civil Registry (Legal Opinion no. P. C.C. 66/2022 SJ-CC, dated 12th July 2023).

This Legal Opinion also clarifies which documents will be needed to operate the parentage inscription in the Portuguese Civil Registry – i.e. the foreigner birth certificate of the child and a document from the foreign authorities that certifies the existence of a surrogacy agreement and the name of the surrogate.

It further clarifies that the parentage based on surrogacy agreements celebrated before the introduction of surrogacy in Portugal may also be inscribed in the Civil Registry Office.

It doesn't, however, clarify whether same-sex male or transgender male couples can be inscribed as parents through surrogacy overseas, considering the persisting legal restriction of medical assisted treatments to women, women couples and opposite-sex couples.

If one of the members of the couple is the donor of the male gamete and, therefore, the biological male gamete, it may be possible to go around these restrictions, through the recognition of the biological parent followed by the child's adoption by the other member of the couple. Even this, however, may be a very difficult process to navigate, due to its innovative character and insufficient legislative provisions, which are likely to raise doubts with the authorities involved.

The above is applicable only to Portuguese nationals, since, for foreigners, parentage is regulated by their law of nationality and doesn't need to be inscribed in the Portuguese Civil Registry to be recognized. Therefore, the parentage of foreign same-sex couples, male or female, who have become parents through surrogacy overseas is recognized in Portugal if correctly admitted and inscribed in the Civil Registry Office of the parents country/ countries of origin.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and/or embryo donation are legal in Portugal, under article 10 of LPMA and women, same-sex women couples and opposite-sex couples may resort to donated gamete and/or embryos if pregnancy is impossible or implies a serious genetic disease.

The donor is never recognized as parent of the child and the termination of the relationship between the donor and the child occurs automatically, by the effect of the law (articles 10(2), 21 and 27 of LPMA).

This is so regardless of whether the beneficiaries are married, unmarried or individuals, although male same-sex couples and male individuals can't be beneficiaries of these treatments due to the restriction of article 6(1) LPMA.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Female same-sex couples who have a child through artificial insemination are recognized as parents, as long as one of the members of the couple did carry the child (as surrogacy is not yet available in Portugal, as mentioned above).

For the spouse or civil partner of the child's carrier's parentage to be recognized, they will need to expressly consent, either at the beginning of the medically assisted reproduction treatment or by declaring their consent at the time of the child's civil registration (articles 14 (1) (3) and 20 (1) (2) LPMA). The same conditions apply to opposite-sex couples.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The same legal provisions that apply to artificial insemination apply to IVF treatments.

Therefore, the parentage of the spouse or civil partner is recognized if they consent to the treatment beforehand or at the time of the child's civil registration (article 20 (1), (2) and 27 LPMA).

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

Portuguese law does not provide any distinctions between same-sex or opposite-sex couples regarding divorce and its consequences.

In fact, as stated previously, the legal provisions on marriage, divorce and custody usually adopt, for example, the gender neutral term “spouses” instead of “husband” and “wife”, or “parent” instead of “mother” and “father”.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

N/A.

Since same-sex marriage is recognized in Portugal, Portuguese Law doesn't depend of a lesser, non-marriage form of union to protect the rights of same-sex couples. They are, like opposite same-sex couples, free to marry or live-in a de facto relationship. Upon dissolution, Portuguese Law provides limited protection for unmarried couples regardless of sexual orientation, which are restricted to the use of the family home.

Thus, even if the family home belongs to both or to one of the member of the ex-couple, considering the ex-couple members' needs and the interests of their common children.

When the family home is rented, the rental contract may be transmitted to or centralized in one of the members of the ex-couple, considering the same criteria.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

The consequences of a de facto relationship's breakdown are the same for same-sex and opposite-sex couples alike.

Unlike marriages, de facto unions don't have patrimonial effects comparable to those of the marriage. In fact, there are no rules regarding responsibility for debts assumed during the relationship or the administration of separate and common property.

Likewise, there is no equivalent to a matrimonial regime. Therefore, unless jointly acquired, all assets acquired before or during the relationship are the exclusive property of the partner who acquired them.

There are also no rules regarding alimony or financial compensations upon breakdown, although recent case law has admitted, in exceptional cases, that an ex-partner may be compensated on the basis of unjust enrichment, especially in cases that one of them has renounced to their career in benefit of the family.

Children's custody, on the other hand, is regulated in the same terms as provided for married couples. Upon breakdown, both parents continue to have jointed custody (in Portuguese Law terminology *“the exercise of parental responsibilities regarding matters of particular importance”*), as they had during the relationship.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

In Portugal, both parents have the same rights of custody, regardless of sex, oriental sexuality, gender identity, being married or unmarried or other.

Thus, unlike other European Countries, the recognition of the unmarried father's parentage doesn't depend on the mother's consent, nor is custody given by law to the mother in detriment of the father upon divorce/separation.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Same-sex couples may inherit property via alternate arrangements in the same ways of opposite-sex couples, or even married or unmarried individuals.

In fact, the only relevant difference of treatment, in this regard, occurs between married and unmarried couples, since married people are considered legal heirs of their spouses (unless the spouses have expressly and mutually renounced to this right before the marriage).

Upon death, unmarried couples only have the right to demand alimony, to be paid by the deceased estate, a right that is limited to the strictly needed for the surviving partner's sustenance, housing and clothing.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, as mentioned above, there is a constitutional prohibition of discrimination based on sex and sexual orientation (article 13(2) of the Portuguese Republic Constitution) and a legal prohibition of discrimination based on gender identity and gender expression (Law no. 38/2018, of August 7th).

Although this last prohibition doesn't benefit of a constitutional effect, it bounds directly all private entities, thus strengthening the protection of the LGBTQ+ people against any form of negative discrimination and entitling the party injured of this kind of discrimination with adequate compensation, both for pecuniary and non-pecuniary damage under non-contractual civil liability.

Employment Law only admits collective labor agreements that respect the workers' rights of personality, equality and non-discrimination (article 3(3), paragraph a) of the Portuguese Labor Code (CT)).

This Code also includes an entire subsection dedicated to equality and non-discrimination, where the workers and job applicants' right to equal opportunities, regardless of sex, sexual orientation or gender identity, among

others, are expressly recognized (Article 24 of the Portuguese Labor Code). As a consequence, discrimination by the employer is strictly prohibited and the employer who commits one incurs in an administrative offense and may be subject to civil liability.

30. Is gay conversion therapy banned?

Yes, gay conversion therapy is banned. Law no. 15/2024, of January 29th, amended Law no. 38/2018, of August 7th, to provide in its article 3, no. 3, that *“Any practices aimed at the forced conversion of sexual orientation, identity or gender expression are prohibited”* (freely translated).

As mentioned in the previous answer, article 176-C of the CP provides for a prison sentence of up to 3 or 5 years for anyone who carries out such therapies.

31. If you have further comments on the matters raised in this section, please add them below.

Currently, the equality principle enshrined in the CRP (see answer to question 5.) is considered as not merely formal equality based on the indiscriminate application of the law rather a material equality, which implies that not only must what is equal be treated equally, but also what is unequal be treated unequally to promote real equality.

The consecration of equality as a constitutional vector implies not only the prohibition of any negative discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation, but also a duty to apply the so-called “positive discrimination” if this proves necessary to overcome situations of material inequality faced by the LGBTQ+ community.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Currently, Law no. 38/2018, of August 7th, determines the proceeding for *“Legal recognition of gender identity”*, under articles 6 to 10.

The proceeding starts with a request for a *“change of the mention of the sex”* at the civil registry office and subsequent alteration of the person’s first name, if requested.

These requests can be made by anyone of Portuguese nationality, over the age of 18 and who are not interdicted or disabled due to psychic anomaly, whose gender identity does not correspond to the sex assigned at birth.

This Law explicitly mention that the proceeding has a secretive nature and that no one can be obliged to prove that they have undergone medical procedures, including gender reassignment surgery, sterilization or hormone therapy, as well as psychological and/or psychiatric treatment, as a requirement for the decision of alteration of the registration.

Furthermore, Law also determines that a request can be made for a new birth certificate, in which no mention can be made of the change in registration, determining as well that once the civil registry is altered the person

must start making the necessary changes to update their identification documents within a maximum of 30 days of the change.

Lastly, it is worth mentioning that this proceeding can only be undergone once by each individual, unless a Court decision determines otherwise.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, a few gender-affirming treatments are available to legal minors, namely puberty blockers.

Other hormonal treatments such as gender-affirming hormone therapy or hormone replacement therapy and gender affirmation surgeries are only available in Portugal to people over the age of 18.

Regarding the treatments that are, in fact, available to children/young people, parental consent is necessary, given that children are not legally allowed to provide consent to any kind of medical intervention – be it gender affirming treatment or other.

As a rule, both parents are the holders of the so called “parental responsibilities” and are given all necessary legal powers to represent children (article 1878 (1) and 1881 of the CC), assigned automatically, by operation of the law, to the people registered as the child’s parents (articles 1797 (1) and 1877 *et seq* CC) and empowers a person to make decisions in relation to every aspects of the child’s life, including the issues most relevant to the child’s life and development, referred to in Portuguese law as “*matters of particular importance*”.

Portuguese law differentiates the treatment that should be given by parents and third parties when the subject at hand is defined as a “*matter of particular importance*” or a “*act of everyday life*”.

If the first, by law, each decision require both parents’ consent (even during a marriage or de facto union), if the second, either parent can make decisions alone, without requiring the other’s consent. The main difference between that relates to the significance and impact that a certain issue may have to a child’s development and wellbeing.

However, Portuguese law does not provide a list or specific criteria to determine if a certain issue should be considered a matter of particular importance or a act of everyday life, rather arguing that the classification of a given issue should be made on a case-by- case basis.

Even though there is no specific case-law regarding the use of gender affirming treatments by children/young people, it is arguable that the puberty blockers, even though somewhat reversible, would have a significant impact on a child’s life, and, as such, could be classified as a “*matter of particular importance*” – as well as it being arguable that relevant medical proceedings, such as surgeries, or even or psychological treatments, should require the consent of both parents.

In this case, if there is a disagreement between parents, either of them can petition to the court, which will attempt conciliation or, if conciliation is not possible, decide based on the child’s best interest, after hearing the child’s, parents and even experts opinions, if necessary.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Currently, it is not possible for someone to be identified as non-binary or X on their identity documents.

Even though Law no. 38/2018 does not explicitly refer to this issue, it is certain that the possibility of altering the registration is referred to as “*change of reference to sex in the register*” – displaying a rather binary perspective.

Through Report No. 15/ CC/2022 of October 27th, 2022, the Consultative Council of the Institute of Registries and Notaries expressed its opinion that “whether the request for the procedure of changing sex in the civil registry and consequent change of first name is made by a person whose gender identity does not correspond to the sex assigned at birth, or by an intersex person, it is only possible for the right to be exercised within the female/male categorization associated with the term sex” (freely translated).

35. What happens to the status of the marriage/civil partnership when one party transitions?

Article 10 of Law no. 38/2018 provides that the alteration of the mention of sex in the civil registry does not affect or alter the rights and legal obligations assumed prior to the legal recognition of gender identity.

This includes marriage/civil status, parental responsibilities, and any other rights and duties.

36. Is changing gender a ground for divorce?

Changing gender is not a ground for divorce in itself.

A divorce without the consent of both spouses, also known as a litigious divorce, can be obtained in Portugal under one of the following grounds, under article 1781 of the Portuguese Civil Code:

- a) Separation for one consecutive year;
- b) The alteration of the other spouse’s mental faculties, when it has lasted for more than one year and, due to its seriousness, compromises the possibility of living together;
- c) Absence, without news of the absentee, for a period of not less than one year;
- d) Any other facts which, regardless of fault on the part of the spouses, show the definitive breakdown of the marriage.

Therefore, in the event of a gender transition, divorce will only be granted if it is proven that the marriage has in fact broken down either under article 1781 (a) or (d), as parties cannot be expected to remain in matrimony when a loving relationship between them has ceased to exist.

Nevertheless, there is no specific case law on this matter.

37. If you have further comments on the matters raised in this section, please add them below.

Portuguese nationals between the ages of 16 and 18 can also request the procedure to change their gender and name in their civil registry, through their legal representatives, under the grounds provided for in article 7 (2) of Law no. 38/2018.

The registrar must hear the applicant in person in order to ascertain their express, free and informed consent, by means of a report requested by the applicant from any doctor registered with the Portuguese Medical Association or psychologist registered with the Portuguese Psychologists' Association, which exclusively attests to the applicant's decision-making capacity and informed will without reference to gender identity diagnoses, always taking into account the principles of progressive autonomy and the best interests of the child set out in the Convention on the Rights of the Child.

JURISDICTION

Romania



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

It is not illegal in Romania.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

Not really.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No, marriage is banned and not recognized nor civil partnerships.

5. Are foreign marriages of same-sex couples recognised?

No.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

Cohabitation is not recognized at all in Romania.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

No, maybe in some gypsy communities but are not legally recognized.

- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

No.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

The person giving birth is the mother.

- 12. If you have further comments on the matters raised in this section, please add them below.**

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Adoption

- 13. Is adoption possible?**

Yes, for singles.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

Same sex couples, transgender couples cannot adopt together but yes they can adopt as single parent.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

It is not recognized at all.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

It is hard to recognize this in Romania, it is needed an *exequatur*.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Vitro fertilization is recognized, embryo donation not.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No, they are not recognized at all.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

By simple declaration. In case of cohabitation they can recognize as their own child by declaration in front of the authorities.

Relationship Breakdown

- 22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?**

Is not permitted at all.

- 23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?**

In case of relationship dissolved, and it is not marriage they can prove how they have contributed throughout they relationship to the common wealth, with proves – invoices, contracts, bank payments.

- 24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?**

It is not different, they are just considered civil people who made common fortune.

- 25. If you have further comments on the matters raised in this section please add them below.**

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Inheritance/Tax

- 26. Are same-sex couples treated differently for inheritance?**

They are not treated at all.

- 27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?**

No.

- 28. If you have further comments on the matters raised in this section please add them below.**

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Discrimination in employment/housing/benefits/other

- 29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?**

Yes. Sexual discrimination in case of employment is not allowed and can be sanctioned by court.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Is legal but requires surgery.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, but in all case involves parental consent.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

I think they have to divorce or their marriage will be considered illegal from that time.

36. Is changing gender a ground for divorce?

Yes, it can be.

37. If you have further comments on the matters raised in this section, please add them below.

No.

JURISDICTION

Scotland



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. There are few substantive differences from opposite-sex marriages

5. Are foreign marriages of same-sex couples recognised?

They can be. Recognition is likely to be unproblematic if the marriage was valid in the place where it was celebrated, but there may be issues if either (or both) of the parties would not have had the ability to marry under the law of their domicile (for example if same-sex marriage is not recognised in that jurisdiction).

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Scotland does not have a 'lesser, non-marriage status' for same sex-couples (or for straight couples). We do recognise cohabitation, however, and legal responsibilities and rights do arise from cohabitation (and the sexual orientation of the cohabiting couple is irrelevant).

Since 2021 Scotland has allowed straight and same-sex couples to opt either to marry or formalise their union by entering a Civil Partnership. Previously same-sex couples could not marry, and opposite-sex couples could not enter into a Civil Partnership.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Yes. Cohabitation is recognised for same-sex couples (and straight ones). It is unlikely that there will be any material differences in treatment, unless there are financial claims arising from the economic burden of caring for children, which can arise because of the definition of parentage in the Act.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

It is unlikely that a foreign customary marriage would be recognised in Scotland, but not impossible if it were recognised as a valid marriage in the state where the parties had come from.

We do have a surviving form of irregular (customary) marriage in Scotland, called marriage by cohabitation by habit and repute, but it only applies to couples who were living together before 2006. We have no case law on whether this form of marriage would be recognised between a same-sex couple, but it is unlikely, given the requirements that would need to be satisfied.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person who gives birth to the child will always be recognised as the child's legal mother at birth.

The legal father of a child will be the person whose sperm created the embryo, unless fertility treatment took place within a licensed fertility clinic, in which case the second parent will be the spouse or civil partner of the mother at the time of her treatment unless it shown they did not consent to the treatment; or if the mother is not married or in a civil partnership, her partner provided that certain prescribed consents are completed by both prospective parents prior to fertility treatment.

A child born through assisted conception in a licensed fertility clinic to a single unmarried mother will have one legal parent.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Current law is intended to discourage commercial surrogacy. There are strict legal prohibitions on third parties being involved in the negotiation of surrogacy arrangements on a commercial basis. Payments to a surrogate by intended parents are not subject to a legal prohibition, however the criteria for the granting of a parental order (the means by which the intended parents' parentage would be recognised in law) requires that only reasonable expenses may be paid to a surrogate. In practice, this condition has not prevented courts making orders in circumstances where more than reasonable expenses have been paid.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No. Scotland will apply its own law to the question of legal parentage. Thus any parents, whether same-sex or otherwise, are likely to require to make an application to the court for a parental order to have their legal status recognised in Scotland and to remove the parental status of the surrogate and her spouse (if any). It should be noted that only those who are domiciled within the UK are eligible to apply for a parental order from the Scottish courts.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes. There will never be a parental relationship between an egg donor and a child (see Q11). For a sperm donor not to be considered a legal parent the mother must either be married/in a civil partnership to someone who cannot be shown not to have consented to the treatment, or the donation must have taken place within the context of treatment in a licensed fertility clinic.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes. A female same sex couple who have a child through artificial insemination will both be recognised as parents provided they are married or in a civil partnership at the time of insemination, or if not married/ in a civil partnership, treatment took place within a licensed fertility clinic.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

If fertility treatment takes place in a licensed clinic, a spouse's parentage will be automatically recognised. If the mother is in a cohabiting relationship, her partner will be recognised as a parent provided that prescribed forms of consent are completed by both parties in advance of treatment.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The same claims on divorce can be made upon dissolution of a civil partnership.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

The same claims apply for same-sex and opposite-sex couples where cohabitation comes to an end. The claim is for payment of a capital sum (payment of money from one to the other), either as a result of an economic disadvantage sustained by one which has resulted in an economic advantage to the other or in respect of the continuing economic burden or caring for a child under the age of 16 years.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes bequests can be made in a will. Same sex couples are treated the same in terms of our forced heirship provisions in Scotland.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes. The Equality Act 2010 legislated against discrimination on the basis of gender and sexual orientation.

30. Is gay conversion therapy banned?

No. The Scottish Government consulted on a ban in early 2024. The findings are now being considered.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

An application can be made for a gender recognition certificate after age 18.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Teenagers who are 16 and 17 years of age are entitled to consent to their own treatment and follow the standard adult protocol, and this consent cannot be overruled by their parents. Children who are under 16 years old can consent to their own treatment if it is thought that they have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment. At present specialist gender identity development services for children and young people under 16 are not available in Scotland I have taken this from Appendix 5 of the following protocol: <https://www.publications.scot.nhs.uk/files/cel2012-26.pdf>.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No. This is not currently recognised in the UK. A gender recognition certificate would allow someone to change the registered gender on their birth certificate.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The marriage will continue if the spouse consents to the marriage continuing, but divorce can be granted on this basis.

36. Is changing gender a ground for divorce?

A court may grant decree of divorce if an interim gender recognition certificate has been issued.

37. If you have further comments on the matters raised in this section, please add them below.

There is currently a Gender Recognition Reform Bill in Scotland which would make applying to change gender simpler and would reduce the legal age to do so from 18 to 16.

JURISDICTION

Slovakia



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No.

5. Are foreign marriages of same-sex couples recognised?

No.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

No.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

Sometimes, here are some conditions. For same-sex no.

- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

No.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

Mother is the one who gives birth, no other options.

- 12. If you have further comments on the matters raised in this section, please add them below.**

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Adoption

- 13. Is adoption possible?**

Yes but not for same-sex couples, only one from them can adopt as single parent.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

NO rules are general valid for all.

Adoption is possible only for married couples and in extraordinary cases for single parent.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

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Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes. It's anonymous.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Only one of them – our legal system does not allow to have two fathers or two mothers of one child.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Same as 24.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

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23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

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25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

As far we do not recognise same-sex couples and we do not have any legal form for them they are treated as cohabiting person in probate proceeding – that gives them the position of 2. or 3. group of heirs.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes – but there are limits for wills valid for everyone – such as the children has to get the same or ½ of their share as per law.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, general provisions.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

No specific regulation in Slovakia currently. Old one was canceled and now waiting for new regulation.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The divorce was sometimes requested to proceed with the gender change but no rules currently. As far there are no rules currently people stay with the same gender in papers even after finalizing the change of gender.

36. Is changing gender a ground for divorce?

Yes. Slovak law stipulate the marriage is only between man and women.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Spain



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, it is not illegal.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No, it is not illegal.

3. If you have further comments on the matters raised in this section, please add them below.

Gender identity and gender-affirming treatments are specially protected under Law 4/2023, of 28 February, for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people (hereinafter “Trans and LGBTI Law”).

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples in Spain can legally marry with the same rights and obligations as opposite-sex couples.

5. Are foreign marriages of same-sex couples recognised?

Yes, Spain recognises foreign same-sex marriages as long as they are legally valid in the country where they were carried out.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Spain recognises registered partnerships (*parejas de hecho*) for same-sex and opposite-sex couples. However, its recognition and rights depend on the specific regional laws.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Exceptionally, in Catalonia, de facto cohabitation (*pareja estable*) is automatically recognised without need for registration if any of the following circumstances is met: (a) continuous cohabitation for more than two years, (b) the parties have a child together or (c) the parties formalise their relationship by public deed.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

The recognition of customary marriages in Spain depends on several factors. The marriage must be legally valid in the country where it was celebrated and must also comply with Spain's legal criteria for recognising foreign marriages, which includes adherence to public policy and fundamental rights under Spanish law.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No, a child can only have two registered parents at the Civil Registry under Spanish law. Exceptionally, it is possible for more than two people to be granted custody and guardianship rights, although this is determined on a case-by-case basis.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Only the person giving birth will be automatically named as the mother of the child.

12. If you have further comments on the matters raised in this section, please add them below.

When a woman is married and not legally or de facto separated from another woman, the latter may manifest, in accordance with the provisions of the Spanish Civil Registry Law, her consent for parentage to be established in her favour with respect to her spouse's child. Neither the birthing mother nor the husband/non-birthing mother, when they have given their formal, prior, and express consent to a specific artificial insemination involving a donor or donors, may challenge the marital parentage of the child born as a result of such artificial insemination.

The parentage of the non-birthing mother at the time of the child's registration shall be recorded as follows:

- a) When the marriage of the birthing mother is duly accredited and is consistent with the presumptions of paternity of the husband established in civil law, or even in the absence of such presumptions, when the mother is married to another woman, provided that both spouses have given their consent, even in cases where there is legal or de facto separation.
- b) When the non-birthing father or mother expresses their agreement to the determination of such parentage, provided that it does not contradict the presumptions established in Spanish civil law.

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Ineligibility arises solely from practical considerations such as none of the parents being over 25 years old, health conditions or unfit home environment.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not legal in Spain. According to Article 10 of Law 14/2006, of May 26, on Assisted Human Reproduction Techniques, any contract that arranges a surrogacy agreement, whether paid or unpaid, in which a woman renounces maternal filiation in favour of the intended parents or a third party, is null and void by law.

16. Is commercial/compensated surrogacy legal?

Commercial surrogacy is illegal. Article 221 of the Spanish Criminal Code addresses crimes related to the alteration of parentage, such as substituting one child for another or concealing or delivering a child with the intent to alter or modify parentage.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy is not legal in Spain.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Spanish law does not automatically recognise the parentage of those who have become parents through surrogacy overseas, as surrogacy agreements are not legal in Spain. As recognised in Judgment 1624/2024 of the Spanish Supreme Court, such agreements are deemed to violate fundamental rights, including the right to physical and moral integrity of the surrogate mother and the child, as well as their dignity. Recognising these agreements would, therefore, be contrary to Spanish public policy.

However, parentage may be recognised in the event that (i) the biological parentage of one of the prospective parents is established, or (ii) it is proven a de facto household where the child and prospective parents are integrated. In such cases, filiation may be determined through adoption or by allowing the child's integration into a de facto household through the legal figure of *acogimiento familiar* (living-with order). Please note that the judge's decision will always prioritise the best interests of the child in accordance with Spanish law and international conventions.

There is a clear coexisting contradiction between Spanish case law and the criteria of the Directorate General of Registries and Notaries (DGRN), which established in 2010 that children born through surrogacy abroad could be registered in the Civil Registry as long as there was a foreign judgment recognising their filiation.

However, in 2014, the Spanish Supreme Court judgment 835/2013, contradicted the DGRN criterion, stating that such registration in the Civil Registry is contrary to Spanish public policy. Despite this, in 2014 the DGRN issued a resolution reaffirming the validity of its 2010 criteria.

Subsequently, the Spanish Supreme Court, in judgments 227/2022, and more recently, 1624/2024, reiterated that registering filiation in cases of surrogacy is contrary to public policy. However, it acknowledged the existence of alternative methods for registering filiation, such as adoption or *acogimiento* as explained above. This reflects an ongoing contradiction between administrative guidelines and case law in Spain's approach to surrogacy.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, it is legal if it is not commercial. Donations must be anonymous, and donors have no parental rights or responsibilities over children conceived through their donation. It is not different if the donation is made to a same-sex married couple or a same-sex unmarried individual. Spanish Constitutional Court has declared that the donor's anonymity does not prevent the creation of a legal parent-child relationship, as the donor's identity is not necessary for this purpose. Therefore, donor anonymity is valid, provided that general information about donors remains accessible.

Exceptions to anonymity exist in extraordinary circumstances where revealing the donor's identity is essential – such as when the child's life is at risk or when required by criminal procedural laws – striking a balance between donor privacy and the child's well-being.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

If a person gives birth following IVF treatment during a marriage, there is a legal presumption that their spouse is deemed to be the parent of the child. This applies equally to same-sex and opposite-sex marriages.

For registered partnerships or *parejas de hecho*, the abovementioned presumption does not apply. In such cases, the non-birthing parent's registration as a legal parent is subject to the consent of the birthing parent. If consent is not given, adoption may be necessary to establish legal parentage.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No, an identical process is followed.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The dissolution of a registered partnership (*pareja de hecho*) generally occurs either by mutual agreement or by a unilateral declaration to the relevant registry. Please note that each Autonomous Community may have different/additional requirements.

With the exception of Catalonia, where maintenance payments may be recognized under specific circumstances (such as economic imbalance resulting from the separation or contributions to the household), the dissolution of the registered partnership does not generally give rise to financial claims unless the couple opted for a specific economic regime at the time of registering the partnership.

No, there are no differences between the dissolution of same-sex and opposite-sex unions.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

The dissolution of the registered partnership does not generally give rise to financial claims unless the couple opted for a specific economic regime, in some regions such as Catalonia, maintenance payments may be available under specific circumstances.

Regarding custody, claims as to child arrangements and child maintenance there are no differences from those available to an opposite-sex couple or married couples.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No, same-sex and opposite-sex registered partnerships (*parejas de hecho*) are treated equally under inheritance law in Spain. However, *parejas de hecho*, whether same-sex or opposite-sex, do not have automatic inheritance rights.

Exceptionally, some autonomous communities (such as Catalonia, the Basque Country, Galicia, and the Balearic Islands) grant *parejas de hecho* inheritance rights.

In the rest of Spain, if there is no will, the surviving partner has no inheritance rights as the Spanish Civil Code only regulates inheritance for married couples.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, same-sex couples can inherit property via alternate arrangements such as wills, bequests, etc.

28. If you have further comments on the matters raised in this section please add them below.

Succession pacts are discretionary to each Regional law. Succession pacts are recognised in the following regions with its specific regulations: Catalonia, Galicia, Balearic Islands, Basque Country, Navarre and Aragon.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Discrimination on the basis of sex or any other condition or social or personal circumstance is explicitly prohibited by the Spanish Constitution and has been complemented by different regulations such as Trans and LGBTI Law.

30. Is gay conversion therapy banned?

Yes.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Spain, adults can legally change their gender as of right through an administrative process at the Civil Registry, with no need for court involvement or medical supervision.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, gender-affirming treatments are available to minors in Spain. Parental consent is required for those under 16, in accordance with Law 41/2002, while emancipated minors and those aged 16 and older can generally provide informed consent.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No, as it currently stands in Spain, identity documents such as birth certificates and passports only allow binary options of male (M) and female (F), with no provision for non-binary or “X” markers.

35. What happens to the status of the marriage/civil partnership when one party transitions?

It is not affected as same-sex marriage is recognised and the person is entitled to legally change their gender as of right in all documents through an administrative process at the Civil Registry, with no need for court involvement or medical supervision as referred to in Trans and LGBTI Law. Please note that:

- a) After six months have passed since the entry in the Civil Registry of the rectification of the registration of sex, individuals who initiated such rectification may recover the registration of the sex that appeared prior to such rectification, following the same procedure established for rectification of the registration.
- b) In the event that, after the initial modification has been rectified, a new rectification is sought, the court procedure established in Chapter I ter of Title II of Law 15/2015, of 2 July, on Voluntary Jurisdiction, must be followed.

36. Is changing gender a ground for divorce?

No, in Spain no ground is required to divorce.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Switzerland



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. Homosexuality and consensual homosexual acts are legal under Swiss law.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No. However, there are specific requirements for minors. See question 37.

3. If you have further comments on the matters raised in this section, please add them below.

According to case law, gender-affirming treatments must be reimbursed by basic (and mandatory) health insurance (see Supreme Court 137 I 86). No legal text covers all areas, and concerned individuals might encounter resistance from insurers, requiring additional documentation to establish the necessary diagnosis of Gender Identity Disorder in Adolescents or Adults according to DSM 302.85. Existing psychiatric therapy of at least six months is usually required for insurance coverage of hormonal treatments. Insurers won't cover surgery without an existing psychiatric therapy for at least one year and will usually not accept claims without prior hormonal treatment. Surgery coverage is extensive and may include genital, mammary, facial (though this is disputed), and vocal cord modifications (see Supreme Court 9C_572/2015 § 4.2).

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. On September 26th, 2021, Swiss citizens widely accepted (64% in favor) the "Marriage for All" legislation, establishing gender-neutral marriage. There is no difference between same-sex and opposite-sex marriages.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

An older legislation provided such a non-married status (“Federal Act on the Registered Partnership between Same-Sex Couples”). It was materially abolished by the “Marriage for All” legislation and it is not possible to conclude such agreement.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

They are not legally recognized, and there is no legal difference between same-sex and opposite-sex de facto couples in terms of breakdown. However, Swiss law provides specific corrections allowing de facto couples to be considered in certain situations (notably medical representation and partial social insurance coverage in case of death). Concluding a de facto agreement is possible and legally binding but is complex and highly fact-specific due to form and proof requirements and tax consequences, which differ between cantons.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Not directly. However, a foreign customary marriage might be legally binding in specific circumstances. There is no difference between same-sex and opposite-sex couples in this regard.

9. If you have further comments on the matters raised in this section, please add them below.

Nil.

Parenting

10. Can more than two people be recognised as the parents of a child?

Not under Swiss law. According to Civil Code § 267, previous parent-child relationships are extinguished in the case of adoption. However, Switzerland supports the broad recognition of foreign adoptions, including those with more than two parents.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person giving birth is automatically designated as the mother and cannot choose a different status (see Civil Code § 252 I).

12. If you have further comments on the matters raised in this section, please add them below.

When married, parents with different last names are legally required to choose one of them for their child. Outside of marriage, parents can choose the child's last name from either parent's name, provided they share parental authority. However, all children of the same couple must carry the same last name. A person may request to have their name governed by the law of the state of their citizenship.

Adoption**13. Is adoption possible?**

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Unmarried couples are ineligible to adopt together. Individuals aged 28 or older are eligible to adopt. Married couples are eligible to adopt after three years of cohabitation, provided both partners are aged 28 or older. A spouse or cohabitant is eligible to adopt the child of their partner if they have lived together for more than three years. Gender does not matter at this point. The consent of the other parent is mandatory and can only be waived if the parent is unknown, has been missing for some time, or permanently lacks the capacity for judgment. The consent can be revoked once.

Surrogacy**15. Is surrogacy legal?**

No. Intended parents will not both be recognized – the father or one of the fathers may be able to recognize the child – and it is a misdemeanor under Swiss law for anyone to provide assistance with surrogacy. Parents relying on surrogacy will likely face several legal challenges, including child protection measures. The other parent might adopt the child based on the adoption of the partner's child statutes (see Supreme Court 148 III 384). If the intended parents separate and only one is considered a legal parent, the other parent might request visitation rights (see Supreme Court 147 III 209).

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Nihil.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Not based on Swiss law. Two mothers relying on surrogacy will not be able to recognize their parenthood. When two fathers rely on surrogacy, one may be able to recognize the child and become a legal parent. The other parent might adopt the child based on the adoption of the partner's child statutes (see Supreme Court 148 III 384). The Supreme Court considers the prohibition of surrogacy to be essential to the public interest (see Supreme Court 148 III 384). Two parents relocating to Switzerland will likely not face difficulties as long as their status is recognized by the originating state.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

No. See Federal Act on Medically Assisted Reproduction § 4.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes, as long as they are married mothers (since July 1, 2022) or opposite-sex couples and have complied with the provisions of the Federal Act on Medically Assisted Reproduction.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

With surrogacy and ovum/embryo donations prohibited, and sperm donations reserved for married couples, a child conceived via IVF will be legally recognized only for married women, married opposite-sex couples, or unmarried opposite-sex couples not relying on sperm donations.

Parentage will be automatically recognized for married couples (Civil Code § 252 II). However, in the case of married women, the surgeon must provide a certificate stating that the requirements of the Federal Act on Medically Assisted Reproduction were strictly adhered to (Federal Civil Registrar Ordinance § 35 VIbis). As long as Swiss law is strictly followed, the Federal Act on Medically Assisted Reproduction § 23 I stipulates that if a child is conceived through sperm donation in accordance with this Act, neither the child nor the mother's spouse can contest the filiation with the mother's spouse.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Nil.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Same-sex and opposite-sex couples receive equal treatment in this matter.

Issues regarding child status (parental responsibility, custody, alimony, child protection, child asset protection) are assessed in a summary proceeding, and the basic rules do not differ between married and unmarried couples.

The Supreme Court does not recognize any alimony rights in a de facto couple. However, child support includes a specific portion for the caregiving parent to cover their basic costs, which essentially depends on the age of the child.

Since the law does not regulate de facto couples, any claim must be based on the agreement that the two individuals have concluded a simple contract. Case law presumes that a five-year cohabitation usually involves such a contract. However, even when this is proven, the scope of this contract is typically limited and difficult to predict.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

Attention is specifically drawn to tax issues regarding inheritance or donations for unmarried couples. The situation varies significantly between cantons and might lead to very high inheritance taxes. Seeking tax advice is strongly advised before taking any action.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes. Discrimination and incitement to hatred against a person or a group of persons on the grounds of their sexual orientation is a misdemeanor since July 1st, 2020. The new scope of this article was widely supported in the voting by Swiss citizens (63.1 % in favor).

Since 1981, equality between men and women has been supported by the constitution. In 2000, the Constitution § 8 added a broad equality principle and the prohibition of discrimination based on gender and way of life, including protections for transgender, intersex, and non-binary people, as well as sexual orientation. The federal legislature retains the ability to adopt discriminatory laws if they serve the public interest, are proportionate, and do not conflict with the essence of the principle.

30. Is gay conversion therapy banned?

Not everywhere. Several cantons have prohibited gay conversion therapies (Vaud on October 29, 2024, and Neuchâtel in April 2023). Multiple motions have been accepted in cantons, such as Geneva, and are likely to be introduced into those cantons' laws. At the federal level, several parliamentary initiatives related to a federal prohibition are currently pending. One of these federal parliamentary initiatives was initiated by a canton.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes. According to Civil Code § 30b, since January 1st, 2022, any person who is firmly convinced that they are not of the sex recorded in the civil register may declare to the civil registrar their wish to have the entry changed. They can choose between male and female. Currently, the parliament has refused a third option or the absence of any indication. The declaration may be made at any civil registrar or Swiss diplomatic entity (see Civil Registrar Ordinance § 14b) and incurs a fee of CHF 75 (see Civil Registrar Fees Ordinance).

The person making the declaration may also have one or more new first names entered in the civil register. The declaration has no legal effect on family relationships. The consent of a legal representative is required if the person making the declaration is under the age of 16, is subject to a general deputyship, or if the adult protection authority has so ordered.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes. The matter is not codified in law and largely depends on case law and medical guidelines. Generally speaking, a 16-year-old minor is presumed capable of giving consent independently, and parents do not need to be notified. For minors younger than 16, parental consent is usually required, but physicians may determine that the minor has the capacity to make their own decision. Parents can challenge the medical decision in court as long as the patient is a minor. If only one parent opposes, the other may seek court approval. See question 7 for additional information on the broad insurance coverage.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No. Currently, the parliament has refused a third option or the absence of any indication.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Since January 1st, 2022, the declaration has no legal effect on family relationships (see Civil Code § 30b).

36. Is changing gender a ground for divorce?

Old case law and civil registrar guidelines supported gender change as a ground for divorce. In our opinion, the situation has completely changed after the introduction of the Marriage for All legislation on January 1st, 2022, and we do not believe that a gender change would now be grounds for immediate divorce. However, Switzerland offers a no-fault divorce option after two years of separation.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Turkey



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

In Turkish law, LGBT (lesbian, gay, bisexual, transgender) identities have never been outlawed. However, there is not any written law, by-law or regulation directly regarding the homosexuality in the laws of Republic of Turkey, too. In accordance with the general legal principle that is accepted in Turkey; criminalization is not possible for anything that does not have any law or legal ground. In other words, the authorities do not have any legal provisions to punish the homosexuality or engaging in homosexual sex.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

In Turkey, gender identity and gender-affirming treatments are not outright illegal, but the legal and social landscape for transgender individuals remains complex and challenging.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

According to Turkish law, it is not possible for same sex couples to marry. In other words, civil marriage is not open to same-sex couples and there is no other alternative registration scheme similar to marriage. Also there is no other alternative registration scheme entailing less rights and responsibilities than marriage and same-sex partners are not recognized by the state and the state does not provide some/limited rights and any obligations.

5. Are foreign marriages of same-sex couples recognised?

Turkey does not recognize same-sex marriages, civil unions or domestic partnership benefits due to “public order” causes. Since, same-sex marriage is not recognized in Turkish law, same-sex marriages which have been validly contracted in a foreign jurisdiction are considered as “null and void” in Turkey.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

As stated above, Turkey does not recognize same-sex marriages, civil unions or domestic partnership benefits with its law.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

As stated above, Turkey does not recognize same-sex marriages, civil unions or any kind of domestic partnership benefits either for opposite-sex couples or same-sex couples.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

In Turkey, customary marriages (informal or traditional marriages without a civil registration) are not legally recognized. For a marriage to be legally valid, it must be registered with the civil authorities. The Turkish Civil Code requires all marriages to be performed and registered by a municipal marriage officer. Customary or religious-only marriages (such as those performed by an imam) do not have any legal standing unless they are also registered with the civil authorities.

9. If you have further comments on the matters raised in this section, please add them below.

--

Parenting

10. Can more than two people be recognised as the parents of a child?

It is not possible under Turkish law.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person who gives birth to the child is automatically registered as the mother in official records. This is based on the biological connection between the child and the person who gave birth. The legal system in Turkey currently does not offer the flexibility to choose a different designation (such as “father” or “parent”) for the birthing parent.

The father is typically identified as the biological male parent. If the parents are married at the time of the child's birth, the husband of the person giving birth is automatically recognized as the legal father. If the parents are unmarried, the father can be recognized through a process of paternity acknowledgment or a court decision establishing paternity.

Under Turkish law, the person giving birth cannot choose to be registered as "father" or a neutral term like "parent." The legal system is based on a binary understanding of gender, with the person giving birth automatically recognized as the mother in legal documents.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes adoption is always an option to have a child, subject to conditions to be met.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Under Turkish law, there is no law allowing or prohibiting adoption by same-sex couples. But adoption by same-sex couples is not recognized by law. Adoption by a single parent is allowed under some circumstances. And second parent adoption is also allowed. These adoption provisions of Turkish Civil Law are as follows:

Article 306 of Turkish Civil Code: *"A husband and wife may only together. Unmarried couples cannot adopt a child. For adoption, couples should have been married for five years and they must have reached the age of 31. The husband or wife, if the couple has been married for at least two years and s/he has reached the age of 31 may adopt the other's child."*

Article 307 of Turkish Civil Code: *"An unmarried person who has reached the age of 31 may adopt a child alone."*

However, adoption by same-sex couples is not permitted in Turkey; additionally, Turkish authorities have attempted to reclaim Turkish children adopted into foreign countries by same-sex couples. It is unclear that if there is such law that prevents this situation.

Surrogacy

15. Is surrogacy legal?

Under Turkish law, the mother is the person who gives birth to the child. This is a fact that cannot be disputed. Legal basis of it is the Article 282/1 of the Turkish Civil Code that says that the relationship between the mother and child is established through birth. In other words, surrogate motherhood "has no basis in Turkish law" and the surrogate mother is the actual mother because she is the one who gives birth to the child. Therefore, surrogacy is not legal in Turkey.

16. Is commercial/compensated surrogacy legal?

Surrogacy agreements are against Turkish legal rules, personal rights and Turkish public order. These agreements are considered to be null and void in Turkey, and cannot be executed. Parties cannot force each other to carry out the obligations of a surrogacy agreement. If a surrogate mother gets paid under the terms of a surrogacy agreement, the money can be a form of unjust enrichment and can be taken back under the Code of Obligations.

Moreover, if a Turkish couple wants to have a child through surrogacy, they usually choose to go abroad and come back with a baby, which they have registered under their names who are the genetic parents. Northern Cyprus, Ukraine and Georgia are some close countries where Turkish couples prefer to go and have their baby there through surrogacy.

Under the new regulations, it is forbidden for doctors to provide information on surrogacy.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

As explained above, it is illegal for everyone in Turkey.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

As explained above, adoption by same-sex couples is not permitted in Turkey; additionally, Turkish authorities have attempted to reclaim Turkish children adopted into foreign countries by same-sex couples. It is unclear that if there is such law that prevents this situation.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Under Turkish Civil Law, Regulations of Assisted-Reproduction Treatment Applications and Assisted-Reproduction Treatment Centers and Regulations of In vitro Fertilization; in vitro fertilization is only possible for the married couples in Turkey.

According to the Article 18/5 of the relevant regulation; the couple who uses treatment application shall use only their own reproductive cells. Using a donor in any way, producing embryos through a donor, using embryos that are produced with the egg and sperm received from the applicants on others or using embryos that are produced with the egg and sperm received from others on the applicants are forbidden. In case a pregnancy that is a conclusion of acting contrary to these rules is determined at any phase of the pregnancy, the treatment center shall be closed indefinitely and all the relevant workers shall be banned from working at other treatment centers.

As it is understood from this article; donating sperm, egg or surrogacy is not permitted under Turkish law.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

It would not be possible for same-sex couples to have a child through artificial insemination as it only applies to married couples and same-sex couples cannot marry under Turkish law.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Under Turkish Law, the female who gives birth to the child is the mother and Turkish law intends to protect the biological connection between the child and the mother. In addition to this fact, such treatment can be applied to a married couple using their own products (egg and sperm) so they are still both the biological and legal parents when the child is born.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

As stated above; same-sex marriage is not permitted under Turkish Civil Law and the same-sex marriages are not recognized by the state. Moreover, there is not any other alternative registration scheme entailing less rights and responsibilities than marriage and any kind of same-sex partnerships are not recognized by the state and Turkish state does not provide some/limited rights and obligations.

Thus, we cannot discuss any other divorce process rather than the process regulated for the opposite-sex married couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

As stated above, there is not any other alternative registration scheme entailing less rights and responsibilities than marriage for same-sex couples and any kind of same-sex partnerships are not recognized by the state and Turkish state does not provide some/limited rights and obligations.

Thus, we cannot discuss any other dissolution process rather than the process regulated for the opposite-sex married couples.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

As stated above; same-sex marriage is not permitted under Turkish Civil Law and the same-sex marriages are not recognized by the state and there is not any alternative registration scheme for same-sex couples and their marriage. Thus, we cannot discuss about dissolution of a same-sex couple's relationship and their financial and

custodial claims in this process within Turkish jurisdiction. Thus, in case of a same-sex relationship ends, the parties will not be able to make any financial claims against each other.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

As stated above, Turkey does not recognize same-sex marriages, civil unions or domestic partnership benefits for same-sex couples. Thus, there is not any specific regulation on inheritance for the same-sex couples.

Specifically; it should be indicated that, since the adoption, surrogacy or any other possible way to obtain a legal status for a child is not possible for same-sex couples in Turkey, they cannot have any member of their lower lineage who can inherit.

In terms of inheritance of spouses, as Turkey does not recognize same-sex marriages or any other alternative registration scheme such as civil unions or domestic partnership, a same-sex couple cannot be inheritor to each other.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

A same-sex couple that wishes to have each other as inheritors can prepare a testament to state their will about the inheritance. Although Turkey does not recognize same-sex marriages, civil unions or domestic partnership benefits for same-sex couples, they can leave their property to each other just like they can do the same for third parties; they do not need to be officially married to appoint each other as inheritors for themselves.

However, the reserved portion of the other inheritors of the deceased cannot be violated while preparing a testament.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, discrimination is prohibited by the Turkish Penal Code and it is deemed a crime to perform such discrimination.

30. Is gay conversion therapy banned?

There is no specific law in Turkey that explicitly prohibits conversion therapy for sexual orientation or gender identity. This means that, legally, the practice is neither officially supported nor formally banned.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Sex change has two stages in Turkey. First stage is to make an application to the Court for the permission for the operation. If the applicant meets the conditions required in the Article 40/1 of Turkish Civil Code, then an examination shall be requested to be performed in a training and research hospital. Usually, the Court requests a report to be prepared by the Gender Identity Counsel of these hospitals. In the first phase of this examination, a psychiatrist examines if the applicant is mentally available for the sex change (it is necessary to submit any other previous mental reports of the applicants if any to obtain a positive report). After the positive report, the treatment process starts and upon the official report of the training and research hospital, all the requirements shall be met.

After this stage, upon the correction with an official health board report that a sex-change operation has been held in accordance with the purpose of the given permission and medical procedures; the second stage begins to change sex in the civil registry that requires a second case to be filed and it is possible to file this case with the request of name change, too. However, when a name change is requested, the Court may need to hear witnesses besides the official health board report obtained.

Under Article 40 of the Turkish Civil Code; being not married/single is one of the requirements to obtain the permission of the Court for the sex change. Otherwise, this request of the applicant shall be rejected by the Court at the beginning of the whole process.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Gender-affirming treatments are possible under Turkish Civil Law with the conditions set under the Article 40 of Turkish Civil Code:

Article 40 of Turkish Civil Code

"A person who wishes to change his/her sex may make an application to the Court in person and request the permission for sex change. However, to obtain the permission, there are some requirements that shall be met; the applicant should be over eighteen, should be not married; should have the transsexual nature and the applicant is obliged to document that the sex change is mandatory for the applicant's mental health with an official health board report obtained from a training and research hospital.

When it is verified with an official health board report that a sex-change operation has been held in accordance with the purpose of the given permission and medical procedures, the court decides to perform the necessary corrections in the civil registry.”

Moreover, The Constitutional Court has decided to annul the legal requirement “*to be deprived of the ability to reproduce*” to allow sex change.

As can be seen from the law, applicant to have a gender-affirming treatment should at least be 18 and it is not available to the minors.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No, Turkey currently does not allow individuals to be legally identified as non-binary or use an “X” gender marker on official identity documents such as birth certificates or passports. Turkish law recognizes only the binary gender categories of male and female for the purposes of legal identification.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Under Article 40 of the Turkish Civil Code, being not married/single is one of the requirements to obtain the permission of the Court for the sex change. Otherwise, this request of the applicant shall be rejected by the Court at the beginning of the whole process.

However, in an extreme case where the Court permission has been obtained for a married applicant to transition; there are several different opinions on how this will affect the current marriage:

1. **First Opinion:** This opinion says that sex-change would cause the self-termination of the marriage because for the couples that apply for marriage, having the opposite sex is a requirement since the same-sex marriage is not allowed under Turkish Civil Law and in case of a same-sex marriage, the marriage is considered as “void”. Thus, it is thought in the doctrine that this condition should be taken into account during the marriage, not just at the beginning of the marriage and with this reason, if a married person changes his/her sex, his/her marriage should be considered as “void” automatically without needing any other transaction to be performed.
2. **Second Opinion:** This opinion says that the self-termination of the marriage is only possible with the death of a party as it is stated in the Law and sex-change does not conclude this situation. Sex-change of a party should be added to the Law as a reason of considering the marriage as “null”. A marriage established in accordance with Turkish Civil Code can only be terminated with a Court decision. In case a sex-change without the permission obtained from the Court, the sex-change will not be approved and recognized. Thus, the marriage will be valid on the documents since the party who had the sex-change operation without the permission of the Court cannot change his/her gender in the civil registry due to the lack of the Court’s permission. Thus, the only way for spouses to terminate this marriage is to file for a divorce case as based on the general grounds.

36. Is changing gender a ground for divorce?

Considering a marriage as “null” or “void” is a conclusion of the necessary conditions not meeting for the marriage, however, the other reasons occurred during the marriage can only be considered as a divorce ground.

Sex-change of a party after the marriage is not a lack of a condition at the time of the marriage, it is only a reason that makes the common life unbearable. Thus, there is not any penalty for changing gender during the marriage but it can be used as a divorce ground for “*irremediable breakdown of the marriage*” under the Article 166 of Turkish Civil Code.

It should be noted that this would be an extreme case since being single/not married is a requested condition for sex change and since the conditions are examined by the Court before approving the process.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Israel



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

They can be recognized as common law marriages. No difference.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

Yes. No differences.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

Not familiar with the term.

- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

Yes, courts have recognized psychological parenthood in addition to the biological parent.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

You cannot choose but a surrogate mother will not automatically be registered as the mother.

- 12. If you have further comments on the matters raised in this section, please add them below.**

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Adoption

- 13. Is adoption possible?**

Yes.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes but requires approval of a state appointed Board.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. Requires a court order.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, must not be of the same family. No.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Court order. No.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

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23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

No difference.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Yes.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The law prohibits discrimination based on gender.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? Yes If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

The individual's Health Fund approves the procedure. No consent is required.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

It would require the approval of the individual's Health Fund. Any surgery on a minor requires parental consent.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing.

36. Is changing gender a ground for divorce?

It is not a specific legal ground for divorce but a divorce would be granted to the petitioner in such cases.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Lebanon



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Article 534 of the Criminal Code (enacted in 1943) punishes “*intercourse against nature*” with imprisonment for up to one year.

Although many decisions considered this provision inapplicable to consensual homosexual acts, there are many cases where homosexuals were prosecuted / found guilty pursuant to this Article.

In some acquittal decisions, judges made dissident opinions considering that Article 534 of the Criminal Code applies to homosexual sexual acts.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

N/A.

3. If you have further comments on the matters raised in this section, please add them below.

The Criminal Appeal Court of Beirut found in 2018 that a sexual relationship between a man and a trans-sexual who had become a woman is not punishable under Article 534.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

No. All marriages held in Lebanon are religious marriages.

Each religious community has its own set of rules (recognized by the State) and none recognizes same-sex relationships or the possibility for same-sex couples to marry.

Civil marriages cannot be held in Lebanon and civil marriages between a man and a woman contracted abroad are recognized, subject to certain conditions.

5. Are foreign marriages of same-sex couples recognised?

Foreign marriages of same-sex couples may be tolerated, but cannot be recognized or given legal effect in Lebanon. Public order considerations would be invoked against such recognition (in the context of seeking *exequatur* to a foreign decision, for instance).

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No. There is no legally recognized status.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

De facto/cohabiting/live-in relationships exist, but are not recognized. Any attempt to obtain formal recognition may trigger prosecution under Article 534 of the Criminal Code

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Religious customary marriages are recognized, but there is no legal possibility to extend such recognition to same-sex marriages.

9. If you have further comments on the matters raised in this section, please add them below.

The presidents of religious communities have the right to file a recourse before the Constitutional Council in respect to matters dealing with “personal status”. Even if a law allowing recognition of same-sex relationships or marriages is ever passed by the parliament, it will very likely be subject to a recourse before the Constitutional Council.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

All marriages in Lebanon are necessarily between a man and a woman. The man will be named as father and the woman as mother. There is no possibility to be named or to opt to be named as a “parent” without further specification.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

It is possible for Christians, but not for Muslims. Adoption by Christians married in Lebanon is made by decision of the competent religious court. Muslims do not recognize the institution of adoption. Instead, they have the institution of “*Kafala*”, which allows them to raise non-biological children without claiming parenthood over them.

Lebanese courts have confirmed/granted *exequatur* to international adoptions (by heterosexual couples) in some cases.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Adoption for Christians in Lebanon is reserved to married heterosexual couples, subject to various conditions.

Surrogacy

15. Is surrogacy legal?

Surrogacy is neither defined, recognized nor organized under Lebanese laws.

16. Is commercial/compensated surrogacy legal?

N/A.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

N/A.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

N/A.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Article 30 of the Medical Ethics Act provides that artificial insemination or pregnancy through assisted reproductive technologies (ART) are permitted *“if consented in writing by both spouses, subject to the laws applied by civil and religious tribunals”*.

This implies that ART is only available to married heterosexual couples, but not to single parents or couples of the same-sex. The explicit reference to the religious laws emphasizes these restrictions.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

N/A.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Please see above. A pre-existing marriage is required and parentage questions would be inapplicable.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

N/A.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

N/A.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

N/A.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

None of the religious communities recognizes the possibility of inheritance for same-sex couples.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, it is possible. However, enforcement of the will may be jeopardized if it contains an explicit reference to the same-sex relationship.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Lebanon has acceded to the International Covenant on Civil and Political Rights in 1972. As such, Lebanon is bound by Article 26 thereof which provides that *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

However, Lebanon has not transposed these provisions into its local laws, including without limitation in respect to Article 534 of the Criminal Code.

30. Is gay conversion therapy banned?

No, but it is not authorized either.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Registration of personal status documents is governed, *inter alia*, by the Law on the Registration of Personal Status Documents dated 7 December 1951. It is a civil law applicable to all Lebanese and foreigners, irrespective of their religious community.

By virtue of this law, it is possible by virtue of an *ex parte* application filed before the Sole Judge Ruling on Personal Status Matters (a civil Judge) to request “corrections” in the register, in order to match the reality of the person. There is case law on change of gender based on this “correction” principle.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

There is no case law but the other party can file a recourse before the court for a decision regarding the marriage.

36. Is changing gender a ground for divorce?

It is not ground for divorce per se, because none of the existing laws even envisages a marriage between persons of the same gender.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

United Arab Emirates



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Answering this question requires us to return to the UAE's Criminal Code, Federal Law by Decree No. (31) of 2021 Promulgating the Crimes and Penalties Law, specifically Article (409), which states that:

"A penalty of incarceration for a period not less than (6) six months shall be imposed on whoever has sexual intercourse with a female, or commits sodomy with a male, who has completed (18) eighteen years of age with consent thereof. The same penalty shall be imposed on anyone who accepts to engage in such action.

No criminal lawsuit may be filed for the crime stipulated in the preceding paragraph except on the basis of a complaint from the husband or tutor.

In all cases, the husband or tutor has the right to waive the complaint, and the waiver shall result in the expiry of criminal action or the stay of execution of the penalty, as the case may be."

This article specifies the penalty for anyone who has sexual intercourse with a female or sodomises a male, the matter is the same, and the matter is the same if the male subject is a private person or a homosexual. Still, it stipulates that the subject must be over 18 years of age and the act must have been done with his consent, because the UAE laws derived from the Convention on the Rights of the Child, which the UAE has signed, consider a child born under 18 years of age as a child, for example, see Federal Law No. (3) of 2016 on Child Rights Law (Wadeema), in which the legislator stated in Article (1) definitions that :

"Child: Each and Every human being born alive and below 18 years of age."

The child has no will, and in this case, the operation is considered rape or indecent assault by force because his consent is not considered, so whoever exposes a male or female child under the age of eighteen to rape, this article does not apply to him, and he is punished with more severe penalties, sometimes up to the death penalty (see Article 406 of the Federal Law by Decree No. (31) of 2021 Promulgating the Crimes and Penalties Law).

If no complaint is filed by the guardian or husband – or wife – there is no crime, and the authorities will not intervene unless it is a public act, which is another crime.

If a complaint is filed by those whom the law gives the right to do so, the penalty for both parties is imprisonment for a period of not less than (6) six months. The law does not specify the maximum penalty, but it is known in the UAE that “imprisonment” shall not be for more than 3 years; otherwise, it will be converted to temporary imprisonment, which is between 3 years and 15 years.

We would also like to note, as stated in the tail of Article (409) that we mentioned above, that the person who filed the complaint has the right to waive it. In the event of a waiver, the criminal case will be terminated, or the judge will decide to suspend the execution of the penalty according to the circumstances of each case.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Yes. In the United Arab Emirates, it is illegal, and gender reassignment is not allowed and is punishable by law, and the “Federal Decree-Law No. (4) of 2016 Concerning Medical Liability” stipulates that it is prohibited for a doctor to operate this kind, as it states in Article (5/9) of it, that:

“It is forbidden for the doctor to do the following:

9. *Conduct sex change surgeries.”*

As for the prescribed penalty, Article (31) stipulates that “Whoever violates the provision of Article (5/9) of this Decree-Law shall be punished with imprisonment for a period of not less than three years and not more than ten years”.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

The answer is clearly no; same-sex marriages are not permitted in the UAE; instead, the UAE legislator has emphasized in the country’s laws that marriage is between a male and a female, as it is explicitly stated in Federal Decree-Law No. (41) of 2024 regarding the issuance of the new Personal Status Law, in the definition of engagement in Article (11) thereof as follows:

“Engagement is a man’s request to marry a woman who is permissible for him and a promise to marry her. Engagement is not deemed to be a marriage.”

The definition of marriage in Article (16) of the new Personal Status Law stipulates that:

“Marriage is a contract concluded in accordance with the provisions of this Law with elements and conditions between a man and a woman with the intention of perpetuating the marital relationship between them. It establishes rights and duties among spouses, aiming at chastity and purity, and the establishment of a stable family that spouses care for with affection and mercy.”

Article 2 of Cabinet Resolution No. (122) of 2023 Concerning the Executive Regulation of Federal Decree-Law No. (41) of 2022 on the Civil Personal Status (Non-Muslims) stipulates the conditions required to contract a civil marriage as follows:

“For a civil marriage contract to be established, the following conditions shall be met:

- 1. That both the husband and wife have attained at least (21) twenty-one Gregorian years.*
- 2. That the married couple shall have the legal capacity necessary to undertake legal actions.*
- 3. The civil marriage shall be executed between a male and a female.*
- 4. That the married couple explicitly express their consent to marriage.*
- 5. Marriage shall not take place between brothers, sons, grandchildren, paternal uncles, maternal uncles or relatives up to the third degree.*
- 6. The marriage shall not take place between the adopted child and the father or mother in the alternative family or any of their natural children.*
- 7. Never get marriage to two sisters, a wife and her mother, maternal aunt, paternal aunt or grandmother, if the legislation, to which the husband is subject, permits polygamy.*
- 8. The wife shall not have an existing marital relationship, and also the husband if the legislation, to which he is subject, does not permit polygamy. In all cases, the husband shall disclose any existing marital relationship.”*

The only marriage recognized in the UAE is between a man and a woman. No other marriage is recognized, neither between male and male or female and female, nor between human and animal, as we see in some world countries these days.

5. Are foreign marriages of same-sex couples recognised?

Based on what we have stated above, we reiterate and emphasize that the answer is: No.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is nothing in the laws of the UAE called a “civil partnership system” that permits a same-sex marriage relationship. If such a relationship occurs abroad, it is not recognized according to the country’s laws. Still, any agreement in a civil partnership contract between two people about financial matters, regardless of gender, in buying a house, for example, is subject to Federal Law No. (5) of 1985 issuing the Civil Transactions Law of the United Arab Emirates, and this does not mean any recognition of their marital sexual relationship if they are of the same gender; therefore, the permitted civil or commercial relationship is one thing, and the marriage relationship, whether by the civil partnership system.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There is no recognition whatsoever of de facto/cohabitation/same-sex relationships; it is just that the authorities do not intervene as long as the persons to whom the law gives the right to complain do not file a complaint against them, as we explained above in our answer to the first question.

As mentioned above, there is no comparison between same-sex marriage and natural marriage between a man and a woman, as stated in the question, because Emirati laws do not recognize this type of relationship in the first place.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

According to the text of Article (41) of Federal Decree-Law No. (41) of 2024 regarding the promulgation of the new Personal Status Law, under the title of documenting the marriage contract, which stipulates that:

- “1) The marriage contract must be documented and notarised in court in accordance with the applicable legislation.*
- 2) Any interested party may request proof of an undocumented marriage contract.*
- 3) The marriage contract must fulfil the requirements and submit the documents and medical reports specified by the legislation in force in this regard.”*

Article (4) of the Executive Regulation No. 122 of 2023 on the Executive Regulation of Federal Legislative Decree No. 41 of 2022 on the Civil Personal Status of Non-Muslims stipulates the procedures for submitting a civil marriage application as follows:

“Procedures for Submitting Civil Marriage Application

- 1. The married couple shall submit an application for a civil marriage to the authentication judge in accordance with the procedures followed in this regard.*
- 2. The following documents shall be submitted with the civil marriage application form No. (1) accompanying this Resolution:*
 - a. The supporting documents and ID cards of the civil marriage applicants.*
 - b. A document proving the residence of the civil marriage applicant in the State.*
 - c. A document issued by the competent authorities in the home country of the civil marriage applicant, showing their age.*
- 3. The marriage application form No. (1) accompanying this Resolution shall include the following:*

- a. *A declaration that there is no existing marital relationship for the wife, and also for the husband if the legislation, to which he is subject, does not permit polygamy.*
- b. *Any conditions to be agreed upon between the married couple that determine their rights during the period of marriage and post-divorce through divorce application form No. (3) accompanying this Resolution, in particular joint custody.*
- c. *Evidence of the married couple' express consent to the marriage contract.*
- d. *Signatures of the married couple.*
- e. *Disclosure Form No. (2) accompanying this Resolution."*

Article (5) of the regulation also stipulates the Civil Marriage Contract Procedures and Authentication:

- "1. The auditor shall be responsible for verifying the fulfillment of all conditions for marriage and the completion of all documents and forms stipulated in the Decree Law and this Resolution, and he may return the application to its applicants until the requirements are fulfilled.*
- 2. The application shall be admitted and referred to the authentication judge at the competent court after the required conditions are met and the fees are paid.*
- 3. If it becomes clear to the authentication judge at the competent court that the application meets all the conditions stipulated in the Decree Law and this Resolution, a hearing shall be scheduled for appearance for the sake of completing the procedures for authentication of the marriage contract.*
- 4. The married couple shall expressly express before the authentication judge at the competent court their consent to complete the procedures for the marriage in the scheduled hearing.*
- 1. The authentication judge shall authenticate the marriage contract when he verifies that there is nothing that legally impedes the validity of the consent of the married couple and after verifying proof of their signature on Disclosure Form No. (2) accompanying this Resolution.*
- 2. The competent court shall issue the civil marriage document in Arabic and English whenever necessary, taking into account the nationality of the parties and shall hand over a copy of the marriage document to each of the married couple in accordance with its procedures."*

These two articles of the above-mentioned laws clearly state that customary marriages can be documented if they fulfil the conditions set forth therein, and therefore, any interested party has the right to request proof of an undocumented marriage contract.

Regard the second part of the question, whether customary marriages are recognized between same-sex couples, has become clear from the previous answers. There is no recognition between same-sex couples at all, whether the marriage is documented or customary.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

The answer to this question is, of course, NO, because it is contrary to human nature. Initially, the child is not attributed to a person as long as he has a visible and known father, as Article (89) of Federal Decree-Law No. (41) of 2024 regarding the promulgation of the new Personal Status Law stipulates in the Conditions of Proving Lineage by Admission:

- “1. In order to prove lineage by admitting filiation, even during a dying sickness, the following conditions shall be met:*
 - a. The admitting person is an adult, sane, and having free will.*
 - b. The child’s lineage is unknown.*
 - c. The person to whom the admission is made confirms it if he/she is an adult and sane.*
 - d. The age difference between the person making the admission and the child supports its truth.*
- 2. The court may request a DNA test whenever it deems necessary.”*

And Article (14) of Law No. 41 of 2022 on the Civil Personal Status of Non-Muslims stipulates that the paternity of a child shall be established in accordance with the following:

- “1. The child’s parentage shall be established by marriage or by the acknowledgment of the father and mother, and the child’s birth certificate shall be issued in accordance with the legislation in force in this regard.*

The court may order a DNA test, in accordance with the rules governing the same, and shall not issue its order to prove the parentage to the person claiming it until after verifying the following:

- A. The child is of unknown parentage.*
- B. The age difference makes it likely that the child will be related to the alleged*
- C. father.*
- D. The Council of Ministers, based on the proposal of the Minister of Justice, may*
- E. issue a decision regulating the procedures and provisions of adoption and alternative families and the effects thereof.”*

Therefore, as these two articles prove, a person who has a known parentage may not be attributed to another person, and the short answer to the mentioned question is that more than two people cannot be recognised as the parents of a child.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Yes, if the child is born, the person is automatically named, so the mother who gives birth and is the child's mother is automatically called a mother, and she has no right to choose to be a "father." Her husband, the father, is automatically the "father" without their will, and they are not allowed to choose the name that they want at their own discretion.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

To answer this question, please note that there are two federal personal status laws in the United Arab Emirates; the first is Federal Decree-Law No. (41) of 2022 regarding the issuance of the Civil Personal Status Law for non-Muslims, and the second is Federal Decree- Law No. (41) of 2024 regarding the issuance of the Personal Status Law, whose provisions are in accordance with the provisions of Islamic jurisprudence, a law that may apply to Muslims and others if they do not request the application of another law at the time of the dispute between them.

The UAE legislator stipulated in Federal Legislative Decree No. (41) of 2022 regarding the issuance of the Civil Personal Status Law for Non-Muslims, in paragraph 3 of Article (14) mentioned above:

"3. The Council of Ministers, based on the proposal of the Minister of Justice, may issue a decision regulating the procedures and provisions of adoption and surrogate families and the effects thereof."

According to this article, non-Muslims are permitted to adopt in the UAE if they fulfil the conditions set out in the decisions that may be issued by the Council of Ministers in this regard.

As for Muslims, Islamic jurisprudence has prohibited adoption, so Federal Decree- Law No. (41) of 2024, regarding the promulgation of the new Personal Status Law, which was issued in accordance with the provisions of Islamic jurisprudence, did not provide for this.

The United Arab Emirates has created an alternative solution for children of unknown parentage, orphans, and foundlings, which is summarised as follows:

1. Fostering children of unknown parentage and caring for orphans:

The UAE does not recognize the adoption system but allows a qualified Emirati family to foster and raise a child of unknown parentage, subject to specific terms and conditions. The UAE provides monthly assistance to orphans. Emiratis and residents can sponsor the cost of living for children within the framework of various childcare programs overseen by charitable and humanitarian institutions in the country.

2. Fostering children of unknown parentage:

The Child Rights Law stipulates that a child deprived of a natural family environment, permanently or temporarily, has the right to alternative care through:

- a) The foster family.
- b) Public or private social welfare institutions if a foster family is unavailable.

3. The system of fostering and caring for children of unknown parentage is governed by Federal Decree-Law No. (24) of 2022 on children of unknown parentage, which aims to organise the care and fostering of children of unknown parentage through:

- a) Providing all the necessary support for them regarding health, psychological, social, educational, and recreational aspects.
- b) Creating and securing the necessary living conditions for their natural development.
- c) Protect them from being subjected to abuse, inhumane treatment, or neglect, and provide them with a sound social upbringing.

The Ministry of Community Development supervises all procedural and organizational aspects of the country's care homes for children of unknown parentage.

A family wishing to foster a child of unknown parentage must contact the Ministry of Community Development and submit all the documents specified by law.

4. Criteria for choosing a foster family:

The foster family must fulfil the following criteria and conditions:

- a) The family must be Muslim citizens residing in the country. (Non-Muslims whose law allows adoption).
- b) The couple must be at least 25 years old.
- c) The single mother must be at least 30 years old.

- d) Neither of the spouses or the single mother has been previously convicted of a crime against honour or honesty.
- e) Applicants must prove that they are free from infectious and psychological diseases and mental disorders that affect the child's health and safety, through a report issued by an official medical authority.
- f) The family or single mother must be able to support its members and the foster child financially.
- g) The family or single mother must undertake to treat the child well, raise him/her properly, take care of his/her health, education, protection and development.

The law also specifies controls to follow up on the foster family and its obligations. In addition, a field visit to the home of the family applying to foster a child is conducted to ensure that it complies with the conditions mentioned in the law. The application of the family applying for foster care is rejected if one or more of the conditions are violated. The law also stipulates penalties if foster families violate their obligations towards the foster child.

5. **Procedures to be followed when a child of unknown parentage is found:**

The person must immediately report to the nearest police station with the clothes that were on the child and all other objects found on or near the child, and must specify the time, date and place where the child was found.

If it turns out that the child is in a condition that fears for his/her life and safety, the person who found him/her must immediately inform the police station of the situation and inquire about what he/she should do.

6. **Organisations that provide foster care services:**

The following organisations provide the foster care service:

- a) Community Development Authority – Dubai (Family Village).
- b) Department of Social Services – Sharjah (Social Welfare House).
- c) Abu Dhabi Department of Community Development (Family Welfare Authority).

These institutions play a key role in providing family fostering, continuous follow-up for children of unknown parentage according to each emirate encouraging Emirati families to foster, which translates into the inclusion of a child in a family that will raise and care for him, and adopting the idea of an alternative family, which provides a stable environment for the child through female employees who work as surrogate mothers and aunts in a home environment similar to a natural family.

7. **Social welfare programmes for children:**

The Emirates Red Crescent provides a programme to sponsor orphans, their living expenses and their living and educational care, and the scope of the programme extends inside and outside the UAE.

In 2010, the Zakat Fund in the UAE launched the “Kafeel” project, which aims to care for orphans and support them financially and morally.

According to Federal Law No. 2 of 2001 on Social Security, orphans and persons of unknown parentage are entitled to monthly assistance and social benefits in accordance with the provisions of the law.

There are also many social and humanitarian organisations that provide social assistance services for orphans and children of unknown parentage.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Answer: Yes, adoption is for natural couples, i.e. male and female couples only, and as for the rest of the categories mentioned in the question, namely (unmarried individuals, unmarried couples, same-sex couples, transgender people, non-binary people, or bisexual people) are categories whose relationship is not recognised by the laws of the UAE as valid, and therefore they are not entitled to adopt.

Surrogacy

15. Is surrogacy legal?

Surrogacy is forbidden and prohibited in Islamic jurisprudence, and the decision of the Islamic Research Academy No. (1) was issued at its session on 29/3/2001, prohibiting surrogacy.

Also, contemporary jurists were unanimous in discussing this issue in one of the seminars of the Islamic Organisation for Medical Sciences on its prohibition; because there is a third party other than the husband who owns the sperm and the wife who owns the egg, and it is not possible to determine with certainty with the presence of the third party the true mother of this child, whether it is the owner of the egg from which the child is created and carries all its genetic characteristics, or the foster mother who owns the womb in which its growth, development and change until it becomes a full-fledged embryo, is entitled to it.

A child who comes between two mothers who does not know who his mother is for sure will live torn between his belonging to this and that, and this is one of the reasons that led the jurists to conclude that surrogacy is legally forbidden.

Therefore, the laws of the UAE do not allow this, at least not yet.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Surrogacy is not recognised in the UAE as per the above.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

If the process takes place in any country that legally allows it, the UAE does not interfere. The UAE authorities recognise this as long as their identification papers and personal documents are intact. They will not look for backgrounds, bearing in mind that a man cannot be a mother and a woman a father.

Unless there is a dispute between the mother of the egg and the mother who gave birth to the child, and the matter reaches the court, then the court will rule after proving the child to the mother who gave birth, according to what is stated in the *Holy Qur'an*: (Their mothers are only those who gave birth to them) *Surah Al-Majjadalah* 2.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

It is well established in the UAE that everything mentioned in the question is not permitted by law. This matter is derived from Islamic jurisprudence, which prohibits donating such things because of the overlapping and mixing of genealogies. This affects inheritance by taking it from those who do not deserve it and depriving those who deserve it.

Also, the law in the United Arab Emirates permits insemination only between the sperm and eggs of the spouses only, during married life and during their lifetime, and may not be used after divorce or the death of one or both parties, all regardless of whether the donation is to married couples of the same-sex or unmarried individuals of the same-sex, it is neither permissible nor allowed, except between spouses and under the conditions that we have explained.

In this regard, Article (14) of “Federal Legislative Decree No. (4) of 2016 on Medical Liability” stipulates that:

“It is not permissible to perform assisted reproductive technology on a woman or implant an embryo in her womb except in accordance with the provisions of the legislation in force in the State in this regard.”

If this is violated, Article (28/1) of the same law stipulates the prescribed penalty, which is as follows:

“1) Any person who violates any of the provisions of Articles (12/1) and (14) of this Decree-Law shall be punished by imprisonment for a period of not less than two years and not more than five years and a fine of not less than (200,000) two hundred thousand dirhams and not more than (500,000) five hundred thousand dirhams or one of these two penalties.”

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

We have already answered this question above, and in short, we say that same-sex marriage is not recognized at all, so how can the child between them be recognized? Of course, a child like this is not recognized, and it is not possible – as we said – to consider the mother as a father or the father as a mother as some people wish,

contrary to common sense and the natural state, as the mother is a mother and the father is a father, and no other is acceptable.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

If the child was conceived from the husband's sperm and the wife's eggs during the marriage and their lives, and neither of them has died, the child is recognized as their child and will inherit after their death.

As for the repeated part of the question (same-sex relationship), the repeated answer does not recognize them as a couple at all, let alone remember the consequences of this illegal and illegitimate relationship.

If this happens in any clinic, the country's laws stipulate a penalty for the perpetrators with the permanent closure of the license and clinic closure.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

I think after answering the questions above, we do not need to repeat the answer that same-sex marriage is illegal in the UAE. Therefore, there is no divorce until we discuss the differences in divorce.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

There is no such thing in the UAE. We only have one form of marital relationship, a complete marriage between a woman and a man, as described in previous answers to this questionnaire. We confirm that no other relationship other than this straightforward relationship is recognized in the UAE.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Such relationships are not recognized so that there is room for such claims, especially custody, which is not awarded if the child does not belong to them biologically because the undeniable reality is that the child does not come from a same-sex couple. Therefore, there is no room for comparison between them and the relationship between heterosexual couples, as heterosexual couples are subject to the laws of the UAE according to their religion and their laws according to their nationalities if they wish to do so.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

There is no inheritance between them, as no recognized relationship exists between them.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

We have previously confirmed that the laws of the UAE recognize no same-sex marriage, and therefore, there is no room to discuss inheritance between them. Still, for alternative arrangements that have nothing to do with the marriage between them, the regulation of wills for non-Muslims is mentioned in Federal Decree-Law No. (41) of 2022 regarding the issuance of the Civil Personal Status Law in Article (11/1) on inheritance distribution, which states that:

“1) The testator shall have the right to leave a will with the entire property he owns in the State in favor of anybody he wants in accordance with the controls specified by the Executive Regulations of this Decree-Law.”

Therefore, the heir has the right to bequeath his estate to whomever he wishes, whether he has a valid or invalid marital relationship with him, his relatives or others.

There is no provision in this law regarding gifts, and therefore, in accordance with Article (15) of this law regarding *“what is not specifically provided for,”* which stipulates that:

“The laws and legislations in force in the State shall apply in matters for which no special provision is made in this Decree-Law.”

Therefore, the general rules will be applied to gifts. The person has the right to gift whatever he wants, but in case his real heirs object after his death, the court will look into the matter and rule as it deems appropriate according to the evidence of each party.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The law does not discriminate between individuals based on gender (transgender, bisexual, non-binary) or sexual orientation, as everyone is equal before the law in civil matters, but the talk is limited to personal status, and we also note that the authorities have nothing to do with employment matters. In employment matters, each person is appointed according to his scientific qualifications and competence. As for housing, it does not differentiate between people because of their sexual orientation, as everyone deserves to live humanely. There is no difference between normal human beings and transgender/bisexual/non-binary people.) or sexual orientation or others.

30. Is gay conversion therapy banned?

In the United Arab Emirates, gender reassignment or sex change is not considered a treatment, but the treatment is for the hermaphrodite, whose organs are shared; that is, he has male and female genitals at the same time, which is considered a birth defect, and it is permissible to operate to correct and treat it, but as for sex change or conversion, it is legally prohibited and those who perform it are subject to legal accountability and punishment.

The Federal Decree-Law No. (4) of 2016 on Medical Liability has clarified all of this in detail, as Article (1) stipulates the definition of some of the terms addressed by the law, including:

“Sex change: The change of a sex of a person whose sexual orientation is clear whether as a male or a female, whose physical sexual aspects are identical to his physiological, biological and genetic characteristics and there is no suspicion in his / her sexual identity as a male or a female. This definition shall also include the sex reassignment surgery against the sexual identity indicated by the medical analyses.

Sex reassignment: Medical intervention for the purpose of reassigning the sex of a person whose sexual orientation is ambiguous; there is a suspicion of whether he / she is a male or a female. For example, if such person has physical sexual aspects different from the physiological, biological and genetic characteristics and his appearance indicate that he is a male while he is in a fact a female and vice versa.

Cloning: Means the creation of a human being by the transfer of a nucleus from a human body cell to an enucleated ovum. The resulting cells reproduce forming a fetus which is a genetic copy almost identical to the owner of the body cell.”

As for the permissibility and prohibition, Article (5/9) of it, that:

“It is forbidden for the doctor to do the following:

9. *Conduct sex change surgeries.”*

As for the prescribed penalty, Article (31) stipulates that

“Whoever violates the provision of Article (5/9) of this Decree-Law shall be punished with imprisonment for a period of not less than three years and not more than ten years.”

Concerning sex correction operations, the legislator included it in Article (7) of this law, where it stipulates that

“The sex reassignment surgeries may be conducted subject to the following conditions:

1. *The person’s sexual orientation shall be ambiguous and there is a suspicion of whether he / she is a male or a female.*
2. *His / her sexual aspects are different from the physiological, biological and genetic characteristics.*
3. *The provisions of the two paragraphs (1 and 2) of this Article shall be confirmed by medical reports and by the approval of a specialized medical committee formed by the health authority for the purposes of*

identifying the patient's sex and approving the reassignment surgery. Such committee must refer the issue to the psychologist to carry out the necessary mental adaptation."

They are all permissible and permissible.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

We have already stated that sex reassignment is strictly prohibited and is a punishable offense, and we have provided all these details in answer to the previous question.

It should be noted that sex reassignment surgery is considered a crime and, therefore, is not approved by the court. And for your information, some cases have been filed to obtain court approval to change the sex of some individuals for special reasons. Still, all these cases have been rejected, and the consent of the husband or not is of no value as long as this medical procedure is considered a crime.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Suppose this question intends to change or change the sex of the child, as explained above. In that case, this is not possible at all as it is a punishable offense as mentioned above, but if it is to correct the sex, it is permissible. Treatments are available to confirm the gender identity of the intersex person, for example. Of course, the parents must take their child to the doctor for this corrective surgery after their consent for this operation. Then, the sex of the child must be confirmed in the official records according to the proper procedures.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

This is strictly prohibited in the UAE, and there is only a male or female gender. As for the entry of foreigners who are registered as non-binary or have an X on their passport, the authorities at the airport have clear instructions to refuse them entry into the country.

35. What happens to the status of the marriage/civil partnership when one party transitions?

We do not have a civil partnership in marriage, but if one spouse changes his/her gender, the other spouse may request a divorce based on the change to the same gender as the other spouse.

36. Is changing gender a ground for divorce?

Yes, and since gender reassignment is against the laws of the UAE, it will undoubtedly be a ground for divorce if gender reassignment is proven.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Canada



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

N/A.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. No.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

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7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Common law couples (people who are not married) are recognized in Canada regardless of the sex of the partners. For most areas there are no differences (parenting, support, government benefits).

Government benefits and programs are available to and they recognize unmarried couples (regardless of the sex of the couple)

Some provinces in Canada have specific legislation to recognize domestic partnership. Some provinces recognize these relationships naturally and other provinces require the couple to register their relationship to get the same rights as married spouses. (These rights exist regardless of the sex of the couple).

In some provinces common law couples (regardless of the sex of the couple) are referred to in legislation as Adult Interdependent Partners.

There are differences between common law couples and married couples regarding property division rights upon separation in most provinces in Canada. Again, no difference for same-sex couples. For example, there are difference between the provinces regarding the right of a survivor to make a claim against property under legislation held by the other spouse upon death. They also are not included in the list of personal representatives to administer an intestate estate. In many provinces there is no presumptive to an equal division of property upon relationship breakdown. These omissions in law apply equally to common law couples regardless of the sex of the couple.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes, but this applies to foreign marriages. In Canada a marriage must meet the requirements of the provincial Marriage Act (varies slightly by province).

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

In some provinces there is administrative recognition of legal rights to parentage by more than two people where the child is conceived by assisted reproduction. Otherwise, if the provincial legislation does not provide for it, a parents is required to obtain a judicial declaration to have more than two legal parents.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In provinces with parentage legislation ensuring equal rights to parentage, the person who gives birth to the child is the birth parent. The person married to or in a common law relationship with the birth parent is the other parent unless they declare otherwise.

In provinces such as Nova Scotia, where the common law still applies parentage laws discriminate against LGBTQIA+ families. The birth parent is the child's legal mother and only the man married to her at the time of the child's birth is automatically a legal parent on the child's birth. Fathers otherwise can be determined by paternity testing pursuant to provincial parenting legislation. Aside from the man married to the birth mother at the time of the child's birth, or the man declared to be the father by paternity testing, in order for the non-birth parent to have full legal parentage they must adopt the child or receive a judicial declaration of parentage.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

While nothing is wrong with using a commercial service to locate a surrogate, the rules do not allow compensation for profit but do allow compensation for expenses. For example, you can be reimbursed \$2000 a month for expenses.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

This is complicated. It would depend on the legal status of parentage in the originating country. The parents may have to apply for citizenship of the child. An adoption may be required but it depends on the province.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Gamete and embryo donation is federally regulated. There's a federal law that regulates the broad strokes of assisted reproduction, but the rules about parentage are provincial. No difference regarding the sex of the couple.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

There are differences between provinces. For example in BC, an agreement executed prior to conception is capable of determining parentage for all purposes of the law, but BC is an outlier. In Nova Scotia 2SLGBTQIA+ persons are having to get affidavits signed by known sperm donors in order to be listed as parents on the child's birth certificate.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Yes, the child is considered their parent's child.

No difference regarding the sex of the couple.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No difference in divorce law – all couples are treated the same for all issues across Canada.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Same sex couples have different rights depending on the province where they live at the time of their separation. There is no difference regarding the sex of the couple.

In all provinces common law couples have a right to seek spousal support.

In some provinces common law couples have the same rights as married couples regarding the division of assets. In other provinces common law couples only have rights based on title or common law torts e.g. unjust enrichment or *quantum meruit*.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

As discussed above. No difference.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes – no difference.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, it is not permitted under any circumstances.

30. Is gay conversion therapy banned?

Yes it is banned (January 2022).

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

As of right. Person may change their sex with the vital statistics office.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, but requirement for parental consent changes province by province.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Court sanction isn't required It's a matter of applying to the provincial vital statistics agency.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing.

36. Is changing gender a ground for divorce?

No.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of California



Contributor Name	Andrew J. Botros, Esq.
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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

As of 2003, various states in the southern United States illegalized consensual homosexual sexual acts. However, in 2003, the United States Supreme Court issued *Lawrence v. Texas*, which struck down Texas' anti-sodomy law as unconstitutional. In the United States, now all forms of private, consensual non-procreative sexual activities between consenting individuals of is lawful, regardless of whether those acts are homosexual or heterosexual.

As to any penalties involved – N/A, though the plaintiff in *Lawrence v. Texas* was fined.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Not for adults. Many states ban gender affirming care for minors, but California is not one of them.

There are no other elements of criminal law that relate only or primarily to homosexuals as they are unconstitutional.

3. If you have further comments on the matters raised in this section, please add them below.

N/A.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, throughout the entire United States.

5. Are foreign marriages of same-sex couples recognised?

Yes, throughout the entire United States.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

In California, we call civil union type schemes “Domestic Partnerships.” Both same-sex and opposite-sex couples can access it. I don’t believe the United States federal government recognizes these relationships as marriages, so such individuals cannot get the tax benefits of filing as a couple.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

De facto or cohabiting/live-in relationships are not recognized for either same-sex or opposite-sex couples.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes and yes, throughout the entire United States.

9. If you have further comments on the matters raised in this section, please add them below.

All 50 states were required to recognize same-sex marriages in 2015 after the United States Supreme Court issued *Obergefell v. Hodges*. I should point out that Justice Thomas has suggested in his concurring opinion in *Dobbs* (the United States Supreme Court which returned the question of abortion back to the individual states) that *Lawrence v. Texas* and *Obergefell v. Hodges* should be revisited.

Parenting

10. Can more than two people be recognised as the parents of a child?

As of 2013, yes. Prior to 2013, no.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

This is complicated but I’ll try to make it simple. Under California law, certain criteria must be met in order for someone to potentially be named a parent. This applies equally to women and men, including the mother who gave birth to a child:

1. He or she is the biological parent.
2. He or she was married to (or in a registered domestic partnership with) the child’s biological parent when the child was born.

3. He or she attempted to marry the other parent before the child's birth but the marriage is later found invalid.
4. He or she married (or attempted to marry) the child's other parent after the child's birth and agreed to be listed as the parent on the birth certificate or paid child support.
5. He or she *"received the child into their home and openly held out the child as their natural child."*

If there is more than one parent that fits all these criteria, the Court has to basically choose the two best parents. Except for the exception listed below, being a biological parent in and of itself does not give that parent any additional advantage to becoming named the parent. The exception: unless the parent is a biological parent and that biological parent did everything they could since birth to try to have a relationship with the child. If they do so and are unable to have access to their child but promptly sue for parentage, they have a constitutional right to be the parent.

Once the Court decides two parents, it could name an additional parent, but can only do so if the child would suffer extraordinary detriment otherwise.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not in California, but other states permit adoption agencies to discriminate based on these factors.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not in California. I'm not sure elsewhere.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. No other steps required.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, it is legal. I don't know what requirements must be met, if any in order to terminate the parental relationship between the donor and the child.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

No.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No. Same as married couples: division of community property estate and spousal support/child support. These claims do not differ in any way from opposite-sex couples.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Dissolution of domestic partnership. It's the same form as a divorce:

Same financial claims can be made on dissolution of the civil union – just like a divorce. There are no differences between the financial provision made for same-sex as opposed to opposite-sex couples.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

California does not recognize de facto or common-law marriages for opposite or same-sex couples. However, we recognize that people in committed relationships can form contracts like everyone else. If one party takes care of the other party's business relationships and the other party promises to take care of that party for the rest of their life for doing that, that could be an enforceable contract. We call these Marvin actions after the actor and the famous case that bears his name.

The law does not treat children of unmarried parents any differently from children of married parents and the parental rights or responsibility of unmarried parents do not differ from those of married parents.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Not anywhere in the United States.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, anywhere in the United States.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Sexual orientation – In California, pretty extensively. Federal law prohibits employment discrimination based on sexual orientation or gender identity. But some states permit private businesses to refuse to do business with homosexuals. They can do so on what are called “Religious Freedom” laws.

Transgender, intersex and non-binary people – Yes, federally as it relates to employment. In California, it's very broad. Other states are probably not as liberal as California in this respect.

30. Is gay conversion therapy banned?

Yes.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, but parental consent is required.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing.

36. Is changing gender a ground for divorce?

In California, you don't need a reason to get a divorce. Changing gender does not affect the divorce process in any way.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Colorado



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. There are no current laws under 18 CO St Art. 3, Pt. 4 which allude to homosexuality being illegal when consensual.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Gender affirming treatment is legal for adults in Colorado. There are some bills that attempt to affirm children's gender identity, but they are not as vast as the protections for adults.

- a) In 2023, Colorado became the first state in the country to explicitly include gender-affirming care services in its benchmark health insurance plan for essential health benefits.
- b) Colorado Regulation 4-2-62 prohibits discrimination in private health insurance based on sexual orientation or gender identity. Private insurance plans sold in Colorado cannot deny, exclude, or otherwise limit coverage for medically necessary services, in accordance with generally accepted professional standards of care, based on a person's sexual orientation or gender identity.
- c) SB23-188 sought to protect healthcare providers in Colorado that provide gender affirming care from persecution within the state and from other states. The bill was signed into law on April 21, 2023.
- d) The Foster Care Bill of Rights which was passed in 2024 includes provisions which mandate that foster children have adequate and gender affirming food, clothing, hygiene products and necessary hygiene services in all potential placements

Are there other elements of criminal law that relate only or primarily to homosexuals?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can marry. There are no differences between opposite-sex and same-sex marriages. This is because of *Obergefell v. Hodges*.

5. Are foreign marriages of same-sex couples recognised?

Yes, because of *Obergefell v. Hodges*.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is a civil union-type scheme governed by Article 15 of Title 14. Both LGBTQ and heterosexual partners can get a civil union in Colorado.

Partners in a civil union have the same rights as married spouses.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Yes, de facto/cohabiting/live-in relationships for same-sex couples are recognised. There are no differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Colorado recognizes common law marriage when a party holds itself out as married. It is recognized for same-sex couples.

9. If you have further comments on the matters raised in this section, please add them below.

The Colorado constitution previously had an amendment added in 2006 which stated “*only a union of one man and one woman shall be valid or recognized as a marriage in this state.*” In 2024, Coloradans were given the ability to adopt Amendment J which would strike that phrase. The amendment only required a simple majority vote to pass. The state passed the amendment with more than 60% of voters.

Parenting

10. Can more than two people be recognised as the parents of a child?

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11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person giving birth to the child can immediately establish their legal relationship with the child. A parent that did not give birth must establish proof of relationship with the child through other means. An adoptive parent establishes a relationship by showing proof of adoption.

12. If you have further comments on the matters raised in this section, please add them below.

- a) C.R.S. §19-4-102.5(2) *"Unless the context otherwise requires, any reference in this title 19 to 'father' includes a parent of any gender, any reference to 'mother' includes a parent of any gender, and any reference to 'paternity' is equally applicable to 'parentage'."*
- b) C.R.S. 19-4-105(1) *"A person is presumed to be the natural parent of a child if: (a) The person and the parent who gave birth to the child are or have been married to each other or are in a civil union pursuant to article 15 of title 14, and the child is born during the marriage of civil union, within three hundred days after the marriage or civil union is terminated by death, annulment, declaration of invalidity of marriage or civil union, dissolution of marriage of civil union, or divorce, or after a decree of legal separation is entered by a court."*

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

C.R.S. 19-5-202(1) states that *"Any person twenty-one years of age or older, including a foster parent may petition the court to decree an adoption."*

Timeline: A Colorado court shall issue a decree declaring an adoption granted by a court of competent jurisdiction or entity of a country other than the U.S. as valid after finding that: (1) At the time the petition was filed one of the adopting parents is a resident of the US and of Colorado, (2) The original or a certified copy of a valid foreign adoption decree is presented to the court, and (3) The child is either a permanent resident or naturalized citizen of the US.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Anyone in Colorado can access surrogacy as long as they follow the Surrogacy Agreement Act.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Colorado recognizes surrogacy from overseas if the contract follows the guidelines laid out in the Surrogacy Agreement Act.

Pursuant to C.R.S. 19-4.5-106, it does not appear that there are any differences between international and domestic surrogacy.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, gamete and/or embryo donation is legal. The donors cannot be anonymous pursuant to the Donor-Conceived Persons and Families of Donor-Conceived Persons Protection Act that passed in 2022. Anyone can undertake surrogacy and assisted reproductive treatment procedures (including IVF).

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

20 (i) Can the parental relationship between the donor and the child be terminated if the donation is made to a same-sex married couple?

Yes.

20 (ii) Can the parental relationship between the donor and child be terminated if the donation is made to a homosexual unmarried woman or man?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

“Intended Parent means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.”

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No, there are no differences in the divorce process for same-sex couples. The financial claims that can be made are the same claims as a heterosexual couple could make.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The parties must file a dissolution of civil union case with their district court. Financial claims can be made on the dissolution of the civil union – the process is very similar to a divorce. There are no differences between dissolution of same-sex as opposed to opposite-sex unions.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

If a common law marriage is established the parties will have a normal divorce. The couple can make financial claims. These claims do not differ from the claims that can be made by an opposite-sex couple.

24 (i) Does the law treat children of unmarried parents any differently from children of married parents? If so, how?

No, the standard for children is always best interests regardless of their parent’s marital status.

24(ii) Do the parental rights or responsibility of unmarried parents differ from those of married parents?

No.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

--

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Sexual orientation is a protected class in Colorado. However there was a recent U.S. Supreme Court case which challenged the breadth of Colorado's protections. The case name was *303 Creative LLC v. Elenis*, and in a 6-3 decision the USSC struck down Colorado's protections for LGBTQ individuals.

CADA also protects transgender and non-binary individuals. However federal protections have been rolled back in Trump's administration.

30. Is gay conversion therapy banned?

Colorado has the Minor Conversion Therapy Law this prohibits mental health professionals from attempting to change a minor's sexual orientation. A violation of this law can lead to a \$5000 fine and the loss of the professional's license.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Colorado you can, but the Trump administration is actively limiting this so the answer is subject to change.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes. Legally the law protects children's interest in accessing gender affirming care, however in practice it is not as readily available.

33(i) Does gender affirming medical care for children require court sanction? If not, how is consent for medical care assessed?

No.

33(ii) Is gender "correction" or affirmation surgery on children prohibited?

Surgery is also available for children but is heavily limited based on a doctor's recommendations.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Not anymore. The Trump administration recently overturned the laws that allowed this.

35. What happens to the status of the marriage/civil partnership when one party transitions?

They must be updated to remain in effect, or the other party has the option to get divorced.

35(i) Where a person was married prior to changing their gender, is their spouse's consent required for their gaining gender recognition?

No.

36. Is changing gender a ground for divorce?

No. Colorado is a no-fault state.

36(i) Does changing gender affect the divorce process in any way?

No.

36(ii) Does changing gender affect inheritance?

No.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Connecticut



Contributor Name	Jill H. Blomberg, Esq. and Laura L. Battey, Esq. with assistance from Bree Wilkes, Legal Intern
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Contributor Firm	Schoonmaker, George, Blomberg, Bryniczka & Welsh P.C.

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. No, no differences.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?
-

Yes. No, no differences.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?
-

No.

9. If you have further comments on the matters raised in this section, please add them below.
-

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Parenting

10. Can more than two people be recognised as the parents of a child?
-

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?
-

In Connecticut, the person giving birth is automatically named the mother on the birth certificate.

12. If you have further comments on the matters raised in this section, please add them below.
-

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Adoption

13. Is adoption possible?
-

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?
-

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non- binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. No further steps are required.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same- sex unmarried individual?

Yes. In Connecticut, a donor automatically has no legal parental rights or responsibilities for any resulting child.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

In Connecticut, if a person gives birth to a child following IVF treatment, the spouse is automatically recognized as a legal parent, regardless of sex.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Any dissolution is handled through the standard divorce process.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

None are legally recognized as marriages.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes. Connecticut law prohibits discrimination on the basis of sexual orientation and gender identity or expression (including transgender, non-binary, and intersex identities).

30. Is gay conversion therapy banned?

Yes, for minors.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes. In Connecticut, an adult can legally change their gender without court involvement and without spousal consent. It is considered a legal right and is done by applying to appropriate state agencies.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes. Minors seeking gender-affirming care, including hormone therapy, require parental consent unless they are 16 or older and can consent to outpatient mental health treatment. If a minor is seeking care related to gender dysphoria, existing laws regarding outpatient mental health treatment may apply, allowing minors to consent to such treatment without parental consent under certain circumstances.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing.

36. Is changing gender a ground for divorce?

No.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Florida



Contributor Name	Jorge Cestero
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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, although Florida's sodomy law has not been repealed. There are no penalties, as it has been superseded by Federal law. Same sex marriage legal since 2015.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Florida has laws banning health care (gender affirming) for transgender minors and restricting it for transgender adults. There can be criminal penalties (including felony penalties) on providers who give gender-affirming care; it takes licenses away from those providers; and it would prohibit Medicare from covering gender-affirming care for transgender youth or adults. It would also forbid public funds, including those of a public university, public hospital, city, or county, and Medicare, from being used to provide benefits that include gender-affirming care – for transgender people of all ages. And – uniquely – it allows the state to remove trans children from their parents if they are receiving transition care by purporting to give Florida family courts jurisdiction to set aside another state's custody determination for a young person if their parents have authorized or might authorize best practice, age-appropriate gender-affirming health care.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. No.

5. Are foreign marriages of same-sex couples recognised?

Yes, assuming they are valid in the place of marriage.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Not any more.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

No.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting**10. Can more than two people be recognised as the parents of a child?**

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Auto mother.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption**13. Is adoption possible?**

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Generally, yes.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, gamete (sperm and egg) and embryo donation are legal in Florida, and under state law, the donor generally relinquishes all parental rights to any resulting child unless they are part of the “commissioning couple” or have a pre-planned adoption agreement in place, effectively terminating the parental relationship without further action needed; this means that a separate legal process to terminate parental rights is usually not necessary for the donor.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

See above.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

N/A.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

N/A.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Florida's Bureau of Vital Statistics will amend the gender marker on your birth certificate if it receives "*original, certified, or notarized supporting documentary evidence*" of your gender transition. What you are required to provide as evidence is not explicitly defined by law.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing.

36. Is changing gender a ground for divorce?

Florida is a no-fault divorce jurisdiction.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Illinois



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Contributor Firm	Emily Alper of Ward Family Law with assistance from interns at Davis Friedman Kristen Abraham, Allison Frain and Jennifer C. Tenghea

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

In Illinois it is not illegal to either be homosexual or engage in consensual homosexual acts. However, this was not always the case. Illinois officially decriminalized being homosexual or consensual homosexual acts with the 1961 Criminal Code revision which went into effect in January 1962. Specifically, the revision removed the crime of consensual sodomy which made it illegal to engage in any sexual activity which was deemed to be deviant. Up until this point, homosexual behaviour was considered deviant and against nature and therefore, was considered illegal.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so, what are the penalties?

No, in fact, in Illinois gender identity and gender affirming care is carefully protected. Pursuant to the Illinois Human Rights Act it is illegal to discriminate based on gender identity as it pertains to employment, housing, public accommodations and healthcare.

3. If you have further comments on the matters raised in this section, please add them below.

N/A.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, in Illinois, same-sex couples are allowed to marry and are afforded all the same benefits and protections as an opposite-sex couple.

This protection is new as of 2011. Specifically, on June 1, 2011, Illinois passed the Religious Freedom Protection and Civil Union Act which allowed same-sex couples to enter civil unions which allowed same-sex couples to take advantage of many, but not all, of the same rights as an opposite-sex couple. Unfortunately, however, civil unions were not recognized by the Federal Government or all other states.

On November 20, 2013, a bill was signed allowing for same-sex marriage. This law took effect on June 1, 2014, making Illinois the 16th state to recognize and allow same-sex marriage. This law allowed all couples who entered civil unions to convert those unions into marriages and be afforded all the rights and protections of opposite-sex couples.

5. Are foreign marriages of same-sex couples recognised?

Yes, pursuant to the 2011 Religious Freedom Protection and Civil Union Act and the subsequent 2014 Religious Freedom and Marriage Fairness Act, same-sex marriages from foreign jurisdictions are recognized in Illinois and given the same weight and effect as a same-sex marriage entered, in Illinois.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so, what are the significant differences (if any) from full marriage?

No, as of 2014 with the implementation of the Religious Freedom and Marriage Fairness Act, same-sex couples were no longer required to enter a lesser non-marriage status such as civil unions and were allowed to enter into marriage with the same rights and protections of an opposite-sex couple.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Common law marriage is invalid in Illinois. 750 ILCS 5/214 (LexisNexis, Lexis advances through P.A. 104-1 of the 2025 regular session of the 103rd General Assembly. ***). De facto/cohabiting/ live-in relationships are only recognized as a marriage in Illinois if it is a common law marriage that was established in a jurisdiction that recognizes common law marriage. 750 ILCS 5/213 (LexisNexis, Lexis Advances through P.A. 104-1 of the 2025 regular session of the 103rd General Assembly. ***)

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

In Illinois, regardless of whether you are a same-sex couple or an opposite-sex couple, customary/common-law marriage has not been recognized since 1905. However, Illinois will recognize a customary/common law marriage for both same-sex and opposite-sex couples if it has been legally entered into and is recognized in another jurisdiction.

9. If you have further comments on the matters raised in this section, please add them below.

N/A.

Parenting

10. Can more than two people be recognised as the parents of a child?

No, in Illinois, nothing is in place allowing for more than two (2) people to be legally recognized as parents of a minor child. While Illinois does not have any statutes which explicitly state that a two-parent rule is in effect, the Illinois Adoption Statute (750 ILCS 50/1, et. al) requires that one or both parents' rights be either given up or terminated to allow for the adoption of a child. Nothing within the statute allows for a third parent to establish parental rights but rather it allows for parental rights to be replaced. *In re Adoption of C.D.*, upheld this stance in an argument between grandparents vs. foster parents in which the court held that adoption requires the termination rather than an addition of parental rights. *In re Adoption of C.D.*, 313 Ill. App.3d 301, 729 N.E.2d 553 (2000).

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The birth giver is presumed to be the mother of the child. 750 ILCS 46/201, unless she is a surrogate. 750 ILCS 47/15. The birth giver's husband or partner is presumed to be the father even if he is not listed on the birth certificate. 750 ILCS 46/204. Because Illinois also recognizes and protects gender identities, this person may choose to be listed as either mother, father, or parent to align with their own personal gender identity.

12. If you have further comments on the matters raised in this section, please add them below.

N/A.

Adoption

13. Is adoption possible?

Yes, the Illinois Adoption Act (750 ILCS 50/1 *et seq.*) governs the laws in Illinois regarding adoption.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

The Illinois Adoption Act does not discriminate based on marital status, gender identity, or sexual preference. Pursuant to the Illinois Adoption Act, any person who has resided in Illinois at least 6 months "*immediately preceding the commencement of an adoption process*" and who is a "*reputable person of legal age and of either sex*" may adopt. 750 ILCS 50/2.

Surrogacy

15. Is surrogacy legal?

Yes, surrogacy is legal in Illinois. The Illinois Gestational Surrogacy Act (750 ILCS 47/1 *et seq.*) was enacted in 2005 to govern the laws in Illinois regarding surrogacy. Specifically, the Act was put in place to “*establish consistent standards and procedural safeguards for the protection of all parties involved in a gestational surrogacy contract.*” 750 ILCS 47/5.

16. Is commercial/compensated surrogacy legal?

Yes, pursuant to the Illinois Gestational Surrogacy Act, compensation is legal. For the purposes of the act, compensation is any monetary compensation beyond contribution for “*reasonable medical and ancillary costs.*” 750 ILCS 47/10. In Illinois, any contract for surrogacy which provides for compensation, the compensation must be placed in an escrow account with an “*independent escrow agent prior... to the commencement of any medical procedure.*” 750 ILCS 47/25.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

The Illinois Gestational Surrogacy Act does not discriminate based on marital status, gender identity, or sexual preference. 750 ILCS 47/20.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes, Illinois will recognize the parentage of same-sex couples who have become parents through surrogacy overseas. However, for parentage to be automatically recognized with no further steps, the surrogacy must comply with the terms of the Illinois Gestational Surrogacy Act, or the child must be born in Illinois. If neither of these requirements are met, the parents will need to obtain a post-birth order from the Court establishing parentage.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, in Illinois gamete and embryo adoptions are legal. Illinois statute 750 ILCS 46/701 governs the laws for children that are conceived as a result of gamete or embryo donation. Pursuant to the statute, a donor is not considered the parent of the child conceived via either gamete or embryo donation. 750 ILCS 46/702. In situations in which the donor knows of the intended parent and makes a specific donation, then both the donor and the intended parent will need to enter into a written agreement for the same prior to insemination with each represented by Counsel. 750 ILCS 46/702. However, if a donor donates without an intended parent as an anonymous donation, then the recipient of the donation will become the intended parent. The donor will have

signed an agreement relinquishing his/her parental rights at the time of the donation. Id. This statute does not discriminate based on marital status, gender, or sexual preference.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes, pursuant to 750 ILCS 46/ *et seq.* any intended parent is recognized as the legal parent regardless whether they are a same-sex or opposite-sex couple.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

No, in Illinois, whether a child is conceived/born with the assistance of IVF does not impact parentage. In Illinois, the person giving birth is automatically considered the parent of the child. If the person giving birth is married, then the spouse is automatically deemed to be the other legal parent.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No, in Illinois, the divorce of a same-sex couple is treated identical to that of an opposite-sex couple.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

In Illinois civil unions are dissolved in the same way as a marriage. Since same-sex marriage dissolutions are treated in the same manner as opposite-sex marriage dissolutions, the same is true of the dissolution of same-sex civil unions versus opposite-sex civil unions. Illinois does not recognize any other form of non-marriage dynamic other than civil unions.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Illinois does not recognize de facto/cohabiting/customary marriage. Therefore, when two unmarried parties cohabiting parties undergo a breakdown of their relationship, regardless of whether they are a same-sex or opposite-sex couples, any property or financial disputes will be governed by property law or contract law. Any issues of custody will be determined by the Illinois Parentage Act and will be treated as any other unmarried couple who has a child as the result of a sexual relationship.

25. If you have further comments on the matters raised in this section, please add them below.

N/A.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Since same-sex marriage/civil unions are legal in Illinois, same-sex couples are treated the same as opposite-sex couples when it comes to inheritance of the property of their spouse provided, they are legally married or in a legal civil union.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

While this is not necessary as same-sex spouses are afforded the same rights as opposite-sex spouses, Illinois does not discriminate as to whether a partner in a same-sex couple can bequeath property to the other person in the couple.

28. If you have further comments on the matters raised in this section, please add them below.

N/A.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No, pursuant to the Illinois Human Rights Act, it is illegal to discriminate based on gender. (775 ILCS 5/1-101 *et seq.*)

30. Is gay conversion therapy banned?

While there is no law governing gay conversion therapy for adults, the Youth Mental Health Protection Act (405 ILCS 48/) makes it illegal for any conversion therapy to be performed on minors (under 18 years of age).

31. If you have further comments on the matters raised in this section, please add them below.

N/A.

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

As of 2023 and a result of Public Act 102-1411 an adult need not obtain surgery, medical verification, or a court order to legally change their gender identity. All that is needed is for the adult to complete a notarized Certificate of Correction Request form and submit the requisite fee to the Illinois Vital Records department.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so, please describe the required parental consent/legal process.

In Illinois, minors can engage in gender affirming treatments such as puberty blockers and hormone therapy; however, these treatments are only available with medical evaluation and parental consent. In 2023, Illinois passed the Patient Provider and Protection Act which prevents medical providers and minors from facing legal action if they engage in gender-affirming care. In general, the medical evaluations needed to obtain puberty blockers or hormone therapy require mental health evaluations, supportive care and continuous monitoring. Minors must also obtain the consent of at least one of their parents. While not expressly illegal in Illinois, gender affirming surgeries are generally not performed on minor children since the enactment of Executive Order 14187 which was signed by President Trump in January 2025 to prevent gender-affirming surgeries on minors.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes, in Illinois a person may identify as either male, female, or “X” on official identification documents such as ID Cards, birth certificates, and drivers’ licenses. The ability to identify as “X” on a passport however is governed by Federal Law. Currently, a person is allowed to identify as “X” on their passport; however, the ability for this to continue is being heavily debated.

35. What happens to the status of the marriage/civil partnership when one party transitions?

In Illinois, the status of marriage/civil partnership does not change if one party chooses to transition their gender identity.

36. Is changing gender a ground for divorce?

No, the only recognized grounds for divorce in Illinois is “*irreconcilable differences*”.

37. If you have further comments on the matters raised in this section, please add them below.

Under 755 ILCS 65/40, transgender persons may designate their gender identity for funeral and burial purposes. These instructions can include their appearance, name, and pronouns, and does not require a court ordered name change or alternations to their government issued documents.

JURISDICTION

USA, State of Indiana



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Contributor Firm	Broyles & Ricafort PC

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. There are no statutes in Indiana which prohibit being gay or engaging in consensual homosexual acts.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

There are no restrictions on gender identity or gender-affirming care for adults – those 18 and over can legally access hormone therapy and surgeries.

Gender-affirming medical care for anyone under 18 years old is prohibited under I.C. §25-1-22-13 which is not a criminal statute. Physicians who provide these procedures could face discipline by the state's medical licensing board.

3. If you have further comments on the matters raised in this section, please add them below.

The statute prohibiting gender affirming care is a civil, not criminal statute.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can legally marry in Indiana. There are no differences as same-sex and opposite-sex marriages are treated equally in rights in Indiana.

5. Are foreign marriages of same-sex couples recognised?

Yes, foreign marriages of same-sex couples are recognised in Indiana.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so, what are the significant differences (if any) from full marriage?

No, Indiana law only recognizes marriage for same-sex couples. Indiana law offers no partial recognition.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

In Indiana, parties who cohabit without subsequent marriage, are entitled to relief only upon general contract or equitable relief theories. Indiana law treats both same-sex and opposite-sex couples equally in this regard.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No, customary marriage is not recognized in Indiana for both same-sex couples and opposite-sex couples.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

No, more than two people cannot be recognised as the parents of a child.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person who gave birth is automatically named as the legal mother and cannot be named as the mother, father, or parent at their choosing.

1. The designation of "father" or "parent" is reserved for the biological or legally recognized father as determined by a marriage presumption, paternity affidavit, paternity order, or adoption.
2. For same-sex couples, the non-birth parent must establish parentage through adoption to gain legal parentage rights over the child, unless the couple was married at the time of birth. If the couple was married at the time of birth, both would be named on the birth certificate.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes, adoption is possible and legal for same-sex couples in Indiana. There are no legal distinctions between same-sex and opposite-sex couples for adoption rights. Second parent adoption allows an unmarried same-sex couple to both be listed as parents after the adoption is complete.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No, there are no classes of people (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people) who are ineligible to adopt.

Surrogacy

15. Is surrogacy legal?

Surrogacy is not illegal in Indiana however it is also not supported by state law. Indiana statutes contain a public policy declaration declaring surrogacy to be against public policy in certain situations and also a provision declaring surrogacy agreements in those situations to be void.

16. Is commercial/compensated surrogacy legal?

No, under Indiana Code § 312011, surrogacy agreements, paid or unpaid, are void and unenforceable as it is against public policy. Therefore, commercial/compensated surrogacy agreements are not legally recognized.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No, there are no classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people).

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes, the parentage of same-sex couples who have become parents through surrogacy overseas is recognised. However, additional steps are required to secure full legal parental rights if one parent is not biologically related to the child. The non-biologically-related parent must complete a pre-birth parentage order or a second parent adoption.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

There are no statutory procedures governing the process of gamete and/or embryo donation in Indiana. Donor contracts are often drafted and are enforced utilizing traditional contract principals. Likewise, children born during a marriage are children of the marriage when both parties knowingly and voluntarily consent to the assisted reproductive process. The court has found the situation to be analogous to when a child is adopted during the marriage by agreement of both spouses. There is no difference in what requirements must be met for same-sex and opposite-sex married couples.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

In 2005, the Indiana Supreme Court found that Indiana courts have the authority to determine whether a person other than a biological parent has the rights and obligations of a parent.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The parentage of the spouse is legally recognised if the couple is married and the spouse has previously consented to IVF. Children born during a marriage are children of the marriage when both parties knowingly and voluntarily consent to the assisted reproductive process. Indiana does not recognize civil unions or common-law/de facto/cohabiting relationships. If the couple is not married, then only the birthing parent gains automatic parentage rights. The non birthing parent must take legal steps, typically through second parent adoption, to gain parentage rights.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No, there are no differences in the divorce process for same-sex couples concerning either finance or custody.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Indiana does not recognise civil union or any lesser legal relationship other than marriage.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Indiana does not recognise de facto/cohabiting/live-in relationships or customary marriage or any lesser legal relationship other than marriage.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No, same-sex couples are not treated differently for inheritance.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes, same-sex couples can inherit property via alternate arrangements such as wills, bequests, etc.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Indiana Civil Rights Law (Indiana Code Title 22, Article 9) lists protected classes, including sex, but specifically does not include sexual preference or orientation. It is prohibited to deny the equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase of rental or real property or to segregate on separate solely on the basis of race, religion, color, sex, disability, national origin, or ancestry.

30. Is gay conversion therapy banned?

No, gay conversion therapy is not banned in Indiana. It is indirectly protected under a 2023 law which prevents cities and counties from enacting ordinances or executive orders that ban the practice.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Indiana an adult can change their gender with court sanction.

1. The legal process to change their gender begins with a petition in the local circuit or superior court requesting an order to change the gender marker on their legal documents (such as birth certificate and driver's license). Supporting documentation is required (such as evidence of gender reassignment surgery). If the court accepts the petition, it will issue an order directing state agencies to amend the gender marker on official records.
2. No spousal consent is required for an adult to legally change their gender.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so, please describe the required parental consent/legal process.

No, as of 2023, Indiana Code Section 25-1-22-13 prohibits healthcare providers from offering gender-affirming treatments to minors. Even with parental consent, treatments are still prohibited.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

No, in Indiana someone cannot be identified as non-binary or X on their identity document, such as a birth certificate/passport.

35. What happens to the status of the marriage/civil partnership when one party transitions?

A marriage is still legally valid even if one party transitions as held by the case *In re Marriage of Davis and Summers*, 1 N.E.3d 184 (Ind.Ct.App.2013).

36. Is changing gender a ground for divorce?

No, in Indiana changing gender is not a sufficient legal ground for divorce. However, Indiana is a no-fault state and a party need only allege an irretrievable breakdown of the marriage in order to proceed with a divorce.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Maine



Contributor Name	Dana Prescott
Contributor Email	dana@southernmainelaw.com
Contributor Firm	Prescott, Jamieson, & Murphy Law Group

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Not at this time though the issue of minors and parental consent remains complex.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, none.

5. Are foreign marriages of same-sex couples recognised?

Yes, if it meets the criteria for a legal marriage in Maine and is not otherwise against public policy (e.g. minors).

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Maine does not recognize non-married couples as having a status similar to marriage irrespective of orientation, except in the area of health insurance for cohabitating partnerships.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes, though I am not quite sure what the question is asking.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

Yes, Maine has adopted the UPA with amendments.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Not sure I can give a general answer to that as there are too many variations with IVF and surrogacy and adoption, for example.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

None by statute.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

“Commercial” would likely violate the law, but compensations are allowed under certain circumstances.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

None that I am aware of by statute (beyond the old limits on degree of biological relationship).

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes, if it complies with the UPA/MPA.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, and no under the MPA.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

I am not enough of an expert to answer that but there have been issues with other states or countries from time to time if it appears the clinic did not follow ethical processes.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

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24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Divorce laws do not apply. Lawsuits can be brought for what is euphemistically called palimony but that is less than clear or easy to establish under ordinary partnership laws.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The Maine Human Rights Act (“MHRA”) is Maine’s anti-discrimination law. It prohibits discrimination on the basis of protected class in employment, housing, places of public accommodation, education, and extension of credit. Protected classes include: race, color, ancestry, national origin, sex, sexual orientation (which includes gender identity and expression), physical or mental disability, religion, age, and other categories in certain contexts. <https://www.maine.gov/mhrc/about>

30. Is gay conversion therapy banned?

Yes. <https://www.maine.gov/governor/mills/news/governor-mills-signs-legislation-banning-conversion-therapy-law-2019-05-29>

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

A petition to do so can be filed in the Probate Court. I am not aware of any right of a spouse to object.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Maybe but minor means different things under different federal and state medical and mental health privacy and health care right laws. There are by-pass processes that allow access to the courts, but this area is evolving.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

I do not know what federal law is now or what it may be after January 20th. As for state law, see <https://www.maine.gov/sos/news/2018/genderdesignationdld.html>

35. What happens to the status of the marriage/civil partnership when one party transitions?

If a couple wanted to stay married or get divorced, they have that choice.

36. Is changing gender a ground for divorce?

Not by statue.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Massachusetts



Contributor Name	Wendy Hickey
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Contributor Firm	Brick, Jones, McBrien & Hickey

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

--

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

We treat them the same but don't treat non-married cohabiting people the same as married people for support and property division on separation.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

It can be so long as it is not against public policy. For example we do not recognize multiple spouses in one relationship even if customarily recognized by some religion.

9. If you have further comments on the matters raised in this section, please add them below.

--

Parenting

10. Can more than two people be recognised as the parents of a child?

Yes.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The birth certificate just lists parents so the parent can self-identify their title on the form.

12. If you have further comments on the matters raised in this section, please add them below.

--

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

I believe so but have not encountered this much.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. No further steps required.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Unsure.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The other parent is also listed on the birth certificate regardless of gender or relationship status so long as both parents agree.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No differences.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

We allow same-sex marriage but if a couple has a civil union in another jurisdiction which does not permit marriage and moves to MA and wants to separate we treat it as a marriage and divorce them.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

One can seek child support if children but not alimony. Property division is based on title status and or equity of who paid for the assets. This is not different for same-sex/opposite-sex couples.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Sure.

28. If you have further comments on the matters raised in this section please add them below.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

No.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes. Court action is only required if they seek to change their name and/or gender on their birth certificate.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

I believe birth certificate forms have all been updated to permit this – not sure passport forms have been – i've not encountered that issue.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Transition does not impact the status of marriage.

36. Is changing gender a ground for divorce?

Not unless the other partner sees it as an irretrievable breakdown of the marriage.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Michigan



Contributor Name	Richard A. Roane
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Contributor Firm	WARNER NORCROSS + JUDD LLP

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. Effective with the US Supreme Court case *Lawrence v. Texas*, 539 U.S. 558 (2003) any remaining state or federal law criminalizing engaging in homosexual acts were repealed. The Court ruled that Texas's law prohibiting private homosexual activity between consenting adults violated the Due Process Clause of the Fourteenth Amendment to the US Constitution.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Yes. While some more liberal US states do not prohibit or criminalize gender affirming treatment, many US states have been recently enacting legislation either prohibiting or even criminalizing providing gender affirming treatments, regardless of whether the transgender individual is an adult or a minor child. Further, some states and federal laws regarding medical insurance and cost coverage have carved out and prohibit using such insurance funds for gender affirming treatment.

3. If you have further comments on the matters raised in this section, please add them below.

While gender affirming treatment is a very controversial topic in 2025, a misconception or outright falsehood is that surgery is being performed on minor children. This is patently untrue and violates the ethical and practice rules of physician's and psychologist's member organizations. Some hormone therapy is in fact being provided to minor children in many cases, however, there is a current move underway to prohibit or even to criminalize hormone therapy ("puberty blockers") to minor children. For transgender individuals who have been undergoing such therapies, suddenly stopping the therapy is very detrimental from a physical as well as mental health standpoint.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. Same sex couples can marry and there are no differences from a legal right standpoint for such marriages. The landmark U.S. Supreme Court case *Obergefell v. Hodges* 576 U.S. 644 (2015), held that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the US Constitution.

5. Are foreign marriages of same-sex couples recognised?

Yes. Foreign marriages that are solemnized in a manner similar to marriages in the U.S. are recognized as valid marriages under the legal theory of “comity” in which the courtesy and friendship of nations marked especially by mutual recognition of executive, legislative, and judicial acts recognizes such marriages.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No. Prior to the *Obergefell* decision as noted above, some states had laws that recognized “Domestic Partnerships” and/or “Civil Unions”. However, after *Obergefell*, such arrangements to formalize a couple’s relationship are no longer utilized, and the recognition of such pre-*Obergefell* non-marital relationships can be a factual consideration in the event of a breakup insofar as property, support and children/family relationships is concerned. Best practices in the US now is that if a same-sex couples wants to formalize their relationship, they enter into a marriage under the laws of their state, but no longer enter into Civil Unions or Domestic Partnerships.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Yes. Cohabiting couple’s non-marital relationships, whether same-sex or opposite-sex, may be recognized in some US states as a fact for the court’s consideration in the event of a breakdown. There is no universal or nationwide rule of recognition or consideration, and state courts decisions can vary greatly in treatment of couples in these situations.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No clear answer. So long as a marriage ceremony follows the laws of the jurisdiction in which the marriage takes place, ie. the formal solemnization of the union regardless of form or substance of the ceremony, then such marriages will be recognized. For example, a couple may choose to solemnize their marriage in a religious ceremony, OR in a civil (non-religious) ceremony, or BOTH. Some evidence of the solemnization of the marriage, regardless of the type of ceremony, coupled with a marriage license proving the fact of marriage, will result in recognition of the marriage.

9. If you have further comments on the matters raised in this section, please add them below.

Note: As of 2025, nine U.S. states (plus the District of Columbia) still allow the formation of new common-law marriages within their borders:

- Colorado
- Iowa
- Kansas
- Montana
- Oklahoma
- Rhode Island
- Texas
- Utah
- South Carolina
- ... and the District of Columbia

In addition, New Hampshire recognizes a limited form of common law marriage for inheritance purposes only but not for full marital rights purposes.

Parenting

10. Can more than two people be recognised as the parents of a child?

Yes.

This is an emerging and rapidly expanding area of family law in the US whereby California, Connecticut, Delaware, Maine, Nevada, Vermont, Washington have laws that can recognize three parents of a child via updated parentage laws or the Uniform Parentage Act.

Additionally, courts in Alaska, Louisiana, Massachusetts, New Jersey, North Dakota, Pennsylvania, Oregon, and Washington State have ruled that children may have more than two legal parents on a case-by-case basis via decisions on third-parent adoption or psychological parenthood for example. North Carolina has a statute that explicitly limits parental recognition to two people only.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

Varied treatment: Depending upon the marriage as well as the surrogacy laws of the various states, parental recognition can be of the birth parent, the sperm donor, the egg donor, the birth parent's legal spouse, or in certain situations as noted above, a psychological relationship between an adult and child giving rise to equitable parent.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No. Historically, the groups of individuals listed above had been prevented from adopting children. However, adoption laws have been changing such that mere categorization amongst these groups does not automatically disqualify a person from adopting. Laws of the many states vary state by state, with a child's "best interests" at the forefront of these decisions. Unmarried individuals or couples are allowed to adopt, but some states prohibit an unmarried couple from adoption, requiring only one of the couple to adopt, and then follow up with a step parent or second parent adoption.

After the *Obergefell* decision, all same-sex couples are allowed to adopt. However, several states allow faith-based agencies to refuse to allow same-sex individuals, couples, transgender and/or non-binary individuals from adopting, thereby creating de facto barriers to adoption. And in some geographical areas, the only agencies providing adoption services are faith-based ones.

Surrogacy

15. Is surrogacy legal?

Yes. As of mid-2025, no US state outright bans surrogacy.

16. Is commercial/compensated surrogacy legal?

Yes. Prior to April 1, 2025, Michigan was the only remaining US state that criminalized surrogacy as a felony offense punishable by 1 year in jail and a \$10,000 fine. The law changed effective on April 1, 2025 making compensated surrogacy legal. A few remaining states hold surrogacy contracts void or unenforceable.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not by any national ban: There is no explicit national ban on these groups of people to participate in surrogacy. However, such contracts may not be enforceable in certain jurisdictions, or availability of surrogacy or enforcement of such contracts can vary state by state and judge by judge.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Not automatically in all states. Some US state such as California and Massachusetts automatically recognize parentage of both parents who adopt a child overseas. Best practices include obtaining US citizenship of the

adoptee child, seeking a court order for second or step-parent adoption or court ordered recognition of parental status. Adoptive parents should update all legal documents related to the child to reflect the adoptive and court ordered recognition.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes. Gamete and embryo donation is fully legal in Michigan, especially under the recent Assisted Reproduction and Surrogacy Parentage Act (ARSPA) that took effect on April 1, 2025. Further, parents who use a donated gamete or embryo can establish parentage through a judgment of parentage without being required to go through a step parent or second parent adoption.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes if they are married, based upon Michigan's "marital presumption" which states that a child born during a marriage is a child of the parties to the marriage (regardless of biological connection).

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The married spouse is recognized as a parent, and there is no difference in recognition of parentage based upon same-sex status.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

None whatsoever after *Obergefell*.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

There is no formal process for dissolving a non-marriage form of union – ie, a divorce action is not available because there is not a marriage. However, claims for property division, spousal support can be made based upon contract law. A problem is that proof of such a contract or agreement is often elusive if there are no legal documents such as a Domestic Partnership Agreement or Civil Union Agreement. For child related issues upon breakup of a non-marital relationship, Michigan allows for custody and support issues to be decided under the Child Custody Act, Child Support Act and/or the Paternity Act.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

There should be no difference in treatment of these claims as between same-sex vs. opposite-sex couples. However, states vary on their treatment of these situations on a case-by-case basis, often with wildly varying results. Michigan law should allow for same or equal treatment.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

Same sex MARRIED couples are not treated differently for inheritance purposes after *Obergefell*.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes.

Based upon the Civil Rights Act of 1964, discrimination in employment based upon sex is banned. In 2020, the US Supreme Court in *Bostock v. Clayton County* 590 U.S. 644 (2020) further defined “sex” to include sexual orientation and gender identity.

30. Is gay conversion therapy banned?

No.

Nearly half of the US states don’t ban conversation therapy. Some US states specifically restrict it while others address bans regarding children differently than adults. Michigan law bans licensed mental health professionals from engaging in conversation therapy for minors. There is no ban in Michigan for such therapy for adults.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes.

In Michigan, an adult can change their gender marker and identity documents as follows:

Complete a “Sex Designation Form” available through the Secretary of State. No medical report or surgery history is required. Submit the form in person at the Secretary of State office, pay the fee, bring your old ID and receive your new ID.

Change gender marker on Birth Certificate: Complete an “Application to Change or Correct a Birth Record”. Supply the correct (or new) gender identification document. Pay a fee, submit online or via mail, and the change is usually processed administratively in about 6 weeks.

Name change: file a petition in the county of residence, provide fingerprinting, notice of publication, pay a fee, schedule a court hearing for a judicial decision through the Probate Court.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes.

In Michigan, gender-affirming treatments are available for minors, but surgery is prohibited. Parents with legal custody have the ability to provide consent to such treatment.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes.

In Michigan, a person can have their identity document reflect “non-binary” or “x” as of 2021.

No with respect to US Passports as of July 2025.

As of July 2025, the U.S. Department of State no longer issues passports with an “X” gender marker. This change follows an executive order signed by President Donald Trump on January 20, 2025, which mandates that federal identification documents, including passports, recognize only two sexes: male and female. Consequently, the State Department ceased processing passport applications requesting the “X” marker and will only issue

passports with a male or female designation that matches the individual's biological sex at birth. The impact on existing passports with "x" or "non-binary" is uncertain other than such passports should be valid until renewal. At renewal, the executive order would apply and only "female" or "male" can be the gender designation. This executive order is being challenged by the courts by the ACLU and other organizations.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing. There is no automatic change in relationship status based upon a party's transition. However, transitioning often leads to dissolution of marriage.

36. Is changing gender a ground for divorce?

No

In Michigan, the ONLY grounds for divorce under its No-fault Divorce statute is the statutory language which provides:

"There has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed, and there remains no reasonable likelihood that the marriage can be preserved."

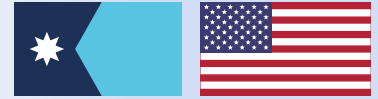
MCL 552.6 effective January 1, 1972. No proof of the breakdown is required, and the Court MUST grant a divorce if the petitioning party states the statutory language under oath in open court.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Minnesota



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

Minnesota decriminalized consensual same-sex activity in 2001 by repealing its sodomy law. However, even before then, the law was not enforced for private behavior by consenting adults.

2. Is any aspect of gender identity or gender affirming treatment illegal?

No! Minnesota is a “trans refuge” state.

In March, 2023, Governor Tim Walz signed an Executive Order to protect the rights of Minnesota’s LGBTQIA+ a community to seek and receive gender affirming care.

3. If you have further comments on the matters raised in this section, please add them below.

The legislature later amended child custody statutes to reflect this. Of particular note is 518D.204: 518D.204 TEMPORARY EMERGENCY JURISDICTION.

(a) *A court of this state has temporary emergency jurisdiction if the child is present in this state and:*

(1) *the child has been abandoned.*

(2) *it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse; or*

(3) *the child has been unable to obtain gender-affirming health care as defined in section 543.23, paragraph (b)*

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex couples can marry and is no difference between heterosexual and same-sex married persons.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

This is interesting; I would have said that same-sex couples have the same ability to enter into a “cohabitation agreement” as heterosexual couples. However, MN Statute Section 513.075 states:

“If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if: (1) the contract is written and signed by the parties; and (2) enforcement is sought after termination of the relationship”

There is no precedential caselaw which specifically applies the above statute (known as the “anti-palimony statute”), but the Minnesota Court of Appeals referenced the statute when addressing a support claim brought by a woman against her partner of 30 years.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes to both.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

It appears not. However, third parties can be granted custody if certain requirements are met.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

In the absence of a pre-or post-birth Order establishing legal parents (surrogacy), the parent giving birth is by law the mother of the child.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Adoptions are possible for all of the above, but there may be extensive testing, background checks, home visits, etc, for a Court to approve an adoption if the adoptee is a minor.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes.

Are further steps required? Here's what AI says:

In Minnesota, foreign adoptions finalized abroad are generally recognized as valid if the child received an IR-3 or IH-3 visa from the United States Citizenship and Immigration Services (USCIS). While not always legally required, re-adoption in Minnesota is highly recommended to ensure the child's US citizenship and permanent family status. Minnesota law also allows for the adoption of a child under the laws of a foreign country if it is valid under those laws, and the adoption is recognized in Minnesota if the validity is verified by the granting of an IR-3 visa.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

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20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes, no further work is needed so long as the parents are married to each other. If they are unmarried, the non-genetic parent would have to apply to adopt the child and go through the normal adoption process (which is longer and more expensive than a stepparent adoption, for obvious reasons).

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

All of these involve the same cautions. Pre-birth orders are key. In the case of artificial insemination, the donor gives up his rights when the sperm is donated, and the Minnesota Court of Appeals (again, in a non-precedential opinion) addressed the issue of an "informal" sperm donor and his rights with respect to the child in https://scholar.google.com/scholar?scidkt=585584361186273854&as_sdt=2&hl=en

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

The process is exactly the same.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

See above regarding the anti-palimony statute.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

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25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

They are treated the same. Married is good; unmarried and no written agreement or will is bad.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, but this is a fluid situation based on recent US Supreme Court rulings

30. Is gay conversion therapy banned?

Yes. First by executive order in 2021 and then via statute in 2023

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? Yes. If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

The legal process normally would accompany a name change, so it must be part of a court order (ordering the Department of Health and Human Services to amend the birth certificate), and there are some judicial officers who have communicated that they would not sign off on such a request. Basically, it's a request to change the birth certificate to reflect a different gender from that at birth.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes gender affirming treatments are available to minors with both parents' consent. If one parent does not consent, then a court may determine if gender affirming treatment should be commenced. See above; I am actually aware of a case under advisement right now with this exact fact pattern; it is likely that the therapy will be denied, but one of the parents plans to appeal if that is the case.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

A Minnesota driver's license can, but right now, there is no non-binary designation on passports.

35. What happens to the status of the marriage/civil partnership when one party transitions?

No change.

36. Is changing gender a ground for divorce?

Minnesota is a no-fault state, so all that is required is one person stating that there is an irretrievable breakdown of the marital relationship.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Nevada



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

- 2(i) Are there other elements of criminal law that relate only or primarily to homosexuals?

No.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes, same-sex couples can marry. There are no differences between opposite-sex and same-sex marriages

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Yes, there is a civil union type scheme (predating same-sex marriage legality, but still in place). Any couple eligible to marry can access it.

There is a streamlined dissolution procedure under some circumstances, but otherwise there are not many differences from full marriage.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Yes, but proving such cases (same or opposite-sex) is more difficult than dissolution of marriage.

There are no differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship.

There is no statutory basis for cohabitation (*Marvin* type) cases; the remedies are entirely driven by case law.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Yes.

9. If you have further comments on the matters raised in this section, please add them below.

I explained the applicable law, theory, and where the law is going in several articles posted at <https://www.willicklawgroup.com/palimonycohabitation/>

Parenting

10. Can more than two people be recognised as the parents of a child?

Yes, by recent case and statutory changes.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The law is moving toward recognition of “intended parents” in surrogacy, in vitro, and other ART situations.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Yes. There are age and consanguinity limitations.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

I do not think so, but am unsure.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No known limits.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Parentage law evolving to recognize intended parents.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

I am not aware of any limitations, but this is not my specialty.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Today, generally, yes.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

No distinctions known to me.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

None known. The usual financial claims apply for same-sex couples – community property, alimony, child support. These claims do not differ in any way from an opposite-sex couple.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Either the summary process or something very much like a divorce case. Financial claims can be made on dissolution of the civil union. There are no differences between the financial provision made for same-sex as opposed to opposite-sex couples.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

These claims do not differ from the claims that can be made by an opposite-sex couple.

The law does not treat children of unmarried parents any differently from children of married parents?

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

I do not think so.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

I believe so (this, also, is not my area of expertise).

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Transgender, intersex and non-binary – Not specifically, but I think it is covered by the general statutes.

Sexual orientation – some protection in state constitution; others in various statutes, plus case law.

30. Is gay conversion therapy banned?

Not to my knowledge.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

I think there are some such services, and have seen cases where people are using them, but I do not practice in this area.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Unsure.

35. What happens to the status of the marriage/civil partnership when one party transitions?

No effect known to me.

36. Is changing gender a ground for divorce?

As the only ground necessary is “incompatibility,” it could be, but not specifically.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of New York



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Contributor Firm	Teitler & Teitler, LLP

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No, there are no criminal statutes against homosexuality in the State of New York.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so, what are the penalties?

No, gender identity, and affirming treatments are fully legal and have been protected under the Gender Expression Non-Discrimination Act ("GENDA"), Ch. 8, 2019 N.Y. Laws, since its enactment on January 25, 2019.

3. If you have further comments on the matters raised in this section, please add them below.

New York is among the most progressive states in the United States of America, offering many protections at the institutional level for LGBTQ+ individuals.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes; under New York State law there is no difference between same-sex and opposite-sex marriages. They are fully equal.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so, what are the significant differences (if any) from full marriage?

New York State does not recognize civil unions or domestic partnerships at the state level. Full marriages are the only status for couples seeking formal recognition from the state. However, various localities within the state permit registrations of domestic partnerships, and domestic partners are accorded certain rights, such as hospital visits and making health-care decisions. However, foreign alternative unions are recognized under New York law.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Same as above; foreign alternative unions are still recognized under New York law.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

No. New York does not legally recognize customary or ritual marriages.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

While tri-parentage or multi-parenthood has not been recognized by any New York statute, courts throughout New York have upheld tri-parentage or multi-parenthood arrangements in limited circumstances. See, e.g., *Tomeka N.H. v Jesus R.*, 181 A.D.3d 106, 122 N.Y.S.3d 461(4th Dep't 2020); *Frank G. v Renee P.-F.*, 142 A.D.3d 928, 37 N.Y.S.3d 155 (2d Dep't 2016); *Matter of Giavonna F.P.-G. (Frank G. – Renee P.-F.)*, 142 A.D.3d 931, 36 N.Y.S.3d 892 (2d Dep't 2016); *David S. v. Samantha G.*, 59 Misc. 3d 960, 74 N.Y.S.3d 730 (Fam. Ct. N.Y. Cnty. 2018); *Dawn M. v Michael M.*, 55 Misc. 3d 865, 47 N.Y.S.3d 898 (Sup. Ct. Suffolk Cnty. 2017).

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The Acknowledgment of Parentage ("AOP") form, which is New York's formal mechanism establishing parentage, allows individuals to identify themselves as the "Birth Parent" or "Other Parent." N.Y. State Dept. of Health, Acknowledgment of Parentage (2021), <https://otda.ny.gov/programs/applications/5171.pdf>.

The "Other Parent" must select "Yes" or "No" with respect to whether they are the genetic or biological father of the child. *Id.* However, pursuant to the Gender Recognition Act ("GRA"), Ch. 158, § 6, 2021 N.Y. Laws, codified in part at N.Y. Civ. Rights Law art. 6-A, signed into law on June 24, 2021, parents have the right to change their own name and identity marker on their children's birth certificates to "mother," "father," or "parent." See N.Y. State

Dep't of Health, Affidavit to Correct Name or Gender of Parent for a Person 16 Years of Age or Under, <https://www.health.ny.gov/forms/doh-5721.pdf>; N.Y. State Dep't of Health, Affidavit to Correct Name or Gender of Parent for a Person 17 Years of Age or Older, <https://www.health.ny.gov/forms/doh-5722.pdf>.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

Surrogacy

15. Is surrogacy legal?

Yes, effective February 15, 2021, pursuant to the Child Parent Security Act, Ch. 56, part L, 2020 N.Y. Laws. However, only gestational surrogacy is legal. Under N.Y. Domestic Relations Law ("DRL") § 122, *"genetic surrogate parenting agreements are hereby declared contrary to the public policy of this state, and are void and unenforceable."*

16. Is commercial/compensated surrogacy legal?

Yes.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Any adult is eligible so long as they have undergone surrogacy screenings, and meet the residency requirements set forth in Family Court Act ("FCA") § 581-402(a)-(b).

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. See *Matter of Maria-Irene*, 153 A.D.3d 1203, 61 N.Y.S.3d 331 (1st Dep't 2017); *Matter of Anonymous*, 85 Misc. 3d 676, 222 N.Y.S.3d 917 (Sup. Ct. N.Y. Cnty. 2024); *Matter of J.J.*, 44 Misc. 3d 297, 984 N.Y.S.2d 841 (Fam. Ct. 2014). If the surrogacy agreement satisfies FCA § 581-403, each intended parent is, by operation of

law, deemed a parent of the child. FCA § 581-406. However, if the surrogacy agreement does not satisfy the requirements of § 581-403 or if there is no surrogacy agreement, parentage must be determined by the court. FCA §§ 581-407, 581-408.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes. The burden is on the donor to establish a parental relationship. New York accords a statutory presumption that a child born during a marriage is the legitimate child of both parents, DRL §§ 24(1), 73, and the donor has no parental rights; this presumption has been extended to an unmarried woman who gives birth by artificial insemination, see *Matter of Michael*, 166 Misc. 2d 973, 636 N.Y.S.2d 608 (Sur. Ct. Bronx Cnty. 1996), and to a same-sex couple, see *Christopher YY. v. Jessica ZZ.*, 159 A.D.3d 18, 23-25, 69 N.Y.S.2d 887, 891-92 (3d Dep't 2018). The presumption can be rebutted if, for example, DRL § 73 (requiring that artificial insemination be performed by persons duly authorized to practice medicine and the wife and husband have consented in an acknowledged writing) is not complied with. See *Joseph O. v. Danielle B.*, 158 A.D.3d 767, 769-71, 71 N.Y.S.3d 549, 552-53 (2d Dep't 2018) (summarizing law).

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Same-sex couples automatically acquire parental authority. See *Pavan v. Smith*, 582 U.S. 563 (2017) (both parties to same-sex marriage are entitled to be listed on birth certificate of child born of the marriage through anonymous sperm donation); *Obergefell v. Hodges*, 576 U.S. 644, 669-70, 676-77 (2015) (Constitution entitles same-sex couples to civil marriage “on the same terms and conditions as opposite-sex couples” and the “constellation of benefits that the States have linked to marriage”).

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Parents who conceive through assisted reproduction methods (e.g., in vitro fertilization) may choose to sign an AOP; however, an AOP is not required to establish parentage. Child Support Services, <https://childsupport.ny.gov/parentage/faq> (last visited June 30, 2025). A child born to married parents utilizing IVF are presumed to be the child of both parents. *Id.* In addition, a record showing mutual consent to conceive and parent a child using assisted reproduction is sufficient to establish parentage. *Id.*

With respect to same-sex relationships, so long as the intended parents are spouses, parentage of the child is presumed. FCA § 581-304(a). To the extent there is a civil union, common-law, de facto, or cohabiting relationship, pursuant to FCA § 581-304(b), “the consent to the assisted reproduction must be in a record in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together.”

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

New York does not recognize civil unions contracted within the state. *Debra H. v. Janice R.*, 14 N.Y.3d 576, 612, 930 N.E.2d 184, 205, 904 N.Y.S.2d 263, 284 (2010) (Smith, J., concurring). However, New York does recognize civil unions validly contracted under the laws of other jurisdictions and does entertain actions to dissolve such unions. See, e.g., *O'Reilly-Morshead v. O'Reilly-Morshead*, 163 A.D.3d 1479, 83 N.Y.S.3d 379 (4th Dep't 2018); *Dickerson v. Thompson*, 88 A.D.3d 121, 928 N.Y.S.2d 97 (3d Dep't 2011).

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

As New York does not recognize these alternative forms of union, there are no recognizable claims. However, for alternative forums of union entered into outside of the state, New York Courts will follow the law of the jurisdiction the union was entered into.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, both GENDA and the Sexual Orientation Non-Discrimination Act, Ch. 2, 2002 N.Y. Laws, protect individuals from discrimination on the basis of gender and sexual orientation. **Division of Human Rights**, <https://dhr.ny.gov/genda> (last visited June 30, 2025); **Office of the New York State Attorney General**, <https://ag.ny.gov/resources/individuals/civil-rights/sexual-orientation-non-discrimination-act-sonda> (last visited June 30, 2025).

30. Is gay conversion therapy banned?

Yes. See Ch. 7, 2019 N.Y. Laws.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes. Under the GRA, individuals 18 and older, born in New York City, can change gender markers on birth certificates, driver's licenses, and passports (without gender affirming surgery) by filing a basic application with the NYC Department of Health. Know Your Rights, *Changing Your Name or Gender Marker Under the Gender Recognition Act*, NYCLU (Jan. 27, 2025), <https://www.nyclu.org/resources/know-your-rights/changing-your-name-or-gender-marker-under-gender-recognition-act>. Neither Court sanction, nor spousal consent, is required. Individuals born elsewhere in New York State, but not necessarily New York City, may request to change their gender at the age of 17 without the need of their parents or legal guardians. *Id.*

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, with parental consent; however, legal minors who are married, parenting, or emancipated may consent independently. NYCLU, *Teenagers, Healthcare, and the Law: A Guide to Minors' Rights in New York State* (2018), <https://www.nyclu.org/uploads/2018/10/thl.pdf>; N.Y. Pub. Health Law § 2504(1)-(3).

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes, under the GRA. <https://www.governor.ny.gov/news/governor-hochul-announces-new-yorkers-can-now-choose-x-gender-marker-nys-driver-license-and-id> (last visited June 30, 2025).

35. What happens to the status of the marriage/civil partnership when one party transitions?

The marriage remains intact.

36. Is changing gender a ground for divorce?

No.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of North Carolina



Contributor Name	Kimberly Bryan
Contributor Email	Kimberly.Bryan@parkerbryanfamilylaw.com
Contributor Firm	Parker Bryan Family Law

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

Yes. NCGS §90-21-50. Penalties include medical license revocation and civil liability.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

Not one that is recognized and that affords either person rights like those of married persons.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

No.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

Yes, depending on the definition of “customary marriage”, and so long as the marriage is performed according to N.C. law. NCGS §51-1.

- 9. If you have further comments on the matters raised in this section, please add them below.**

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Parenting

- 10. Can more than two people be recognised as the parents of a child?**

Not yet.

- 11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

The person giving birth is presumed to be the mother and her name is automatically listed on the birth certificate. If a surrogate is the gestational carrier, a special court order must be obtained to list someone else on the birth certificate.

- 12. If you have further comments on the matters raised in this section, please add them below.**

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Adoption

- 13. Is adoption possible?**

Yes.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

Currently, there are no limitations other than the prospective adoptive individual be over the age of 18.

Surrogacy

15. Is surrogacy legal?

Yes. Currently there are no laws in NC prohibiting surrogacy. Various bills are being advanced in the NC Legislature.

16. Is commercial/compensated surrogacy legal?

There are currently no laws in NC prohibiting compensated surrogacy.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Not yet.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

--

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Embryo donation is not prohibited in NC thus it is recognized. NC currently does not have any laws covering Assisted Reproductive Technology thus general principles of family law, parentage, & adoption apply.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Not by operation of NC law since NC does not have any laws covering Assisted Reproductive Technology. General principles of family law, parentage, & adoption apply.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

NC currently does not have any laws covering Assisted Reproductive Technology thus general principles of family law, parentage and adoption apply.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Civil unions are not recognized as valid marriages in NC thus the individuals would not be entitled to spousal support or equitable distribution of property acquired during the cohabitation. Child support and child custody will be recognized in the same way as children born during a valid marriage.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Cohabitation is not recognized in NC as a valid marriage thus the individuals would not be entitled to spousal support or equitable distribution of property acquired during the cohabitation. Child support and child custody will be recognized in the same way as children born during a valid marriage.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, generally.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes, as to adults. NCGS §90-21-50.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

No.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

--

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing happens unless one of the spouses elects to separate and bring the marriage to an end. In that case, NC law applies in the same manner as any other marital dissolution.

36. Is changing gender a ground for divorce?

No, not for divorce. NC is a no-fault divorce jurisdiction. Changing gender might be considered “marital fault” as defined in NC law in the application of spousal support; however that is largely a discretionary factor to be considered by the trier of fact.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Virginia



Contributor Name	Colleen M. Quinn, Esq.
Contributor Email	colleen@quinnlawcenters.com
Contributor Firm	Quinn Law Centers

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

Court order not needed to change gender on birth certificates.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. No.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

No.

- 7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?**

No; common law marriage for same-sex or opposite-sex is recognized.

- 8. Is customary marriage recognised? If so, is it recognised between same-sex couples?**

No.

- 9. If you have further comments on the matters raised in this section, please add them below.**

--

Parenting

- 10. Can more than two people be recognised as the parents of a child?**

No, but more than two people can have custody.

- 11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?**

Person giving birth is presumed parent and spouse is presumed other parent if spouse there to also attest to it.

- 12. If you have further comments on the matters raised in this section, please add them below.**

Presumptions can be overcome by DNA testing and other evidence of paternity/maternity.

Adoption

- 13. Is adoption possible?**

Yes.

- 14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?**

No.

Surrogacy

15. Is surrogacy legal?

Yes.

16. Is commercial/compensated surrogacy legal?

Not as stated but reimbursable surrogacy is permitted.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Do not know, at that is case by case and depends on the paperwork, additional steps may be needed.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes, need donor agreement, no difference.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

If married, then yes. If not married, then need to do second parent adoption.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Too complicated to answer and is case by case. The woman who gives birth is the presumed mother.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

N/A.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Too complicated to answer and is case by case. No different for same-sex versus opposite-sex. Custody and support matters are the same process.

25. If you have further comments on the matters raised in this section please add them below.

--

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

--

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, but it varies between federal and state law and locality laws.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

--

Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Yes, no court order needed, and it is a simple administrative process through the vital records department.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, both parents must consent.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Not yet.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Nothing, marriage stays the same.

36. Is changing gender a ground for divorce?

No.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, State of Washington, Seattle



Contributor Name	Lisa Ann Sharpe
Contributor Email	sharpe@lasher.com
Contributor Firm	Lasher

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No being homosexual or engaging in consensual homosexual sexual act is not illegal.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

--

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes a same-sex couple can marry. There are no differences.

5. Are foreign marriages of same-sex couples recognised?

Yes.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is a non-marriage status for both same-sex and opposite-sex couples "committed intimate relationship".

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

There is a non-marriage status for both same-sex and opposite-sex couples “committed intimate relationship”.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

I don’t know what a customary marriage is.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

Yes we have de facto parenting.

11. What is the status of a parent upon the child’s birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

I don’t understand this. The person giving birth is the “mother” except in surrogacy cases and then another person can be named as the second parent.

12. If you have further comments on the matters raised in this section, please add them below.

--

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

All classes of individuals can adopt.

Surrogacy

15. Is surrogacy legal?

Yes. But a woman can only be a surrogate one time in WA state.

The statute is under RCW 26.26A.

16. Is commercial/compensated surrogacy legal?

Yes. But a woman can only be a compensated surrogate one time in WA state.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

Any can participate.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Yes donation is legal.

RCW 26.26A.605

Assisted reproduction – Parental status of donor.

A donor is not a parent of a child conceived by assisted reproduction.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Yes.

<https://app.leg.wa.gov/RCW/default.aspx?cite=26.26A.100>

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

They are a parent, if married (same sex or opposite sex).

RCW 26.26A.610

Parentage of child of assisted reproduction.

An individual who consents under RCW 26.26A.615 to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

If unmarried, then the other parent should do a second parent adoption.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

It's the same process.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

There are no differences. In a "lesser non-marriage" form you cannot get spousal support and only assets acquired during the relationship are divisible.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Division of property acquired during the relationship. (So there is no claim for spousal support).

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No. They are treated the same.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes.

30. Is gay conversion therapy banned?

Yes In 2018, Washington enacted Senate Bill 5722, which prohibits licensed health care providers from performing conversion therapy on individuals under the age of 18.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Washington State, individuals can update their gender marker on official documents such as birth certificates and driver's licenses through a self-attestation process, without the need for medical documentation or court orders. Here's how you can make these changes. Fill out the "Request to Change Sex Designation on a Birth Certificate for an Adult" form.

https://kingcounty.gov/en/dept/dph/certificates-permits-licenses/change-birth-death-certificate?utm_source=chatgpt.com

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Generally yes with parental consent but this is all up in the air with Trump.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Yes in Washington State – There are three sex designation options: male, female, and X.

While Washington State allows for self-attestation in changing gender markers on state documents, federal policies may differ. As of early 2025, an executive order mandates that federal documents, including passports, reflect an individual's sex assigned at birth. This policy change has led to challenges for individuals whose state documents have been updated to reflect their gender identity.

35. What happens to the status of the marriage/civil partnership when one party transitions?

You are still married.

36. Is changing gender a ground for divorce?

No, Washington State is a no-fault state.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

USA, Washington, D.C.



Contributor Name	Jessica Vinnik
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Contributor Firm	Hostetter Strent LLC

Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

No. The sodomy law was repealed in 1995.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No.

3. If you have further comments on the matters raised in this section, please add them below.

In 2022, the District of Columbia enacted DC ST § 2-1461.01, which prohibits District of Columbia officers and employees from participating or assisting an interstate investigation or legal proceeding seeking to impose civil or criminal penalties for, *inter alia*, engaging in sexual conduct or providing, consenting to, receiving, or facilitating gender-affirming care.

Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Yes. There are no differences in the marriage process based on the gender makeup of the couple. Unless prohibited by statute (e.g. for categories of void marriages), *"Any person may enter into a marriage in the District of Columbia with another person, regardless of gender."* DC ST § 46-401(a).

5. Are foreign marriages of same-sex couples recognised?

Yes, as long as they are recognized as valid in the other jurisdiction, and unless void for other reasons unrelated to the sex of the parties. DC ST § 46-405.01.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

District of Columbia has domestic partnership. See DC ST § 32-702. Interestingly, this statute is within a legal chapter called Health Care Benefits Expansion. However, the legal status does confer other rights, including creation of shared property. The primary differences are the lack of rights and responsibilities that derive from United States federal law and the less onerous process required for terminating the domestic partnership.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

These are not categories that are distinctly recognized.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

The District of Columbia does not recognize customary marriage. However, it does recognize common law marriage. To have a legally recognizable common law marriage, the partners must have lived together after an express mutual agreement, using present tense language, to be permanent partners with the same degree of commitment as spouses in a ceremonial marriage.

9. If you have further comments on the matters raised in this section, please add them below.

If certified by the Mayor or if another jurisdiction's laws sufficiently describe the relationship, a relationship from another jurisdiction that is akin to a domestic partnership, but which has a different name, shall be recognized as a domestic partnership in the District of Columbia. DC ST § 32-702(i).

Parenting

10. Can more than two people be recognised as the parents of a child?

Practically yes, but the right is not yet statutorily codified clearly. However, the law enacted in 2017 in the context of surrogacy opens the door by codifying how the parentage of "intended parents" shall be recognized, and the statute does not limit the number of intended parents. DC ST § 16-401 *et seq.* An intended parent is defined as "*an individual, married or unmarried, who manifests the intent in a written agreement to be legally bound as the parent of a child.*" DC ST § 16-401(16).

Further, the statute permitting orders of custody to third parties implicitly permits shared custody between more than two individuals, saying the court can order a shared custody arrangement as the court determines is in the best interests of the child, and local practitioners have successfully obtained third party custody orders when two legal parents were already recognized. DC ST § 16-831.04(5).

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

When one of the parents is the birthing person, that parent is automatically called “mother” on the birth certificate, and the second parent is listed on the birth certificate as “father/parent.” Intended parents of a child born via surrogacy may petition for an order of parentage, and such order shall “*Direct the Registrar of Vital Records (“Registrar”) to issue the certificate of birth naming the intended parent or parents as the parent or parents.*” DC ST § 16-408(d)(2)(A).

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Yes. There is a detailed statutory scheme outlining the process. As of 2023, there is also “expedited adoption” available to parents who utilized assisted reproductive technology as long as one of the intended parents was the birthing person or there was a surrogacy agreement that only established the parentage of one of the intended parents. DC ST § 16-318.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No. “*Any person may petition the court for a decree of adoption.*” DC ST § 16-302.

Surrogacy

15. Is surrogacy legal?

Yes. DC ST § 16-401 *et seq.* An agreement is required along with other requirements, such as mental health evaluations and independent counsel.

16. Is commercial/compensated surrogacy legal?

To be enforceable, a surrogacy agreement must “*provide that the intended parent or parents shall assume the costs of all agreed-upon reasonable medical and ancillary expenses*” and “*allocate responsibility for the assumption of costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party.*” DC ST § 16-406(a)(6)-(7). Medical expenses are defined as “*those expenses not otherwise covered by medical insurance that a surrogate incurs due to the medical effects of surrogacy, including expenses directly related to the pregnancy and expenses related to complications or other medical issues arising from the pregnancy.*” DC ST § 16-401(18). Ancillary expenses are defined as “*those expenses that a surrogate incurs due to the surrogacy, including legal and counselling expenses, actual lost wages, compensation for risk, inconvenience,*

forbearance, or restriction from usual activities, insurance premiums, expenses associated with recovery, childcare expenses, housekeeping expenses, birthing classes, nutritional expenses, maternity clothing, and travel expenses incurred during the pregnancy and directly related to the surrogacy.” DC ST § 16-401(1).

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

No.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Yes. The parents will need to seek an order of parentage. As long as they follow the statutory prerequisites, they will be able to obtain such an order as long as they live-in District of Columbia at the time of filing, even if the child was born elsewhere. DC ST § 16-408(b).

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

Such donation is legal. Because no parental relationship is automatically created between the donor and the child, no termination is required. *“A gamete or embryo donor who is not an intended parent and that donor’s spouse or domestic partner, if any, shall not be the parent or parents of the child, and shall not have any rights, powers, privileges, immunities, duties, or obligations with respect to the child.”* DC ST § 16-407.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Regardless of the sex or gender of the intended parent(s) and regardless of any genetic relationship to the child or lack thereof, the intended parent(s) are recognized as the legal parents. The intended parents must manifest their intent to be legally bound in a written agreement. DC ST § 16-401(16).

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Although the spouse’s name may appear on the child’s birth certificate, this does not carry the weight of a court order, which may be advisable to avoid any risk of the same-sex partner’s parentage being recognized in other, more hostile jurisdictions. The non-birthing partner, whether or not married and regardless of sex, can seek a parentage order by petitioning the court. The petition must include an *“affidavit by the medical professional who oversaw the embryo transfer or insemination attesting to the facts pertaining to the creation of the embryo and the embryo transfer or insemination, if applicable.”* DC ST § 16-408(c)(1).

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

No.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The termination process for a domestic partnership may be initiated if one of the partners files a statement with the Mayor of the District of Columbia, marries, dies, or files a legal action akin to a divorce. DC ST §§ 16–904, 37-702. The statute pertaining to the equitable distribution of property applies to both divorces and dissolutions of domestic partnerships. There is no difference for same-sex unions. DC ST § 16–910.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

If the relationship is recognized as a domestic partnership pursuant to DC ST § 32-702(i), either person, regardless of the sex of the parties, may seek division of property pursuant to DC ST § 16–910 or alimony pursuant to DC ST § 913(a). No formal relationship between parents is required to participate in a custody proceeding as long as the party's parentage is recognized. DC ST § 16-914.

25. If you have further comments on the matters raised in this section please add them below.

DC ST § 46-401(b) mandates a gender-neutral reading of any policy, rule, or statute pertaining to the implementation of rights and responsibilities relating to marital or familial relationships.

Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No. The statute pertaining to the *"intestate share of a decedent's surviving spouse or surviving domestic partner"* does not differentiate by sex or gender. DC ST § 19-302.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes. The statutory scheme pertaining to inheritance and wills is gender neutral. DC ST § 18-301 *et seq.*

28. If you have further comments on the matters raised in this section please add them below.

While Title 19 does not explicitly state that the statutes shall be read in a gender neutral manner, there are no occurrences of any the following words: man, woman, sex, or gender.

Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

The District of Columbia Human Rights Act (D.C. Code § 2-1401.01 *et seq.*) prohibits discrimination on the basis of twenty-three protected traits. Discrimination on the basis of gender expression, gender identity, sex (including being intersex), and sexual orientation is prohibited in educational institutions, employment, housing, public accommodation, and government services. The District of Columbia Office of Human Rights enforces the District of Columbia Human Rights Act and investigates and adjudicates complaints of discrimination filed under certain federal laws (Title VII of the Civil Rights Act of 1964 [Equal Employment Opportunity Act] and Title VIII of the Civil Rights Act of 1968 [Fair Housing Act]).

30. Is gay conversion therapy banned?

Conversion therapy is banned for minors and adults under a conservatorship or guardianship. DC ST § 7-1231.14a.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

If a declaratory judgment is sought, an application may be filed with the court. As long as the petitioner presents an affirmation by a licensed healthcare provider who has treated or evaluated the petitioner and who certifies they have undergone treatment (surgical, hormonal, or other) for gender transition or that they are intersex, the court must grant the petition and issue a declaration, which shall be effective as of the date of the gender transition identified in the provider's statement. No spousal consent is required. DC ST § 16-2503.

If the individual only wants new local identity documents, no court order is necessary (see number 34 herein).

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

The applicable statute does not address gender-affirming treatment directly, but there is an exception that would appear to apply to some youth seeking gender-affirming care: *"Health services may be provided to a minor of any age without parental consent when, in the judgement of the treating physician, surgeon, or dentist, the delay that would result from attempting to obtain parental consent would substantially increase the risk to the minor's life, health, mental health, or welfare, or would unduly prolong suffering. D.C. MUN. REGS. tit. 22, § 22-B600.4."*

This may not be the common practice, though. One of the major providers in the area, Children’s National Hospital, where there is a robust program dedicated to gender-affirming care for minors, states on their website that parental consent is required. Similarly, while surgery for minors is not legally prohibited, Children’s National Hospital and another major provider, Medstar, offer other gender-affirming services to minors but do not offer surgery until the age of eighteen.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

A gender-neutral gender marker (“x”) is available for a District of Columbia driver’s license or local identification card. DC ST § 50-1401.01(i). No court order or supporting documentation is required; the individual must submit a short application to the Department of Motor Vehicles. In 2017, the District of Columbia was the first jurisdiction in the United States to offer the X identifier on its identity documents. There is not an explicit category for nonbinary gender.

An individual can obtain an amended birth certificate without a court order by submitting an application to the Department of Health along with an affirmation by a licensed healthcare provider who has treated or evaluated the petitioner and who certifies they have undergone treatment (surgical, hormonal, or other) for gender transition or that they are intersex. DC ST § 7-231.22. The current options for gender designation on the revised birth certificate includes male, female, or unknown.

Passports are issued by the United States federal government, and available options for gender markers are in flux due to changes by the current administration.

35. What happens to the status of the marriage/civil partnership when one party transitions?

Under D.C. Code § 46-401, the legality of a marriage or domestic partnership remains unaffected by the gender transition of either spouse/partner. This is consistent with D.C.’s recognition of marriage equality and gender identity protections under the D.C. Human Rights Act (D.C. Code § 2-1401.01 *et seq.*).

36. Is changing gender a ground for divorce?

No. As of 2024, the only available grounds for divorce in the District of Columbia is that one or both parties asserts that they no longer wish to remain married. DC ST § 16-904(a).

37. If you have further comments on the matters raised in this section, please add them below.

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South America

Buenos Aires City & Province of Buenos Aires	419
Chile	424

JURISDICTION

Argentina, Buenos Aires City & Province of Buenos Aires



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Criminal Law

1. **Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?**

Being homosexual or engaging in homosexual acts is not a crime in Argentina.

2. **Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?**

Gender identity issues are not illegal.

3. **If you have further comments on the matters raised in this section, please add them below.**

Relationship Status

4. **Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?**

Yes, they can marry there are no differences with opposite-sex marriages.

5. **Are foreign marriages of same-sex couples recognised?**

Yes, as long as they comply with same-sex marriage laws in Argentina.

6. **Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?**

Yes, there are. Civil unions so called. Minor differences, particularly if the marriage chooses the marital assets regime. if the spouses to be choose separate asset regime to rule their marriage, there are no significant differences, exception made of succession laws, in which the cohabitants have no inheritance rights respect to each other, opposite to spouses who do have inheritance rights.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Yes they are recognised. there are no differences between same-sex and opposite-sex facto cohabiting.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Customary marriages are not legally recognised.

9. If you have further comments on the matters raised in this section, please add them below.

Parenting

10. Can more than two people be recognised as the parents of a child?

No.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

The person giving birth is the mother and the biological father is the father, under our legal system.

12. If you have further comments on the matters raised in this section, please add them below.

Adoption

13. Is adoption possible?

Yes.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

There are no particular ineligible people to adopt.

Surrogacy

15. Is surrogacy legal?

No.

16. Is commercial/compensated surrogacy legal?

No.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

N/A.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

No.

Assisted reproductive treatment**19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?**

Donation of gametes and embryo is only permitted anonymously. There is no relationship, therefore, between donor and the child.

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

No only the woman carrying the child is recognised as parent in same-sex couples having a child through artificial insemination.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

The spouse will be considered parent if he is the biological father in the treatment.

Relationship Breakdown**22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?**

There are no differences.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

The claims to be made are based on alimony and economic compensation. There are no differences with same-sex civil union dissolution.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

Financial claims are based on those regarding co-owners of goods. Custody of children is applicable as in marriage dissolution. No differences with opposite-sex couple.

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

No

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

Yes they can.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

Yes, the law allows to claim damage compensation in those cases.

30. Is gay conversion therapy banned?

No.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

Any adult can change gender and file for change of name also.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

It is not allowed in minors.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

Not anymore.

35. What happens to the status of the marriage/civil partnership when one party transitions?

The status remains unchanged.

36. Is changing gender a ground for divorce?

There is no cause or fault in divorce proceedings in Argentina.

37. If you have further comments on the matters raised in this section, please add them below.

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JURISDICTION

Chile



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Criminal Law

1. Is either being homosexual or engaging in consensual homosexual sexual acts illegal? If so, what are the penalties?

In Chile it is not illegal either being homosexual or engaging in consensual homosexual acts.

But article 365 of the Chilean Criminal Code used to criminalize sexual relationships between same-sex persons, until it was first amended in 1999 and then abolished in 2022.

2. Is any aspect of gender identity or gender affirming treatment illegal? If so what are the penalties?

No aspect of gender identity or gender affirming treatment is illegal in Chile.

3. If you have further comments on the matters raised in this section, please add them below.

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Relationship Status

4. Can a same-sex couple marry? If so, are there any differences from opposite-sex marriages?

Same sex couples can marry in Chile since 2021. The only difference between same-sex couples marriages and opposite-sex marriages is that same-sex couples can not be married under community of assets or "*Sociedad Conyugal*" patrimonial or marital regime.

Marital regimes are the legal framework governing financial relations between spouses and third parties, broadly speaking, there are three regimes: "community of assets" ("*Sociedad Conyugal*"), "separation of assets" ("*Separación de Bienes*") and "Profit sharing" ("*Participación en los Gananciales*").

To understand the scope of each marital property regime, I will refer, in general terms, to each of them.

1. **Separation of Assets Regime:** the description provided by article 159 of the Civil Code states that “*spouses separated in assets manage, with complete independence from each other, the property they had before marriage and those acquired during it, under any title.*” This regime keeps the assets and debts of each spouse separate, during marriage. This means that during the marriage, each spouse maintains ownership, possession, administration, and disposal of their assets and debts independently and separately, without there being any community of property created between them because of marriage. In the event that the marriage shall end – i.e. through a divorce- this property situation remains unchanged, with no patrimonial rights being generated in favor of either spouse over the other’s assets because of the marital regime, without prejudice to other property rights that may arise. Thus, after the dissolution of the marriage under this regime, each spouse maintains their debts and ownership of the assets acquired during the marriage and those they possessed before.
2. **Community of Assets Regime:** this is the marital regime in which, briefly, the assets acquired by the spouses during the marriage are communal and are divided equally in the event of the dissolution of the marriage in accordance to a set of rules that determine how the liquidation of the assets is carried out. This regime is regulated in articles 1725 to 1792 of the Civil Code, and during the existence of the conjugal partnership, the husband is generally the administrator or “boss” of the common assets. That is why same-sex couples cannot get married under this marital property regime, because in lesbian couples there is no husband and in homosexual couples there are two husbands.
3. **Conjugal Participation of Gains Regime:** this regime is regulated in articles 1792-1 to 1792-27 of the Chilean Civil Code. In this regime, each spouse maintains ownership and administration of their own assets and debts during the regime. However, upon the dissolution of the marriage, a liquidation is carried out to determine the increase in assets that each spouse obtained during the marriage, compensating for the gains, and generating a right to participate equally in the excess, which is materialized through a credit in favor of the spouse who obtained fewer gains.

When spouses marry in Chile the default property regime for heterosexual couples is community of assets, which applies automatically upon marriage unless the spouses choose one of the other two property regimes according to articles 1351 and 17182 of the Civil Code. But for same-sex couples the default property regime is separation of assets, which, according to article 135 of the Civil Code, applies automatically upon marriage unless the spouses choose Conjugal Participation of Gains regime.

5. Are foreign marriages of same-sex couples recognised?

Foreign same-sex marriages are recognised in Chile.

6. Is there a lesser, non-marriage status (e.g., civil union-type scheme) for same-sex couples? If so what are the significant differences (if any) from full marriage?

There is a lesser, non-marriage status in Chile, but it is available for both same-sex couples as well as heterosexual couples. This institution is called “*Acuerdo de Unión Civil*” or Civil Union Agreement. It also implies rights and obligations regarding for example health, succession rights (only if the Civil Union Agreement is still valid), economic compensation, among others. The main differences are the patrimonial regimes and the ways to put an end to the Civil Union Agreement.

7. Are de facto/cohabiting/live-in relationships for same-sex couples recognised? If so, are there any differences in the treatment of opposite-sex and same-sex de facto or cohabiting/live-in relationships on the breakdown of their relationship?

Chile only recognises de facto/cohabiting/live-in relationships for domestic violence purposes.

8. Is customary marriage recognised? If so, is it recognised between same-sex couples?

Chile doesn't recognise customary marriage.

9. If you have further comments on the matters raised in this section, please add them below.

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Parenting

10. Can more than two people be recognised as the parents of a child?

Chile doesn't legally recognise nor prohibits for more than two people to be the parents of a child. But recent case law has started to recognise it by recognizing socio-affective bonds between a child and for example his or her stepfather. Until now I am only aware of 3 judgments where three parents are legally recognised, so is something still very new.

11. What is the status of a parent upon the child's birth – for example, is the person giving birth automatically named as the mother, or can the person be named as mother, father or parent at their choosing?

According to article 183 of the Chilean Civil Code Motherhood is legally determined by birth, recognition or a judgment.

In heterosexual marriages the child is presumed to be the husband's son or daughter if it was born after the marriage or within 300 days after the dissolution or judicial separation of the spouses. This presumption will not apply for the child born before 180 days after the marriage if the husband didn't have knowledge of the pregnancy at the time of the marriage and judicially denies its paternity.

If the parents are not married or if it is a same-sex marriage the parent status will be legally determined by recognition at the Civil Public Register of one or both parents or by a judgment in an affiliation case.

12. If you have further comments on the matters raised in this section, please add them below.

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Adoption

13. Is adoption possible?

Adoption is possible in Chile, and it is regulated by Law N°19.620.

14. Are there classes of people who are ineligible to adopt (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

People who want to adopt must be physically, mentally, psychology and morally evaluated by one of the institutions designated by law for it. They also must be more than 25 years old and less than 60 years old, and the difference of age between them and the child has to be of 20 or more years. Furthermore, the prospective adopter can't be inscribed in the National Child Support Debtors Registry.

Even though unmarried individuals or unmarried couples are eligible to adopt, there is a priority order.

- First Chilean or foreign married couples that reside permanently in Chile.
- Secondly, a single, divorced or widowed person with permanent residency in Chile.
- Third, people that don't reside in Chile.

Surrogacy

15. Is surrogacy legal?

In Chile surrogacy isn't legally recognised, but it isn't illegal either. Furthermore, it has been recognised by some case law.

16. Is commercial/compensated surrogacy legal?

In Chile surrogacy isn't legally recognised, but it isn't illegal either as long as it isn't compensated. If it is a commercial/compensated surrogacy scholars discuss if, according to Chilean law, the contract would be absolutely null and void due to an unlawful object. Most of them say it would, and that the only legal surrogacy should be gratuitous. But since we have no legal frame for it, everything will be considered and interpreted by the family court, on a case-by-case basis.

17. Are there classes of people who are ineligible to participate in surrogacy (unmarried individuals, unmarried couples, same-sex couples, transgender, non-binary or intersex people)?

It doesn't apply because surrogacy isn't regulated in Chile.

18. Is the parentage of same-sex couples who have become parents through surrogacy overseas recognised? If so, are further steps required?

Even though surrogacy isn't legally recognised in Chile, same-sex couples who have become parents through surrogacy overseas are recognised in Chile and there are no further steps required for it.

Assisted reproductive treatment

19. Is gamete and/or embryo donation legal and if so, what requirements must be met to terminate the parental relationship between the donor and the child? Is this different if the donation is made to a same-sex married couple or a same-sex unmarried individual?

In principle, the donation of gametes and/or embryos is not expressly permitted in Chile. While certain regulations allude to this practice, there is no comprehensive legal framework addressing it – despite the existence of legislative proposals that have been archived in Congress.

Regulations such as Article 182 of the Civil Code, which falls under the general rules for determining parentage, are relevant. This article was incorporated in 1998 through Law No. 19,585 and stipulated: *“Article 182. The father and mother of a child conceived through assisted human reproduction techniques are the man and woman who underwent them. The parentage determined according to the preceding rule cannot be contested, nor can a different one be claimed.”*

It is noteworthy that this article was introduced after the birth of the first in vitro child in Chile – Aliro Franco – who was conceived in 1984 and born on January 25, 1985.

Subsequently, Law No. 21,400, which *“modifies various legal bodies to regulate, on equal terms, marriage between same-sex persons,”* published on January 10, 2021, amended the first paragraph of Article 182 as follows:

“Art. 182. The parentage of a child born through assisted human reproduction techniques shall be determined concerning the two persons who underwent them.”

Regarding the Health Code, it does not apply, as Article 154 establishes: *“The provisions of this Book shall not apply to blood donations or those of other tissues specified by regulation.”*

Additionally, Decree No. 240, the regulation of Book Nine of the Health Code, in its Article 17 states: *“The provisions of this regulation shall not apply to sperm, egg, blood, bone marrow, bone, skin, hair, or any product of conception that does not result in a live birth; all of which shall be perfected by the mere will of the donor expressed without any formality.”*

20. Are same-sex couples who have a child through artificial insemination recognised as the parents?

Article 182 of the Chilean Civil Code states that: *“The filiation of a child born through the application of assisted human reproduction techniques shall be established with respect to both persons who underwent such procedures”*. Therefore, same-sex couples who have a child through artificial insemination are in fact recognised as the parents.

21. If a person gives birth to a child following treatment at an IVF clinic how is the parentage of the spouse recognised? Is it any different if they are in a same-sex relationship, civil union or common-law/de facto/cohabiting relationship?

Article 182 of the Chilean Civil Code applies to heterosexual couples as well as to same-sex couples, whether they are married or not, but both must consent on it. Nevertheless, this article only applies to lesbian couples and not gay couples because if the spouses are men for them to be able to have a baby they need a third person, a woman, and in that case we would be speaking about surrogacy which was explained above.

Relationship Breakdown

22. If same-sex marriage is permitted, are there differences in the divorce process for same-sex couples concerning either finances or custody? If so, how?

There are no differences for same-sex couples marriage concerning either finances or custody in Chile, but the patrimonial regime, that in the case of same-sex couples will never be community of assets.

23. If a lesser non-marriage form of union (e.g., civil union type scheme) is recognised, how is the relationship dissolved, what claims can be made upon dissolution, and are there any differences between dissolution of same-sex as opposed to opposite-sex unions?

Civil Union Agreement is dissolved either by death, marriage of the civil partners between themselves, mutual agreement by public deed or before the civil registry, by unilateral manifest from one of the civil union partners by public deed or before the civil registry or declaration of nullity. The dissolution of the Civil Union Agreement puts and end to all rights and obligations between the civil partners. The difference upon dissolution in between marriage and civil unions are more formal than substantive. Different proceedings and terms, but same rights could be claimed.

24. If a de facto/cohabiting/live-in relationship or customary marriage between a same-sex couple breaks down, what financial and/or custody claims are available and how do they differ from those available to an opposite-sex couple?

De facto/cohabiting/live-in relationship or customary marriage are not recognised in Chile (same or opposite-sex) there are no financial claims available, and regarding custody and child support claims they are the same for all parents despite their civil or marital status (single, married, widow or civil partner).

25. If you have further comments on the matters raised in this section please add them below.

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Inheritance/Tax

26. Are same-sex couples treated differently for inheritance?

In Chile same-sex couples are treated equally to heterosexual couples regarding inheritance rights.

27. Can same-sex couples inherit property via alternate arrangements such as wills, bequests, etc.?

In Chile same-sex couples, legally bonded, are treated equally to heterosexual couples regarding inheritance rights (forced heirs). We have no free will system in Chile, but if you leave a will, you can freely dispose the 25% of your assets to whom you decide, so could be a de facto or cohabitation partner.

28. If you have further comments on the matters raised in this section please add them below.

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Discrimination in employment/housing/benefits/other

29. Does the law prohibit discrimination on the basis of gender (including transgender/intersex/non-binary) or sexual orientation? If so, how?

On July 24, 2012, Law No. 20,609, known as the Anti-Discrimination Law or the “Zamudio Law,” was published. This law regulates in Article 2:

“Definition of arbitrary discrimination. For the purposes of this law, arbitrary discrimination is understood as any distinction, exclusion, or restriction that lacks reasonable justification, made by agents of the State or individuals, and that causes deprivation, disturbance, or threat in the legitimate exercise of fundamental rights established in the Political Constitution of the Republic or in international human rights treaties ratified by Chile and in force, particularly when based on reasons such as race or ethnicity, nationality, socio-economic situation, language, ideology or political opinion, religion or belief, unionization or participation in trade union organizations or the lack thereof, sex, gender, motherhood, breastfeeding, sexual orientation, gender identity and expression, marital status, age, parentage, personal appearance, and illness or disability.”

Additionally, Title II establishes the action for arbitrary discrimination, along with procedural rules to exercise it. The purpose of this action is to declare whether arbitrary discrimination has occurred and, if so, to annul the discriminatory act. A fine may also be imposed.

Furthermore, this law amends the Criminal Code and adds as an aggravating factor in Article 12:

“21st. Committing the crime or participating in it motivated by the ideology, political opinion, religion or beliefs of the victim; the nation, race, ethnicity, or social group to which they belong; their sex, sexual orientation, gender identity, age, parentage, personal appearance, or the illness or disability they suffer.”

Moreover, on June 14, 2024, Law No. 21,675 was published, establishing measures to prevent, sanction, and eradicate violence against women based on their gender.

In Article 5, it defines gender-based violence:

“Gender-based violence is any action or omission that causes death, harm, or suffering to a woman based on her gender, wherever it occurs, whether in public or private; or a threat thereof. Gender-based violence also includes that exercised against girls, boys, and adolescents, with the aim of harming their mothers or caregivers. In these cases, individuals under 18 years of age shall be referred to the competent authority in accordance with Law No. 21,430 on Guarantees and Integral Protection of the Rights of Children and Adolescents. The omission in observing the duties assigned by this law to State bodies and their agents enables the filing of administrative and judicial actions, as appropriate, before the respective authority, to restore the exercise and enjoyment of such rights through the resources and procedures contemplated in the laws.”

It also amends the Penal Code and adds as an aggravating factor in Article 12:

“24th. Committing the crime within the framework of active behaviors constituting obstetric violence, in their capacity as public or private health workers, during the care of pregnancy, prepartum, childbirth, postpartum, and abortion, in the causes established by law within the framework of women’s sexual and reproductive health care.”

30. Is gay conversion therapy banned?

There is no explicit prohibition; however, in 2020, there was an attempt to ban conversion therapy. But those against it argued that, while subjecting a person against his or her will to such therapy is in fact illegal and can be cause for a legal action for arbitrary discrimination, the law does allow such therapy to be conducted on a “voluntary” basis.

31. If you have further comments on the matters raised in this section, please add them below.

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Gender Identity

32. Can an adult legally change their gender either as of right or with Court sanction? If the latter, please describe the legal process, if any, required to do so and whether spousal consent is required.

In Chile, since December 10, 2018, with the publication of Law No. 21,120, it is expressly permitted for an adult to legally change their gender.

The requirements are that the person is of legal age; and they may request it up to two times.

The procedure is before the Civil Registry and Identification Service, where the legal effects of the request will be explained, and the applicant and two competent witnesses will be summoned to declare that the applicant understands all the legal effects of the rectification. The official may not require further information to process the request.

Then, within a maximum period of 45 days, the National Director of the Civil Registry and Identification Service may accept, reject with justification, or declare the request admissible.

Rejection occurs only if the identity of the applicant or their declaration, or that of the witnesses, cannot be verified. It may only be declared inadmissible if the person is not of legal age.

In case of inadmissibility, the Civil Registry and Identification Service must inform the judicial procedures established by the law.

33. Are gender-affirming treatments available to legal minors (including puberty blockers and/or surgery) and if so please describe the required parental consent/legal process.

Yes, gender-affirming treatments are available for minors. In such cases, informed consent is required, and in the case of minors, it is subjectively and prudently evaluated by healthcare providers to determine whether the minor has the capacity to give consent.

Furthermore, Law No. 21,331, on the Recognition and Protection of the Rights of Persons in Mental Health Care, published on May 11, 2021, amended Law No. 20,584 on patients' rights as follows:

- In Article 10, it adds:

"All children and adolescents have the right to receive information about their illness and the way in which their treatment will be carried out, adapted to their age, mental development, and emotional and psychological state."

- In Article 14, it adds the following paragraphs:

"Without prejudice to the powers of parents or legal guardians to give consent on behalf of competent minors in matters of health, all children and adolescents have the right to be heard regarding the treatments they receive and to choose among the available alternatives, considering their age, maturity, mental development, and emotional and psychological condition. It must be recorded that the child or adolescent has been informed and heard."

"In the case of biomedical scientific research and its clinical applications, the refusal of a child or adolescent to participate or continue must be respected. If the research has already started, the child must be informed of the risks of early withdrawal."

These provisions recognize the principle of progressive autonomy in minors, with the evaluation resting on the medical professional.

Additionally, Article 9 of Law No. 21,331 establishes:

"A person with mental illness or a psychological or intellectual disability is the holder of the rights guaranteed by the Constitution. This law specifically ensures the following:

7. *The right not to be sterilized without their free and informed consent. Sterilization of children and adolescents or its use as a method of fertility control is prohibited. When a person is unable to express their will or preferences, or is a minor, only reversible contraceptive methods may be used."*

Thus, only reversible puberty blockers are permitted; surgeries are not allowed for minors.

34. Can someone be identified as non-binary or X on their identity documents, such as birth certificate/passport?

While there is no explicit provision recognizing non-binary or “X” gender markers, Article 9 of Law No. 21,120 states:

“ON THE REQUEST FOR RECTIFICATION OF THE BIRTH CERTIFICATE. Any adult may, up to two times, and through the procedures established by this law, obtain the rectification of the sex and name recorded on their birth certificate to match their gender identity.”

In practice, if the Civil Registry refuses to recognize a person as non-binary or with an “X,” the individual may petition the courts in accordance with Law No. 17,344, particularly Article 1, letter A:

“Any person has the right to use the names and surnames under which they are registered in their birth record... Anyone may request, once, authorization to change their names or surnames, or both, in the following cases:

A) When such names are ridiculous, offensive, or cause moral or material harm.”

The first court ruling recognizing and ordering the registration of a non-binary person was issued on May 25, 2022, and this judicial trend has been upheld consistently (see rulings V-262-2023 from the 21st Family Court; V-287-2023 from the 3rd; V-322-2022 from the 29th; V-132-2023 from the 27th; and V-267-2022 from the 30th).

35. What happens to the status of the marriage/civil partnership when one party transitions?

The marital or civil union status remains in effect due to the reform established by Law No. 21,400, published on March 10, 2022, which ensures marriage equality regardless of gender.

However, the spouse of the person who transitions may request the dissolution of the marriage under Title IV BIS of Law No. 21,120.

36. Is changing gender a ground for divorce?

Yes, it constitutes a ground for termination of marriage. When a gender change is legally recognized while a marriage is still in effect, and the person has undergone the rectification of sex and name under Law No. 21,120, the Civil Registry must notify the spouse.

The spouse then has a period of six months from notification to petition the Family Court for dissolution of the marriage. This is in line with Article 42 of Law No. 19,947 (New Civil Marriage Law), which states:

“Article 42. Marriage ends:

- 1. By the death of one of the spouses;*
- 2. By presumed death, once the periods established in the following article have elapsed;*
- 3. By final judgment of nullity;*

4. *By final judgment of divorce; and*

5. *By the will of the spouse of the person who has obtained a rectification under Law No. 21,120, pursuant to Article 19 of said law."*

37. If you have further comments on the matters raised in this section, please add them below.

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