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More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries. (Documents de travail n°125)

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

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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

Different-sex partners can get married in church or have a civil ceremony with a magistrate. The current Marriage Act no. 31/1933 deals with issues such as impediments to marriage, solemnization of marriage, annulment of marriage, separation and divorce, responsibility of spouses for the maintenance of the family, property and proprietary rights of spouses, financial obligations of spouses, agreements between spouses, marriage settlements and legal procedure in matrimonial action.

A translation of the Marriage Act no. 31/1993 can be found at <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/112>.

Registered partnership

The Icelandic term for registered same-sex partnership is *staðfest samvist* (literally 'confirmed partnership'). The Icelandic Parliament passed a resolution in 1992 commanding the government to appoint a committee to explore the legal, cultural and social situation of homosexuals and to propose measures to abolish discrimination against homosexuals in Iceland. The committee was appointed in 1993 and issued a report in 1994. The majority of the committee recommended the adoption of laws similar to those already adopted in Denmark, Norway and Sweden. In February 1996 the government proposed a bill that was passed and the Registered Partnership Act no. 87/1996 (the RPAAct) came into effect on June 27th 1996. The RPAAct was amended by Act no. 52/2000 (allowing for second-parent adoption, and extending the possibilities for registering a partnership with a foreigner).

The Icelandic Parliament passed a new resolution in 2003 commanding the government to appoint a committee to explore the legal situation of homosexuals. Same-sex informal cohabitation will be looked at in particular together with the issue of homosexuals and (JOINT ?) adoption and medically assisted insemination. The committee is expected to issue a report and proposals before January 15th 2004.

Same-sex partners can register their partnership under the RPAAct with a magistrate and this is the same ceremony as a civil marriage. Such registration generally affords the partners the same rights as a married couple (with a few defined exceptions). Different-sex partners cannot register their partnership under the RPAAct.

See <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/117> for an English translation of the RPAAct. Such a translation can also be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003.

Informal cohabitation

There are basically two types of cohabitation that can be defined as informal.

a) The Icelandic term *óvígð sambúð* (literally 'non-marital cohabitation') is generally used for different-sex partners that share a household and have a relationship similar to a married couple. This is a theoretical definition that evolved hand in hand with the process of attaching legal rights and obligations to non-marital cohabitation, starting before and around the middle of the 20th century in Iceland. There is no general law on such cohabitation and therefore the term does not have a single legal definition. There are only specific provisions in different laws that are controlled by different requirements. Some of these provisions mention a man and a woman and are as such clearly meant only to apply to different-sex partners. Other provisions that use the term non-marital cohabitation are generally interpreted as only to apply to different-sex partners based on the theoretical definition. As mentioned before a committee is currently working on a new report on the legal status of homosexuals in Iceland and is expected to propose changes in this area.

As a general principle of family law in Iceland *óvígð sambúð* does not automatically afford the partners the same rights as a married couple. On the whole Icelandic legislation in practice affords such different-sex partners many of the same rights and obligations as married couples and registered same-sex partners. (Some are mentioned in Tables A, B and C.)

As mentioned above specific provisions in different laws affording rights and obligations to different-sex partners are controlled by different requirements. One of such requirements is a special registration of the cohabitation with the National Registry and there has been an increasing emphasis on this formal requirement in recent years. There are no special provisions that cover this kind of registration in the National Registry Act, but a procedure had to be developed to make a distinction between this registration and a simple registration of two persons at the same address. The registration of different-sex cohabitation with the National Registry is fundamentally different from registration of same-sex partnership under the RPAAct. Different-sex partners sign a special form stating their wish to be registered as partners, submit the form to the National Registry and there is no ceremony involved. In practice the cohabitation is considered to have terminated if the partners marry and one of the partners can effectively terminate the cohabitation by registering his address elsewhere.

The director of the National Registry has confirmed that this kind of registration is only available to different-sex partners. He has also confirmed that it is impossible to register different-sex cohabitation of close relatives (those that are not permitted to marry). This is based on general principles of family law.

Other general requirements of provisions affording rights and obligations to different-sex partners are a minimum length of cohabitation and/or a child in the family.

b) Two different-sex partners can choose to live together and register their joint address without registering their cohabitation with the National Registry. This option is also open to same-sex partners. Icelandic law does not generally attach any specific legal consequences to such informal cohabitation save for a few limited exceptions. Such partners are therefore generally treated as two individuals.

Websites with legal information in English:

<http://eng.domsmalaraduneyti.is/laws-and-regulations/> (contains English translations of various Icelandic laws);

<http://eng.felagsmalaraduneyti.is/information/immigrants/nr/732> (information for foreigners who move to Iceland including info on marriage and cohabitation; published by the Ministry of Social Affairs in 1998);

Table A (Iceland): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but (1981)	No
2. Medically assisted insemination is lawful for women in such a relationship	>3 years: Yes	X	X	No	>3 years: Yes, but	No
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	>1 year: Yes	No
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	>3 years: Yes	X	X	>3 years: Yes, but (2000)	>5 years: Yes, but (2000)	No
5. Partners can jointly adopt a child	>3 years: Yes	X	X	No	>5 years: Yes, but (2000)	No
6. One partner can individually adopt a child	No, but	X	X	No	No, but	Yes, but
7. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	6x3 + 1x1 = 19	7x0 = 0	7x0 = 0	2x3 + 1x2 + 4x0 = 8	2x3 + 3x2 + 2x1 = 14	1x3 + 1x2 + 5x0 = 5

Notes to table A

A1 – Paternity in marriage and different-sex cohabitation is dealt with in art. 2 of the Child Act no. 76/2003: This is new Child Act that came into effect on 1 November 2003. If the mother of a child and a man she alleges to be its father are in a different-sex cohabitation, that is registered in the National Registry, at the time of the birth of the child, that man shall be presumed to be the father. Outside marriage and different-sex cohabitation paternity may be established through formal recognition by the man alleged by the mother to be the father, or by court decision.

A2 – Art. 3 of the Act on Artificial Insemination no. 55/1996, for marriage and different-sex cohabitation that is registered in the National Registry. Art. 6 of the RPAAct, for same-sex registered partnership.

A3 – Art. 29 of the Child Act no. 76/2003: If an unmarried parent who has *sole* custody (i.e. not joint custody with the other birth-parent) marries or enters into a same-sex registered partnership (RPAAct) the stepparent shall also have custody of the child. The same rule applies when a child is born during a registered partnership of two women: in that case the stepparent shall also have custody. If an unmarried parent who has sole custody enters into different-sex cohabitation that is registered in the National Registry, the partner shall also have custody of the child after one year of registration.

A4 – Art. 2 of the Adoption Act no. 130/1999: A married couple (*in practice* the marriage shall have lasted for at least three years) or a man and a woman cohabiting for a period of at least 5 years, may be granted permission to adopt the child or the adopted child of the other. Cohabitation in the Adoption Act means the cohabitation of a man and a woman which is registered in the National Registry or which can be ascertained by other unequivocal evidence. The provisions of the Adoption Act relating to marriage and step-parent adoption apply to registered same-sex partnership, provided the child has not been adopted from another country, according to art. 6 of RPAAct, as amended with Act. nr. 52/2000.

A5 – Art. 2 of the Adoption Act no. 130/1999: A married couple (*in practice* the marriage shall have lasted for at least three years) or a man and a woman cohabiting for a period of at least 5 years can be granted permission to adopt a child. For definition of cohabitation see note to A4.

A6 – Art. 2 of the Adoption Act no. 130/1999: As a general rule partners who can adopt can only engage in adoption together. Either spouse or either partner in different-sex cohabitation may only be granted individual permission for adoption if the other one has disappeared or is in such a mental state as not to understand the meaning of adoption. A single person may be granted permission for adoption under special circumstances (if the person is considered particularly fit to care for a child) and if the adoption is clearly beneficial for the child. In this respect different-sex cohabitants that have not registered their cohabitation in the National Registry could be defined as single persons and the same applies to same-sex informal cohabitants.

A7 – Art. 66 of the Child Protection Act no. 80/2002: The Governmental Agency for Child Protection grants licenses to provide foster care for children based on an individual evaluation of each applicant.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	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	X	X	No	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, but	No, but
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	4x3 + 2x0 = 12	6x0 = 0	6x0 = 0	4x3 + 2x0 = 12	1x2 + 5x0 = 2	1x1 + 5x0 = 1

Notes to table B - part one

B1 – Art. 4 of the Marriage Act no. 31/1993: Each married person shall have control of his or her assets and be responsible for his or her liabilities. According to art. 53, the property of spouses can be either matrimonial property or separate property (the latter may be created by contract or by statute), and spouses may be joint owners of property. There are some limitations as to the spouses' proprietary rights during marriage (art. 60-63). The main difference between matrimonial property and separate property is that net matrimonial property of each is divided upon legal separation or divorce of spouses. Art. 5 of the RPAct: The provisions relating to marriage and spouses apply to registered same-sex partnership. All others are generally considered as individuals. Properties of each partner *can* in certain cases be considered joint property if that is proven to be the case. Courts have recognized that a partner in a different-sex cohabitation can have a part in properties accumulated during the cohabitation (leading principle in the Supreme Court judgment of 4 February 1981, H. 1981:128).

B2 – See note to B1, same principles apply to properties and debts.

B3 – Art. 50 of the Marriage Act no. 31/1993: The mutual obligation of spouses to maintain each other shall not be affected by legal separation. When legal separation takes place a decision shall be taken as to whether one spouse shall pay alimony to the other, and as to the amount of such alimony. After divorce has been granted one spouse shall not be ordered to pay alimony to the other, save in very exceptional circumstances. According to art. 5 of the RPAct, these provisions relating to spouses apply directly to registered same-sex partners.

B4 – Art. 6 of the Marriage Act no. 31/1993: Upon legal separation or divorce of spouses, or upon the death of either spouse, the net matrimonial property of each shall be divided into two equal parts. According art. 5 of the RPAct, these provisions relating to spouses apply directly to registered same-sex partners.

B5 – Art. 12 and 26 of the Tort Act no. 50/1993: In cases of wrongful death of a spouse the wrongdoer shall pay funeral costs, pay the other spouse for loss of a supporter and pay damages for non-material damage to the surviving spouse. According to art. 13 the provision also covers payments to cohabiting partners where the cohabitation is considered comparable to marriage. It is safe to assume that different-sex cohabitation registered in the National Registry is covered in this respect but the legal standard is otherwise uncertain. Courts can also under special circumstances order wrongdoer to pay damages to others who were close to the deceased. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partners.

B6 – Art. 2 of the Inheritance Act no. 8/1962. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partners.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
7. Relationship can result in lower property tax	Yes	X	X	Yes	Yes, but	No
8. Relationship can result in lower income tax	Yes	X	X	Yes	Yes, but	No
9. Public health insurance of one partner covers medical costs of other partner	No, but	X	X	No, but	No, but	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	Yes	X	X	Yes	No, but	No
12. When one partner dies, the other can get a statutory survivor's pension	No, but	X	X	No, but	No, but	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	Yes, but	No, but
Level of legal consequences	4x3 + 2x1 + 1x0 = 14	7x0 = 0	7x0 = 0	4x3 + 2x1 + 1x0 = 14	3x2 + 3x1 + 1x0 = 9	6x0 + 1x1 = 1

Notes to table B - part two

B7 – Art. 79 of the Act on Personal Income tax and Net Wealth tax no. 90/2003: The taxable base for net wealth (property and other assets) tax purposes is the aggregate value of an individual's assets at the end of the tax year, less his liabilities. According to art. 80 the taxable base of married couples consists of added assets less added liabilities. According to art. 116 of the Act, spouses have a joint responsibility for the payment of all their taxes. If one of the spouses has liabilities in excess of wealth such liabilities can lower net wealth taxes for the married couple. According to art. 62, different-sex cohabiting partners have a right to be taxed as a married couple if the woman is expecting their child, they have a child together or if the cohabitation has been registered in the National Registry for the period of at least one year. Art. 5 of the RPA: Provisions in tax law relating to marriage and spouses apply directly to registered same-sex partnership.

B8 – Art. 62 of the Act on Personal Income tax and Net Wealth tax no. 90/2003: Capital income of married couples is taxed in the hands of the spouse whose total employment income is the higher. According to art. 116 of the Act, spouses have a joint responsibility for the payment of all their taxes. Iceland's personal income tax structure is such that there is a basic tax-free income. The tax free income allowance has been made transferable between spouses and partners who are treated as married couples for tax purposes, see note to B12 (Art. 62 of the Act). Once that income has been earned in any given month, a specific tax rate is applied to all subsequent income. Incomes in excess of fixed amounts (approx. EUR 47.000 for a single individual and EUR 94.000 for a couple in 2003) are subject to a specific surtax. Certain expenses are deductible from total employment income of each individual. If total deductions for one spouse are higher than the spouse's income, the excess is added to the deductions of the other spouse (Art. 62 of the Act). According to art. 62 of the Act and art. 5 of the RPA, provisions in tax law relating to marriage and spouses apply directly to registered same-sex partnership.

B9 – Art. 9a of the Social Security Act no. 117/1993: A person who is resident in Iceland is considered insured, which means that public health insurance is based on personal individual status. The State Social Security

Institute may decide, on application, that a person insured under the Act will continue to be insured even if he is working abroad for a party who fulfills specific requirements. The same applies to the person's spouse and this seems to be the only instance where a spouse can be said to be covered by the other partners public medical insurance. Art. 44 of the Social Security Act: The same rules apply to different-sex cohabiting partners if the woman is expecting their child, they have a child together or if the cohabitation has been registered in the National Registry for the period of at least one year. Art. 5 of the RPAAct: Provisions in social security law relating to marriage and spouses apply directly to registered same-sex partnership.

B10 – See note to B16 – Local Authorities Social Services Act no. 40/1991 deals with basic social security. Each local authority is responsible for social services within its boundaries and shall ensure that persons are able to provide for themselves and their families (art. 4,12 and 21 of the Act). Each local authority lays down rules on the implementation of financial assistance so the rules are not uniform throughout Iceland. It may be assumed that assistance is generally higher for two individuals than for a married couple or different-sex cohabiting partners.

B11 – Art. 11 of the Social Security Act no. 117/1993: Persons 67 years of age or older who have been resident in Iceland for at least 3 calendar years between the ages of 16 and 67 are entitled to an old age pension. Full annual old age pension shall be paid to individuals who have been resident in Iceland for at least 40 calendar years between the ages of 16 and 67. In the case of married couples where both partners are pensioners, the income of both may be based on the time of residence of the partner possessing the longer entitlement period. The same applies to same-sex registered partners, and to different-sex cohabiting partners as defined in note B9.

B12 – Art. 6 of the Social Assistance Act no. 118/1993 deals with grants payable for six months following a spouse's death. The same applies to same-sex registered partners and different-sex cohabiting partners as defined in note B9.

B13 – Art. 4 of the Inheritance Tax Act no. 83/1984: Spouses pay no inheritance tax. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners. Art. 2 and 4 of the Inheritance Tax Act: A different-sex partner pays no inheritance tax if the deceased partner leaves a testament clearly naming the other as a cohabiting partner. According to art. 4 the Minister for Social Affairs can decide to exempt others cohabiting from inheritance tax under very special circumstances, such as people that have lived together for a very long time.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	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	$2 \times 3 + 2 \times 0 = 6$	$4 \times 0 = 0$	$4 \times 0 = 0$	$2 \times 3 = 2 \times 0 = 6$	$2 \times 3 + 2 \times 0 = 6$	$4 \times 0 = 0$

Notes to table B - part three

B14 – See note to B7. There is a tax-free net wealth base (approx. EUR 54.000 for the income year 2003) that is the same for all individuals without consideration of marital/cohabitation status.

B15 – See note to B8. It may be added that some specific income-related benefits under the tax law (not directly related to income tax, such as child benefits) are higher for two individuals than for a married couple or for cohabiting partners treated as married couples for tax purposes.

B16 – Local Authorities Social Services Act no. 40/1991 deals with basic social security. Each local authority is responsible for social services within its boundaries and shall ensure that persons are able to provide for themselves and their families (art. 4,12 and 21 of the Act). Each local authority lays down rules on the implementation of financial assistance so the rules are not uniform throughout Iceland. It may be assumed that assistance is generally higher for two individuals than for a married or registered different-sex cohabiting couple.

B17 – Art. 11 of the Social Security Act no. 117/1993 deals with old age pension. The old age pension of a married person shall be reduced if the combined annual income of both spouses is higher than a fixed amount. If the income is above the fixed maximum the old age pension shall be reduced by 30% of the surplus income up to the point where it lapses entirely. The same applies to same-sex registered partners, and to different-sex cohabiting partners as defined in note B9.

Table C (Iceland): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
1. One partner can have or use surname of the other	No, but	X	X	No, but	No	No
2. Foreign partner of resident national is entitled to a residence permit	Yes	X	X	Yes	Yes	No
3. Relationship makes it easier for foreign partner to obtain citizenship	>3 years: Yes	X	X	>3 years: Yes	>5 years: Yes, but	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, but (2000)	X	X	No, but (2000)	No, but (2000)	No, but (2000)
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	No, but	No
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, but	>1 year: Yes
9. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 2x1 + 1x0 = 20	9x0 = 0	9x0 = 0	6x3 + 2x1 + 1x0 = 20	2x3 + 3x2 + 2x1 + 2x0 = 14	2x3 + 1x2 + 1x1 + 5x0 = 9

Notes to table C

C1 – Art. 8 of the Personal Names Act no. 45/1996: The traditional rule on surnames in Iceland is that every person calls him/herself by a patronymic or matronymic so that one of the identification (first) names of his/her father or/and his/her mother is used as a surname, with the suffix "son" in the case of a man or "dóttir" in the case of a woman. Some people also have a family name; in special circumstances (art. 7) a spouse can take the family name of his or her partner as a middle name. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partnership.

C2 – Art. 13 of the Act on Foreigners no. 96/2002: The closest family members of an Icelandic national or a national of another Nordic country residing in Iceland, or those of a foreigner allowed to stay in Iceland under a permit to stay which is not subject to limitations, or under a residence permit, shall be entitled to a permit to stay in Iceland, subject to a few conditions. According to art. 13 the closest family members are considered to be the foreigner's spouse, registered same-sex partner or different-sex cohabiting partner (see also art. 5 of the RPAct).

C3 – Art. 5a of the Icelandic Citizenship Act no. 100/1952, as amended with Act no. 62/1998 and no. 96/2002. A person can apply for citizenship if he/she has been resident in Iceland for three years from the date of marriage or same-sex partnership registration with an Icelandic citizen (who has been so for at least five years). A person can also apply for citizenship if he/she has been resident in Iceland for five years from the date of different-sex cohabitation according to the National registry with an Icelandic citizen (who has been so for at least five years). A single person can apply for citizenship if he/she has been resident in Iceland for seven years; in the case of a national of one of the other Nordic countries, the requirement is only four years.

C4 – Art. 50 of the Code of Criminal Procedure no. 19/1991: Spouses can refuse to testify against their married partners. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners. A judge can exempt others from the duty to testify if they are closely connected to the defendant, such as a cohabiting partner.

C5 – In the year 2000 a new chapter was added to the Code of Criminal Procedure no. 19/1991 (amendment no. 94/2000): Chapter XIII A, on restraining orders. One of the main purposes of the legislation is to protect victims of domestic violence and abuse but such victims are not specifically mentioned or defined in the provisions of the Code.

C6 – Art. 7 of the Act on the Rights of Patients: Provisions of the Legal Majority Act no. 71/1997 apply to the consent to treatment of patients who, on account of lack of intelligence or for other reasons provided for by that Act, are incapable of making a decision regarding treatment. According to the Legal Majority Act the plaintiff in a case involving a request for deprivation of legal competence or for involuntary commitment can be the respondent's spouse by marriage. Art. 6 of the Act on the Rights of Patients no. 74/1997: If a patient is unable to master information on his health and treatment the information shall be given to a close relative or, if the patient has been deprived of legal majority, to his legal guardian. There is no definition of a close relative but it is safe to presume that a spouse, a registered same-sex partner and a different-sex cohabiting partner would generally be considered close relatives in this respect.

C7 – Art. 1 of the Act on Organ Donation no. 16/1998: Anyone over the age of 18 can donate their organs to another person of choice.

C8 – Art. 45 of the Rent Act no. 36/1994. If a tenant dies before the end of the rental period, the tenant's surviving spouse or family members of the tenant's household at the time of his death, shall be permitted to take over the lease unless the landlord presents valid reasons why they should not do this. According to art. 3, provisions of the Act regarding married couples or spouses shall also apply to cohabiting couples, the term 'cohabiting couple' referring to a man and woman who live together, both of them being unmarried, if they have had a child together, or if the woman is pregnant or if their cohabitation has lasted for at least one continuous year, or to another form of cohabitation between two individuals if it has lasted for at least one continuous year. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners.

C9 – No such duty exists.

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

	Between married spouses and registered partners (1996)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status) (1996)
1. With respect to housing	Yes	No	No	Yes
2. With respect to life insurance	Yes	No	No	Yes
3. With respect to health insurance	Yes	No	No	Yes
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes	No	No	Yes
6. With respect to an occupational survivor's pension	Yes	No	No	Yes
7. With respect to other spousal benefits in employment	Yes	No	No	Yes

Notes to table D

D1 – Art. 65 of the Constitution of the Republic of Iceland no. 33/1944, as amended with Act no. 97/1995: Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth or other status. Art. 180 of the General Penal Code no. 19/1940, as amended with Act. no. 135/1996: It is prohibited to an employer or a service provider to deny anyone goods, services or access to public places or forums, on the basis of race, color, national origin, religion or sexual orientation. It is therefore widely prohibited to discriminate against anyone on the basis of sexual orientation. It is not generally prohibited to discriminate between people on the basis of their marital status or form of cohabitation.

Same-sex partners can register their partnership under the RPAct and such registration generally affords the partners the same rights as a married couple (with a few defined exceptions). It is generally prohibited to discriminate between married couples and registered same-sex partners. On the other hand it is accepted to afford married couples and registered same-sex partners more rights and obligations than informal cohabiting partners. Different-sex cohabitation does *not* generally afford the partners the same rights as a married couple (see general notes). Discrimination between married partners and registered same-sex partners is therefore generally prohibited but discrimination between married partners/same-sex registered partners on the one hand and different-sex cohabiting partners on the other, is not prohibited. As stated in the general notes different-sex cohabitation can be registered in the National Registry but not same-sex cohabitation and it is therefore not considered prohibited to discriminate between that type of different-sex and same-sex informal cohabitation. The status of informal same-sex cohabitants and different-sex cohabitants that choose not to register their cohabitation in the National Registry is the same with a few exceptions; discrimination between them is generally prohibited by art. 180 of the General Penal Code.

D2 – See note to D1.

D3 – See note to D1.

D4 – See note to D1 but also note to A2. The Act on Artificial Insemination no. 55/1996 applies the same rule to married spouses and different-sex cohabiting partners that meet certain requirements but the Act does discriminate between married spouses and registered same-sex partners.

D5 – See note to D1.

D6 – See note to D1.

Table E (Iceland): 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 (1996)
Resident national with:	1. Resident national	Yes	X	X	>2 years: Yes
	2. Non-resident national	Yes	X	X	No
	3. Resident foreigner	Yes	X	X	>2 years: Yes
	4. Non-resident foreigner	Yes, but	X	X	No
Non-resident national with:	5. Non-resident national	Yes	X	X	No
	6. Resident foreigner	Yes	X	X	No
	7. Non-resident foreigner	Yes, but	X	X	No
Resident foreigner with:	8. Resident foreigner	Yes	X	X	>2 years: No, but
	9. Non-resident foreigner	Yes, but	X	X	No
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

Notes to table E

E1 – Art. 13 of the Marriage Act no. 31/1993 and Regulation no. 326/1996 as amended with Regulation no. 87/2001. Art. 2 of the RPAAct, as amended with Act no. 52/2000: Same-sex partnership can only be registered in Iceland if two conditions are cumulatively fulfilled: a) at least one of the individuals concerned is an Icelandic national; and b) both individuals concerned have resided in Iceland for the two years preceding the registration. For the purposes of the Registered Partnership Act persons of Danish, Norwegian or Swedish nationality shall enjoy the same rights as Icelandic nationals. The Minister of Justice may decide by administrative provisions that nationals of other countries, where similar legislation on registered partnership is in effect, shall also enjoy the same rights as Icelandic nationals. This has not been done yet.

E2 – See note to E1.

E3 – See note to E1.

E4 – For source see note to E1. Icelandic nationals can always marry non-resident citizens from Norway, Denmark, Finland or Sweden. Icelandic nationals can marry other non-resident foreigners provided they have a permit to stay in Iceland. Art. 8, 15 and 35 of the Act on Foreigners no. 96/2002: Danish, Finnish, Norwegian and Swedish nationals may stay in Iceland without the issue of a permit. EEA nationals may enter Iceland without a particular permit and stay in Iceland for up to three months, or for up to six months if arriving for the purpose of seeking employment. Other foreigners may stay in Iceland for up to three months unless their entry is dependent upon a visa. A foreigner who has been staying in Iceland for a continuous period of three years under a permit to stay and has attended a course in the Icelandic language for foreigners may be granted a residence permit. A residence permit grants a right to stay in Iceland indefinitely

E5 – See note to E1 and E2.

E6 – See note to E1 and E2.

E7 – See note to E1, E2 and E4.

E8 – See note to E1.

E9 – See note to E1, E2 and E4.

E10 – For source see note to E1 and E4. Non-resident foreigners from Norway, Denmark, Finland or Sweden can marry in Iceland. Other non-resident foreigners can marry provided they have a permit to stay in Iceland.

E11 – Art. 9 of the Marriage Act no. 31/1993 and art. 2 of the RPAAct.

E12 – See note to E11.

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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)
1. Registry of births, marriages and deaths	No	X	X	No
2. Local population administration	No	X	X	No
3. Church	Yes	X	X	No
4. Court	No	X	X	No
5. Private person with special authorisation	No	X	X	No
6. Public notary	No	X	X	No
7. Administrative magistrate	Yes	X	X	Yes

Notes to table F

F1 –Registration in the National Registry is not an authority for starting a marriage or registered partnership.

F2 – The National Registry (see F1) is also similar to a local population administration.

F3 – Art. 17 of the Marriage Act no. 31/1993: Religious solemnization of marriage is performed by the ministers of the National Church, and priests or other representatives of registered religious organizations in Iceland who have been empowered to perform such ceremonies by the Ministry of Justice and Ecclesiastical Affairs.

F4 – Not applicable.

F5 – Not applicable.

F6 – Not applicable.

F7 – Art. 17 of the Marriage Act no. 31/1993 and art. 4 of the RPAAct. The Act on Executive Power in Government no. 92/1989 outlines the role of Magistrates in Iceland. Magistrates are the representatives of executive authority in administrative areas and they have no judicial powers. The magistrates have many functions, including acting as commissioners of police and directors of customs, collecting revenues for the Treasury, performing civil marriages and granting licences for judicial separations and divorces, delivering rulings on rights of access to children and maintenance payments following divorce, ruling on the legal competence of individuals, registering official documents, taking various measures in connection with estates following death, seizing property and carrying out other measures of compulsory possession and distraint and holding auctions in execution of judgement.

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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)
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	X	X	No
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)	Yes, but	X	X	Yes, but

Notes to table G

G1 – Art. 41 of the Marriage Act no. 31/1993: Permits for legal separation and divorce are granted by administrative magistrates (see note to F7) if both parties agree. An individual petition for separation or divorce can be submitted in court. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partnership.

G2 – See note to G7.

G3 – Art. 34, 36, 38, 39 and 40 of the Marriage Act no. 31/1993: One spouse can claim legal separation and divorce but has to seek resolution in court. See note to G1 on registered same-sex partnership.

G4 – Not applicable, see note to G6.

G5 – The RPAAct (referring to art. 11 of the Marriage Act no. 31/1993) requires a permit for divorce before a person can marry, or register partnership, with a third person.

G6 – Different-sex registered partnership would be considered to have ended without any formal resolution if the partners marry each other.

G7 – Art. 41 of the Marriage Act no. 31/1993: Permits for legal separation and divorce are granted by administrative magistrates (see note to F7) only if both parties agree. See note to G1 on registered same-sex partnership.

Some literature in English

- 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. 103-107.

