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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 Denmark

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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

Only two persons of different sexes can enter into civil marriage and not if they are close family (e.g. children, grand-children, parents, grand-parents etc.). See for more details Act on Marriage of 9 March 1999 (*Ægteskabsloven*, Act no. 147; last changed by Act no. 365 of 6 June 2002); see www.retsinfo.dk.

Registered partnership

This was introduced by the Act on Registered Partnership of 7 June 1989 (*Lov om registreret partnerskab*, Act no. 372, entering into force on 1 October 1989; last changed by Act no. 360 of 2 June 1999; see www.retsinfo.dk). Only two persons of the same sex can register, and only if one of the partners lives in Denmark and is a Danish citizen or if both (foreign) partners have been living in Denmark in the last two years before the registration. Partners from countries with a similar law as the Danish are regarded as Danish citizens (see table E, below).

With a few exceptions the rules of the Act on Marriage also apply to registered partnership. The main differences between marriage and registered partnership concern the presumption of paternity, medically assisted insemination and joint adoption (see items A1, A2 and A5, below). 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, E6 and E8).

An English translation of the Act on Registered Partnership can be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003.

Websites about registered partnership:

www.lbl.dk/english

www.civildir.dk/regler/aegteskab.htm (only partly in English and German)

www.steff.suite.dk/gaypol.htm

Informal cohabitation

There is no general legislation on cohabitation, but informal cohabitation is taken into account in some areas of law.

Table A (Denmark): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	Yes, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	No	Yes	No
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	No, but	X	X	No, but	No, but	No, but
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	Yes, but (1999)	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	No	Yes	Yes
7. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	5x3 + 1x1 + 1x0 = 16	7x0 = 0	7x0 = 0	1x3 + 1x2 + 1x1 + 4x0 = 6	3x3 + 1x2 + 1x1 + 2x0 = 12	2x3 + 1x1 + 4x0 = 7

Notes to table A

A1 - If a man is married he is automatically recognised as father of the child without any further investigations. See art. 1 of Act no. 460, Act of Children (*Børneloven*) of 7 June 2001. If the child is born by an unmarried woman, a man can be recognised as father if both partners declare that they will take care of the child (see art. 2 of same Act).

A2 - It is only lawful, if the woman is married or living in a similar relation with a man. See art. 3 of Act no. 460, Act on Fertilization, of 10 June 1997 as changed 8 January 1999.

A3 - A stepfather or stepmother has no authority over the child. A stepfather or stepmother has no obligation to maintain the child either, but a single bread-winner loses some public payments when entering into a new relationship.

A4 - For heterosexuals - see Act no. 1040 of 16 December 1999, Act of Adoption. For same-sex couples see art. 4(1) of Act no. 372, Act of Registered Partnership of 7 June 1989 as last changed by Act no. 360 at the 2 June 1999, which reads that one registered partner can adopt the other partner's children as long as they are not an adopted from foreign countries.

A5 -This is exclusively a right for married heterosexual couples. See art. 5(2) of Act no. 1040 of 16 December 1999, Act of Adoption.

A6 - A heterosexual spouse can not adopt alone. If you are married, you can only adopt as a couple. See art. 5(2) of Act no. 1040 of 16 December 1999, Act of Adoption. Registered partners can not adopt neither as a couple nor as an individual. Singles can adopt - no matter if they are heterosexuals or not.

A7 -If they are accepted by the municipalities, everyone can foster a child.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	Yes, but	X	X	Yes, but	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, but	X	X	Yes, but	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes, but,	X	X	Yes, but	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes, but	X	X	Yes, but	Yes, but	Yes, but
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	1x3 + 4x2 + 1x0 = 11	6x0 = 0	6x0 = 0	1x3 + 4x2 + 1x0 = 11	1x2 + 5x0 = 2	1x2 + 5x0 = 2

Notes to table B - part one

B1 - Properties of each partner are considered joint property, see art. 15 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*). But before the marriage/partnership is started, you can decide that part of one or both of the partners/spouses property or money shall be owned exclusively by the one.

B2 - See Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) art. 25.

B3 - If there is a (large) difference between the income of the spouses/partners, the right to alimony can apply (see art. 5-9 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) and art. 49-53 of Act no. 147, Act on Marriage).

B4 - All that is defined as joint property is divided 50:50. See art. 16(2) of Act no. 37 of 5 January 1995, Act on the Economical Consequences Marriage (*Retsvirkningsloven*). See also B1.

B5 - If a spouse, registered partner or a partner in an informal cohabitation loses a breadwinner the person has a right to compensation. See art. 12-13 of Act no. 750 of 4 September 2002, Act on Compensation. In all cases the other is entitled to an amount of 14.400 euro (2003).

B6 - See chapter two of Act no.727 of 14 August 2001, Act on Inheritance (*Arveloven*).

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	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	Yes	X	X	Yes	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	No	X	X	No	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	>2 years: Yes	>2 years: Yes (1986)
Level of legal consequences	2x3 + 5x0 = 6	7x0 = 0	7x0 = 0	2x3 + 5x0 = 6	1x3 + 6x0 = 3	1x3 + 6x0 = 3

Notes to table B - part two

B7 - You do not pay property tax in Denmark any longer except for a sort of house-tax on owned houses, summerhouse and flats - and that tax is the same whether you are married/registered or not.

B8 - In Denmark all citizens have a basic tax allowance (4.600 euro a year), but married/registered couples can transfer their allowance between them if e.g. one of the spouses has no income.

B9 - The Danish public health system is not based on an insurance system, but is paid through the taxes. Since the public health system is individual, it is of no importance whether you are married/registered or not.

B10 - See B16 - See chapter two of Act no. 727 of 14 August 2001, Act on Inheritance (*Arveloven*).

B11 - See B17 - The informal cohabitation partners have to have been living together for two years or more before they pay the same inheritance tax as married couples/registered partners.

B12 - There is no statutory survivor's pension in Denmark.

B13 - The informal cohabitation partners have to have been living together for two years or more before they pay the same inheritance tax as married couples/registered partners. For same-sex partners this was introduced by Act no. 339 of 4 June 1986, which remained in force until 1 October 1989 (when registered partnership was introduced).

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	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	Yes
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	4x0 = 0	2x3 + 2x0 = 6	2x3 + 2x0 = 6	2x3 + 2x0 = 6

Notes to table B - part three

B14 - See B7 - You do not pay property tax in Denmark any longer except for a sort of house-tax on owned houses, summerhouse and flats - and that tax is the same whether you are married/registered or not.

B15 - There are no such rules, on the contrary, see B8. In Denmark all citizens have a basic tax allowance (4.600 euro a year), but married/registered couples can transfer their allowance between them if e.g. one of the spouses has no income.

B16 - According to art. 1 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) both partners shall do what they can to make a living for the couple, which means that the authorities will take a look at the couple as a whole, before the money from the social security system is paid out (see art. 2 of Act on Active Social Politics). Concerning informal cohabitation couples it is more or less the same - in many cases they are looked upon as a couple. Only if they prove that one of the two is only renting a room - the negative consequences will not apply.

B17 - Married spouses, registered partners, informal cohabitants and singles get the same basic amount of 7.000 euro per year. On top of that you get an additional pension which is 3.300 euro per year if you are a married spouse/registered partner/informal cohabitant and 7.100 euro if you are single.

Table C (Denmark): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
1. One partner can have or use surname of the other	Yes	X	X	Yes	No	No
2. Foreign partner of resident national is entitled to a residence permit	Yes, but	X	X	Yes, but	No	No
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	Yes
5. When one partner uses violence against other partner, specific statutory protection applies	No, but	X	X	No, but	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	No	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	>2 years: Yes	>2 years: Yes
9. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 1x2 + 1x1 + 1x0 = 21	9x0 = 0	9x0 = 0	6x3 + 1x2 + 1x1 + 1x0 = 21	3x3 + 6x0 = 9	3x3 + 6x0 = 9

Notes to table C

C1 - Spouses and partners have to apply for the other partner's name, they do not get it automatically any longer. See art. 4 of Act no. 193, Act on Names, of 29 April 1981.

C2 - A foreigner, who is married/registered (and not an EU-citizen) with a Dane, can apply for a residence permit - see art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners (*Udlændingeloven*). Please note, that the same paragraph states that the Dane does not have to be a native Dane: he/she can also be a citizen of the other Nordic countries or a 'convention refugee'. But the spouses have to be 24 years of age or more - and their relation to Denmark has to be stronger than the relation to the foreigner's homeland. The Minister of Integration has decided that these two rules do not necessarily apply on registered partners since they can not go to most of the countries and live as partners there.

C3 - To apply for a Danish citizenship you have to have a residence permit for more than seven years. You can get that permission in three ways - either through marriage/registered partnership, because you have an education which is attractive to Denmark (for example chemistry) or because you are recognised as a refugee.

C4 - See Act on Administration of Justice (*Retsplejeloven*) art. 171 (1)

C5 - The victim has a right to immediately get a divorce. See art. 34 of Act no. 147, Act on Marriage, (*Ægteskabsloven*) of 9 March 1999 as latest changed by Act no 365 of 6 June 2002.

C6 - See art. 105(5) of Act no. 129 of 15 April 1930, Act on Insurance Agreements (*Forsikringsaftaleloven*).

C7 - Special rules for persons under 18 years of age apply. See art. 13 of Act no. 402, Act on Organ Donation etc. of 13 June 1990.

C8 - If a spouse or a registered partner dies - the other spouse/partner can continue the rent. See art. 75(1) of Act no. 347 of 14 May .2001, Act on Renting homes and rooms, (*Lejeloven*). Informal cohabitation couples have the same right if they have been together for two years or more. See art. 75(2) of the same Act.

C9 - Not applicable.

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

	Between married spouses and registered partners (1989)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status) (1987)
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 (1996)	No	No	Yes (1996)
7. With respect to other spousal benefits in employment	Yes (1996)	No	No	Yes (1996)

Notes to table D

D1 - There is a general ban on discrimination on the grounds of race, belief, sexual orientation etc. in the Act on Race Discrimination, Act no. 626 of 29 Oktober 1987 (*Lov om forbud mod forskelsbehandling på grund af race m.v.*). This act covers all kinds of service providers including landlords. But it will not be discrimination if the landlord demands that people who rent his flats are married or registered - and therefore refuse to rent out to informal cohabitants of all kinds.

D2 - See D1.

D3 - See D1.

D4 - As mentioned in A2, only married women or women living in a similar relation with a man are allowed to get assisted fertilisation (insemination, IVF etc.) by help from a doctor. This is a direct discrimination of lesbians.

D5 - See D1.

D6 - See D7.

D7 - See Act no. 459, Act on Discrimination of 12 June 1996 (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*) which bans discrimination in employment and occupation - and giving heterosexual couples spousal benefits which homosexual couples are being refused will be a breach of the Act on Discrimination.

Table E (Denmark): 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 (1989)
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	Yes, but
	9. Non-resident foreigner	Yes	X	X	No
Non-resident foreigner with:	10. Non-resident foreigner	Yes	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 - See art 1-2 of Act no. 372, Act of Registered Partnership of 7 June 1989 as last changed by Act no. 360 of 2 June 1999, and Act no. 147, Act on Marriage (*Ægteskabsloven*) of 9 March 1999 as last changed by Act no 365 of 6 June 2002.

E2 - See E1.

E3 - See E1.

E4 - Beside the rules in the acts on Marriage and Registered Partnership mentioned above - also art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners, applies. This means that you can get married or register your partnership - but you are not sure to be able to bring your partner to Denmark.

E5 - It is not possible for two Danes of the same sex living abroad to register - since it is a demand in art. 2(2) of the Act of Registered Partnership of 7 June 1989 as latest changed by Act no. 360 of 2 June 1999 that one of the partners is living in Denmark. Heterosexual couples are not met with the same demand.

E6 - If the resident foreigner is from a country with a similar legislation as the Danish Partnership Law they can register in Denmark. For the purposes of art. 2(2) of the Act of Registered Partnership, Norway, Sweden, Iceland, the Netherlands and Finland are considered to be such a country.

E7 - You still have to observe the rules of art. 9 of the Act on Foreigners, if the non-resident national wants to bring his/her spouse to Denmark.

E8 - For same sex-couples it is a demand that they have been living in Denmark for at least two years. However, if the foreigners (or just one of them) residing in Denmark are from countries with a similar legislation as the Danish Partnership Law, they are regarded as Danish citizens and can register like Danes, see art. 2 (2 and 3) of Act no. 372, Act on Registered Partnership (*Lov om registreret partnerskab*) of 7 June 1989 as last changed by Act no. 360 of 2 June 1999

E9 - For heterosexual couples see Act no. 147, Act on Marriage (*Ægteskabsloven*) of 9 March 1999 as last changed by Act no 365 of 6 June 2002 - and art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners.

E10 - It has become quite popular among foreign heterosexual couples to go to Denmark just to get married. But of course they do not get any rights concerning social security, residence or working permit etc. The same possibility does not exist for homosexual couples.

E11 - Not applicable in Denmark.

E12 - See E11.

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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)
1. Registry of births, marriages and deaths	No	X	X	X
2. Local population administration	Yes	X	X	Yes
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	No	X	X	No

Notes to table F

F1 - See F2.

F2 - In Denmark you can start your marriage either at the City Hall or in a Church. The City Mayor (or an employee on behalf of him/her) does the investigation to find out whether the couple qualifies for marriage or partnership. The City Mayor can also delegate his authority to marry or register couples to a member of the City Council (which is rather common).

F3 - Only heterosexual couples can get legally married in a church. Homosexuals have to go to the City Hall only (but can get a blessing in a church - if they find a priest who is willing to do so).

F4 - This is not possible in Denmark.

F5 - This is not possible in Denmark.

F6 - This is not possible in Denmark.

F7 - This is not possible in Denmark.

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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)
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	X	X	Yes

Notes to table G

G1 - See art. 32-34, and art. 23-24 (annulment of a marriage), of Act no. 147, Act on Marriage, (*Ægteskabsloven*) of 9 March 1999, as most recently changed by Act no. 387 of 28 May 2003. The same Act states in art. 29 that a spouse (or registered partner) who does not feel he or she is able to continue the relation has a right to separation, which after one year gives the right to final divorce (see art.31 (1) of the above mentioned Act), or after 6 months if the spouses/partners agree (see art. 31(2) of the same Act).

G2 - This is not possible in Denmark.

G3 - See G2.

G4 - You can not convert a marriage into a partnership or the other way around, since it has to be two of opposite sex who marry - and two of the same sex who register. If somebody wants to change sex - he/she will have to end the marriage (or partnership) and register (or marry).

G5 - If by mistake or by will someone marries a third person, or registers a partnership with a third person, the latest marriage or partnership is looked upon as not existing.

G6 - Since you can not marry as a same-sex couple and can not enter into a registered partnership as a different sex couple this question is of no relevance for Denmark.

G7 - Most separations/divorces are given by permission by the public authorities (*Statsamtet*), but under the condition that the couple agrees on divorce/separation (see Act on Marriage, cited above).

Some literature in English

- Ingrid Lund-Andersen, 'The Danish Registered Partnership Act', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 11-23.
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- 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. 61-80.
- Morten P. Broberg, 'The registered partnership for same-sex couples in Denmark', in: *Child and Family Law Quarterly*, vol. 8, no. 2, 1996, p. 149-155.
- E. Albæk, 'Political Ethics and Public Policy: Homosexuals between Moral Dilemmas and Political Considerations in Danish Parliamentary Debates', in: *Scandinavian Political Studies*, vol. 26, no. 3, 2003, p. 245-267.