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Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Finland

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and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

Civil marriage

Civil marriage is only open for different-sex partners. See the Marriage Act (*Avoliittolaki*) 234/1929 of 13 June 1929. For an unofficial English translation by the Ministry of Justice of the Marriage Act, see www.finlex.fi/pdf/saadkaan/E9290234.PDF.

Registered partnership

Registered partnership is only open for same-sex partners. See the Act on Registered Partnerships (*Laki rekisteröidystä parisuhteesta*) 950/2001 of 9 November 2001, which entered into force on 1 March 2002. See www.finlex.fi/pdf/saadkaan/E0010950.PDF for an unofficial English translation by the Ministry of Justice of the partnership law.

The main differences between marriage and registered partnership concern the presumption of paternity (see item A1, below), adoption (items A4 and A5) and the use of each other's surname (C1). Another difference is that unlike marriage a partnership registration cannot take place in a church (see item F3). And for marriage no residency or citizenship requirements apply (see items E5 to E10).

Informal cohabitation

There is no single definition of cohabitation in Finnish legislation. The description varies from one piece of legislation to the next. Usually cohabitation is defined as 'persons living in a marriage-like relationship', sometimes 'a man and a woman who live in a marriage-like relationship'. The government has decided to further define the legal position of same-sex cohabitants, but nothing has been done on that since 2001.

The definitions do not automatically rule out same-sex cohabitants, but there is no clear legislative rule or case law on this. Same-sex couples have been treated as common-law couples when the wording of the law allows it. Examples include joint parental authority (see item A3, below), fostering (A7), compensation in case of wrongful death (B5), next of kin rules (C6 and C7) and probably rent law (C8). See also items B13, B16 and B17.

Names, numbers and websites of laws cited in the notes

- Act on the Medical Use of Human Organs and Tissues (*Laki ihmisen elimien ja kudoksien lääketieteellisestä käytöstä*) 101/2001 www.finlex.fi/linkit/ajansd/20010101
- Act on Compensation for Crime Damage (*Rikosvahinkolaki*) 935/1973 www.finlex.fi/linkit/ajansd/19730935
- Act on confirming the sex of a transsexual (*Laki transseksuaalin sukupuolen vahvistamisesta*) 563/2002 [http://finlex1.edita.fi/dynaweb/stp/stp/2002sd/@ebt-link?showtoc=false;target=IDMATCH\(id,20020563.sd](http://finlex1.edita.fi/dynaweb/stp/stp/2002sd/@ebt-link?showtoc=false;target=IDMATCH(id,20020563.sd)
- Act on Inheritance and Gift Tax (*Perintö- ja lahjaverolaki*) 378/1940 www.finlex.fi/linkit/ajansd/19400378
- Act on Registered Partnerships (*Laki rekisteröidystä parisuhteesta*) 950/2001 www.finlex.fi/linkit/ajansd/20010950
- Act on Residential Leases (*Laki asuinhuoneiston vuokrauksesta*) 481/1995 www.finlex.fi/linkit/ajansd/19950481
- Act on Social Assistance (*Laki toimeentulotuesta*) 1412/1997 www.finlex.fi/linkit/ajansd/19971412
- Act on the Status and Rights of Patients (*Laki potilaan asemasta ja oikeuksista*) 785/1992 www.finlex.fi/linkit/ajansd/19920785
- Adoption Act (*Laki lapseksiottamisesta*) 153/1985 www.finlex.fi/linkit/ajansd/19850153
- Child Custody and Right of Access Act (*Laki lapsen huollosta ja tapaamisoikeudesta*) 361/1983 www.finlex.fi/linkit/ajansd/19830361
- Code of Inheritance (*Perintökaari*) 40/1965 www.finlex.fi/linkit/ajansd/19650040
- Code of Judicial Procedure (*Oikeudenkäymiskaari*) 4/1734 www.finlex.fi/linkit/ajansd/17340004
- Criminal Investigations Act (*Esitutkintalaki*) 449/1987 www.finlex.fi/linkit/ajansd/19870449
- Employment Accidents Act (*Tapaturmavakuutuslaki*) 608/1948 www.finlex.fi/linkit/ajansd/19480608
- Marriage Act (*Avoliittolaki*) 234/1929 www.finlex.fi/linkit/ajansd/19290234

- Names Act (*Nimilaki*) 694/1985
www.finlex.fi/linkit/ajansd/19850694
- National Pension Act (*Kansaneläkelaki*) 347/1956
www.finlex.fi/linkit/ajansd/19560347
- Paternity Act (*Isyyslaki*) 700/1975
www.finlex.fi/linkit/ajansd/19750700
- Penal Code (*Rikoslaki*) 39/1889 as amended by law 578/1995 www.finlex.fi/linkit/ajansd/18890039
- Survivors Pension Act (*Perhe-eläkelaki*) 38/1969
www.finlex.fi/linkit/ajansd/19690038
- The Aliens Act (*Ulkomaalaislaki*) 378/1991
www.finlex.fi/linkit/ajansd/19910378
- The Nationality Act (*Kansalaisuuslaki*) 359/2003
www.finlex.fi/linkit/ajansd/20030359
- Workers Pension Act (*Työntekijäin eläkelaki*) 395/1961
www.finlex.fi/linkit/ajansd/19610395

Table A (Finland): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	Yes	Yes	Yes
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes	X	X	Yes	Yes	Yes
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	No	No	No
5. Partners can jointly adopt a child	Yes	X	X	No	No	No
6. One partner can individually adopt a child	No	X	X	Yes	Yes	Yes
7. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	6x3 + 1x0 = 18	7x0 = 0	7x0 = 0	4x3 + 3x0 = 12	4x3 + 1x1 + 2x0 = 13	4x3 + 3x0 = 12

Notes to table A

A1 – Marriage: art. 2 Paternity Act; partnership: art. 9(1) Act on Registered Partnerships. For different-sex cohabitation paternity is not automatic, but male partner can easily register paternity by announcement (art 3 Paternity Act).

A2 – No legislation on assisted insemination; in fact many lesbian couples are assisted every year.

A3 – Marriage: art. 6 Child Custody and Right of Access Act; partnership and cohabitation: art. 9(1)(i) of the same Act. Many same-sex registered couples and same-sex informal cohabiting couples have been granted joint parental authority during the last years.

A4 – Marriage: art. 6(2) Adoption Act; partnership: art. 9(2) Act on Registered Partnerships; cohabitation: art. 7 Adoption Act.

A5 – Marriage: art. 6(1) Adoption Act; partnership: art. 9(2) Act on Registered Partnerships, cohabitation: art. 7 Adoption Act.

A6 – Marriage: art. 6(1) Adoption Act; partnership and cohabitation: art. 1(1) Adoption Act.

A7 – No legislation on child fostering. No information available on the number of same-sex foster parents.

Table B - part one (Finland): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No, but	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes	X	X	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes	X	X	Yes	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	X	X	Yes	Yes	Yes
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	4x3 + 1x1 + 1x0 = 13	6x0 = 0	6x0 = 0	4x3 + 1x1 + 1x0 = 13	1x3 + 5x0 = 3	1x3 + 5x0 = 3

Notes to table B - part one

B1 – Marriage and partnership: art. 34 Marriage Act.

B2 – Marriage and partnership: art. 52 Marriage Act; only debts which are made for the subsistence of spouses/partners or children living in the household, are joint debts.

B3 – Marriage and partnership: art. 48 Marriage Act.

B4 – Marriage and partnership: art. 35 Marriage Act.

B5 – Marriage, partnership and cohabitation: art. 6a Act on Compensation for Crime Damage. The term used can be translated as 'person closely connected' (*läheinen*).

B6 – Marriage and partnership: art. 1 of chapter 3 of the Code of Inheritance.

Table B - part two (Finland): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	No, but	X	X	No, but	No	No
9. Public health insurance of one partner covers medical costs of other partner	No	X	X	No	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes	X	X	Yes	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	No, but	No
Level of legal consequences	2x3 + 1x1 + 4x0 = 7	7x0 = 0	7x0 = 0	2x3 + 1x1 + 4x0 = 7	1x1 + 6x0 = 1	7x0 = 0

Notes to table B - part two

B7 – Relationships do not affect property tax.

B8 – Income taxation is as a rule individually based. Only in a few cases marriage or registered partnership can result in lower income tax, one example of this is that alimony payments after divorce are tax free (art. 91 Act on Income Tax).

B9 – Public health insurance is individually based.

B10 – No such impact.

B11 – No such impact.

B12 – Marriage and partnership: art. 19(1) Survivors Pension Act.

B13 – Married and registered surviving partners pay less tax (art. 11(3) Act on Inheritance and Gift Tax). The same applies to different-sex cohabitants, but only if the surviving partner has (had) a joint child with the deceased partner.

Table B - part three (Finland): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	No
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes	No
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	4x0 = 0	2x3 + 2x0 = 6	2x3 + 2x0 = 6	4x0 = 0

Notes to table B - part three

B14 – Relationships do not affect property tax.

B15 – No such impact.

B16 – Marriage, partnership and different-sex cohabitation: art. 3(1) Act on Social Security.

B17 – Marriage, partnership and different-sex cohabitation: art. 28(2) National Pension Act.

Table C (Finland): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
1. One partner can have or use surname of the other	Yes	X	X	No, but	No	No
2. Foreign partner of a resident national is entitled to a residence permit	Yes, but	X	X	Yes, but	>2 years: Yes, but	>2 years: Yes, but
3. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	No	No
4. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes, but	Yes, but
5. When one partner uses violence against other partner, specific statutory protection applies	No	X	X	No	No	No
6. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	Yes	Yes
7. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	Yes	Yes
8. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes	Yes, but
9. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 1x2 + 2x0 = 20	9x0 = 0	9x0 = 0	5x3 + 1x2 + 1x1 + 2x0 = 18	3x3 + 2x2 + 4x0 = 13	2x3 + 3x2 + 4x0 = 12

Notes to table C

C1 – Marriage: art. 7(1) Names Act; partnership: art. 10(1)(iii) Names Act. The only way for a registered partner to get the name of his or her partner, is through the administrative procedure for changing a surname (see M. Savolainen, 'The Finnish and Swedish Partnership Acts – Similarities and Divergencies' in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 32-33). In that context registered partnership has been considered as a special reason needed when making an application to take a name that is already in use.

C2 – Marriage or partnership as a rule qualifies as a reason for a residence permit (art. 18(1)(i) Aliens Act). Both same-sex and different-sex cohabitation have usually been accepted as a reason for a residence permit after two years of cohabitation (art. 18(1)(i) Aliens Act).

C3 – Marriage and partnership: art. 22 Finnish Nationality Act.

C4 – Marriage, partnership and cohabitation: art. 20(1)(i) of chapter 17 Code of Procedure. This Code is from 1948 and the words used, 'married or engaged', would likely be interpreted so as to include same-sex and different-sex cohabitation.

C5 – No such provisions.

C6 – Marriage, partnership and cohabitation: art. 9(1) Act on the Status and Rights of Patients.

C7 – Art. 4(1) Act of the Medical Use of Human Organs and Tissues. The terms used 'next of kin' (*lähiomainen*) and 'person closely connected' (*läheinen henkilö*) are most likely to include informal cohabitation.

C8 – Marriage, partnership and cohabitation: art. 46(2) Act on Residential Leases. According to art. 11 of this Act, the term 'spouse' (*puoliso*) includes both married and cohabiting couples. It would be most likely to be interpreted to include also same-sex couples.

C9 – No such provisions.

Table D (Finland): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (2002)	Between married spouses and informal cohabitants (1995)	Between registered partners and informal cohabitants (2002)	Between same-sex and different-sex partners (with same status) (1995)
1. With respect to housing	Yes	Yes	Yes	Yes
2. With respect to life insurance	Yes	Yes	Yes	Yes
3. With respect to health insurance	Yes	Yes	Yes	Yes
4. With respect to medically assisted insemination	Yes, but	Yes, but	Yes, but	Yes, but
5. With respect to other services	Yes	Yes	Yes	Yes
6. With respect to an occupational survivor's pension	Yes	No	No	No
7. With respect to other spousal benefits in employment	Yes, but	No, but	No, but	Yes, but

Notes to table D

D1 – Provisions on discrimination in the Penal Code (art. 9 of chapter 11, as amended by law 578/1995) make it a criminal offence for anyone, exercising their trade or profession, to refuse service or place someone in an unequal or an essentially inferior position, without an acceptable reason, because of [...] sexual orientation, family ties [...] or another comparable circumstance.

D2 – Idem.

D3 – Idem.

D4 – Idem. There is no law on medically assisted insemination; however, several committee reports have suggested to restrict insemination services to married couples. This might be seen by the courts as an 'acceptable reason' needed for justified differential treatment according to the Penal Code.

D5 – See note to D1.

D6 – Idem. According to art. 4a Workers Pension Act, informal cohabitants are not eligible for survivors' pensions.

D7 – See note to D1. There are differences between registered partners and married couples in spousal benefits based on collective agreements. The issue has never been brought to court as a Penal Code discrimination issue. Differential treatment would more likely be considered as prohibited discrimination when between married and registered partners or between same-sex and different-sex partners, than when between married partners and informal cohabitants or between registered partners and informal cohabitants.

Table E (Finland): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (2002)
Resident national with:	1. Resident national	Yes	X	X	Yes
	2. Non-resident national	Yes	X	X	Yes
	3. Resident foreigner	Yes	X	X	Yes
	4. Non-resident foreigner	Yes	X	X	Yes
Non-resident national with:	5. Non-resident national	Yes	X	X	No
	6. Resident foreigner	Yes	X	X	No, but
	7. Non-resident foreigner	Yes	X	X	No
Resident foreigner with:	8. Resident foreigner	Yes	X	X	>2 years: Yes, but
	9. Non-resident foreigner	Yes	X	X	No, but
Non-resident foreigner with:	10. Non-resident foreigner	Yes, but	X	X	No
11. Sister or brother with sister or brother		No	X	X	No
12. Parent with child		No	X	X	No
Level of access		9x3 + 1x2 + 2x0 = 29	12x0 = 0	12x0 = 0	4x3 + 1x2 + 2x1 + 5x0 = 16

Notes to table E

E1 – For partnership, see art. 10(1)(1) Act on Registered Partnerships. No such restrictions apply to marriage. The text of art. 10 of the Act on Registered Partnerships reads as follows:

‘(1) Partnership may be registered in Finland only if: (1) at least one of the partners is a Finnish citizen and habitually resident in Finland; or (2) both parties have been habitually resident in Finland for two years immediately before the registration.

(2) In the application of subsection (1), citizenship of a foreign state whose legislation allows for the registration of partnership with mainly the same legal effects as provided in this Act, shall correspond to Finnish citizenship.’

Governmental Decree 141/2002 currently designates corresponding citizenships to be Dutch, Icelandic, Swedish, Norwegian, German and Danish citizenships.

E2 – Idem.

E3 – Idem.

E4 – Idem.

E5 – Idem.

E6 – Art. 10(2) Act on Registered Partnerships allows registration if the resident foreigner has a citizenship of a country mentioned in the Governmental Decree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E7 – See note to E1.

E8 – Art. 10(1)(2) Act on Registered Partnerships allows registration after two years of residence immediately before the registration for both parties, but according to 10(2) Act on Registered Partnerships two years residency is not required if one of the two resident foreigners has a citizenship of a country mentioned in Governmental Decree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E9 – Art. 10(2) Act on Registered Partnerships allows registration if the resident foreigner has a citizenship of a country mentioned in Governmental Decree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E10 – Art. 108(2) Marriage Act: ‘If neither the woman nor the man is a Finnish citizen and if neither is habitually resident in Finland, they have the right to marry before a Finnish authority only if the marriage is permissible under the law of Finland and if each of them has the right to marry in accordance with the law of the state whose citizen he or she is or where he or she is habitually resident, or in accordance with the law

applicable in one of these states on the examination of impediments to marriage.' For partnership, see art. 10(1) Act on Registered Partnerships (quoted in note to E1).

E11 – Art. 7(2) Marriage Act; art. 2(1)(2) Act on Registered Partnerships.

E12 – Idem.

Table F (Finland): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)
1. Registry of births, marriages and deaths	Yes	X	X	Yes
2. Local population administration	No	X	X	No
3. Church	Yes	X	X	No
4. Court	Yes	X	X	Yes
5. Private person with special authorisation	No	X	X	No
6. Public notary	No	X	X	No
7. Administrative magistrate	No	X	X	No

Notes to table F

F1 – Art. 17(2)(ii) Marriage Act; art. 4(1) Act on Registered Partnerships, which reads as follows: 'Partnership shall be registered by an authority entitled to perform *civil* marriage ceremonies' (emphasis added). This means that partnership registrations can be done either by a judge of the local court of first instance, or by a registrar of the population register, which is comparable to what the French call '*l'état civil*' and the English call '*the registry of births, marriages and deaths*' (see M. Savolainen, 'The Finnish and Swedish Partnership Acts – Similarities and Divergencies' in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 30).

F2 – Marriages and partnerships can be registered by the registrar of the population register, which resembles most the Registry of births, marriages and deaths. See note to F1.

F3 – Art. 17(1) Marriage Act; art. 4(1) Act on Registered Partnerships (quoted in note to F1).

F4 – Art. 17(2)(i) Marriage Act; art. 4(1) Act on Registered Partnerships (quoted in note to F1).

F5 – No such provisions.

F6 – No such provisions.

F7 – No such provisions.

Table G (Finland): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)
1. By court decision (after joint or individual petition)	Yes	X	X	Yes
2. By mutually agreed contract (outside court)	No	X	X	No
3. Unilaterally by one partner (outside court)	No	X	X	No
4. By conversion of marriage into registered partnership, or vice versa (outside court)	No, but	X	X	No, but
5. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	X	X	No
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
7. By administrative decision (after joint or individual petition)	No	X	X	No

Notes to table G

G1 – Art. 25 Marriage Act; art. 7(2) Act on Registered Partnerships.

G2 – No such provisions.

G3 – No such provisions.

G4 – Marriage and partnership: art. 2(2) Act on confirming the sex of a transsexual. When the sex of a transsexual is notarised in compliance with the procedures stated in the Act, the persons marriage is a automatically converted to registered partnership and vice versa.

G5 – No such provisions.

G6 – No such provisions.

G7 – No such provisions.

Some literature in English

- Matti Savolainen, 'The Finnish and Swedish Partnership Acts – Similarities and Divergencies', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 24-40.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 107-110.

