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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 the Netherlands

by Kees Waaldijk ¹

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.

Dutch laws have no numbers. Each new or amending law is published in a numbered issue of the '*Staatsblad*' (official journal). The full text of the updated version of legislation in force in the Netherlands can be found at <http://wetten.overheid.nl>. There are no official translations available in other languages than Dutch, but see: Ian Sumner & Hans Warendorf, *Family Law Legislation of the Netherlands. A translation including Book 1 of the Dutch Civil Code, procedural and transitional provisions and private international law legislation*, Antwerp/Oxford/New York: Intersentia, 2003.

For governmental information in English see www.overheid.nl/guest/sites/ and www.postbus51.nl; for family law see www.ministerievanjustitie.nl:8080/a_BELEID/fact/fact.htm; for social security see www.socialezekerheid.nl/english/index.html; for taxation see www.minfin.nl; and for immigration and citizenship see www.immigratiedienst.nl/Home.asp?LangID=1.

Civil marriage

Civil marriage ('*huwelijk*') is regulated by Book 1 of the Civil Code (*Burgerlijk Wetboek* = CC). Since 1 April 2001 art. 30(1) of Book 1 states that a 'marriage can be contracted by two persons of different sex or of the same sex'. On that date civil marriage was opened up to same-sex couples by the amendment of this article (and some others) by the law of 21 December 2000 (*Staatsblad 2001, nr. 9*). Also on 1 April 2001 the possibility of adoption was opened up to same-sex partners, whether married, registered as partners or only cohabiting (law of 21 December 2000, *Staatsblad 2001, nr. 10*). Summary-translations into English of parts of these laws can be found at www.emmeijers.nl/waaldijk. See also the translation of Book 1 of the Civil Code, by Sumner & Warendorf, cited above.

There are only two legal differences between a marriage of two people of the same sex and a marriage of two people of different sexes. One exception concerns intercountry adoption, which is only available to married different-sex couples (see item A5, below). The other exception is the presumption of paternity: when a child is born to a woman married to a man, the man is deemed to be the father of the child. That rule does not apply when a child is born to a woman married to another woman (see item A1, below). However, since 2002 a new rule provides that when a child is born in a marriage of two women, both women automatically get joint parental authority over the child, unless a man has acknowledged the child as his own before its birth (see items A1 and A3).

Registered partnership

Registered partnership ('*geregistreerd partnerschap*') is also regulated by Book 1 of the Civil Code. It was introduced, both for same-sex couples and of different-sex couples, on 1 January 1998 by the insertion of art. 80a to 80e into Book 1, by the law of 5 July 1997 (*Staatsblad 1997, nr. 324*). Almost all procedures and consequences of marriage also apply to registered partnership. This follows from art. 80b of Book 1 CC, from the many amendments of more than one hundred other laws that were made by the law of 17 December 1997 (*Staatsblad 1997, nr. 660*) that also came into force on 1 January 1998, and from various later amendments, including those contained in the law of 21 December 2000 to open up marriage to same-sex couples (*Staatsblad 2001, nr. 9*) and the law 13 December 2000 (*Staatsblad 2001, nr. 10*). See the summary-translations into English of some provisions at www.emmeijers.nl/waaldijk. See also the translation of Book 1 of the Civil Code, by Sumner & Warendorf, cited above.

There are very few difference between registered partnership and marriage. In a very simple procedure any registered partnership can be converted into a marriage, and vice versa. A difference exists with respect to the ways to split up: unlike a marriage a registered partnership can also be ended by way of mutual contract (see item G2, below). The legal consequences of registered partnership are the same as those of marriage, with two main exceptions: Registered partners are excluded from intercountry adoption (see item A5, below). And when a child is born to a woman in a registered partnership, her (male or female) partner does not automatically become a legal parent (see item A1). However, since 2002 a new rule provides that when a child is born in a registered partnership, both partners automatically get joint parental authority over the child, unless a man has acknowledged the child as his own before its birth (see items A1 and A3).

Informal cohabitation

There is no general law on informal cohabitation. Informal cohabitation of different-sex and same-sex partners has been recognised since the 1970s in an ever growing number of laws and policies. The first example can be found in the policy guidelines for immigration, which since 1975 recognised cohabitation. In legislation cohabitation was recognised for the first time in 1979, for the purposes of rent law (see item C8, below), and in 1981 for the purposes of inheritance tax (see item B13, below). By 2004 almost all legal consequences of marriage are also available to cohabitants. The exceptions include the presumption of paternity (item A1), intercountry adoption (item A5), joint property (B1), joint debt (B2), alimony (B3), inheritance (B6 and B13)

and use of each other's surname (C1). The only difference between the legal position of same-sex cohabitants and that of different-sex cohabitants is that only an unmarried male can simply acknowledge the child of his female partner. Others need to go through an adoption procedure (see items A1, A3 and A4).

Most laws that now do recognise informal cohabitation, refer to the fact of two persons having a lasting joint household (*duurzaam gemeenschappelijke huishouding*). Some legal provisions in the Civil Code, however, use the undefined notion of '*levensgezel*' (life companion).

Cohabitants may choose to make a cohabitation contract (for example with the help of a public notary), but in general such a contract will only bind themselves, not third parties. Cohabitation contracts are subject to general contract law and legally enforceable. However, there are no specific legislative provisions regulating cohabitation contracts. Some legal provisions, and some pension funds, require a cohabitation contract from cohabitants who want to be recognised for a specific purpose.

Abbreviation

CC = Civil Code (*Burgerlijk Wetboek*) as amended by numerous laws, including those mentioned above.

Table A (Netherlands): Parenting consequences

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	No, but (2002)	No, but	No, but (2002)	No, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	Yes	Yes	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	Yes (2001/2002)	Yes (1998/2002)	Yes (1998/2002)	Yes (1986)	Yes (1998)
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 (1979)	>3 years: Yes (2001)	>3 years: Yes (1998)	>3 years: Yes (2001)	>3 years: Yes (1998)	>3 years: Yes (2001)
5. Partners can jointly adopt a child	>3 years: Yes (1956)	>3years: Yes, but (2001)	>3 years: Yes, but (1998)	>3 years: Yes, but (2001)	>3 years: Yes, but (1998)	>3 years: Yes, but (2001)
6. One partner can individually adopt a child	Yes (1998)	Yes	Yes	Yes	Yes (1998)	Yes (1998)
7. Partners can jointly foster a child	Yes	Yes	Yes	Yes	Yes (1980s)	Yes (1980s)
Level of legal consequences	7x3 = 21	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x0 = 17

Notes to table A

A1 - The man married to the woman giving birth is deemed to be the father of the child (art. 199(a) Book 1 CC). An unmarried man can become the legal father of a child by acknowledging it, before or after its birth, (*erkenning*; art. 199(c) Book 1 CC), whether or not he is the registered partner or informal cohabitant of the child's mother. Both rules do not apply to women: in a lesbian relationship the mother's partner can only become the legal parent of the child through second-parent adoption (see A4). However, when a child is born in a lesbian marriage or in a lesbian or different-sex registered partnership, both partners automatically get joint parental authority (including financial responsibility), unless a man (normally with consent of the mother) has acknowledged the child as his own before its birth. This is possible since 1 January 2002 (art. 253aa and 253sa, introduced by the law of 4 October 2001, *Staatsblad 2001, nr. 468*).

A2 - There is no legislation limiting the categories of women that can receive medically assisted insemination. The *Wet donorgegevens kunstmatige inseminatie* (Act on donor data in case of artificial insemination, of 25 April 2002, *Staatsblad 2002, nr. 240*) only regulates the keeping of records of data about donors.

A3 - Married partners automatically have joint parental authority over their common children (art. 251 Book 1 CC). From January 2002 registered partners, too, can *automatically* have joint parental authority (including financial responsibility), but only over children born to a female partner after the partnership registration (art. 253aa and 253sa, introduced by the law of 4 October 2001, *Staatsblad 2001, nr. 468*), and unless a man (normally with consent of the mother) has acknowledged the child as his own before its birth. This also applies to children born into a lesbian marriage (art. 253sa). In other situations joint parental authority can be requested (art. 252 and 253t).

A4 - See art. 227 Book 1 CC, as amended by the law of 24 December 1997 (*Staatsblad 1997, nr. 772*, in force from April 1998) so as to allow adoptions by unmarried different-sex partners, and by the law of 21 December

2000 (*Staatsblad 2001, nr. 10*, in force from April 2001) so as to allow adoptions by same-sex partners (whether married, registered as partners, or neither). Whatever their civil status or gender-combination, the partners must have lived together for three years (art. 227(2)).

A5 - Idem. However, intercountry adoption is only possible for married different-sex couples (art. 1 and 2 of the *Wet opnemng buitenlandse kinderen ter adoptie* (Act on reception of foreign children for adoption) of 8 December 1988, *Staatsblad 1988, nr. 566*), as amended by the the law of 8 March 2001, *Staatsblad, 2001, nr. 128*). Each year only very few Dutch children are available for joint adoption by a couple; the number of foreign children available for joint adoption is much larger. Unmarried couples, and married same-sex couples, are excluded from the possibility of intercountry adoption.

A6 - Art. 227 Book 1 CC, as amended by the law of 24 December 1997 (*Staatsblad 1997, nr. 772*, in force from April 1998), allows adoptions by 'one person alone', whether or not that person has a partner of any gender. Intercountry adoption by any person alone is not excluded.

A7 - There is no legislation limiting the categories of persons that can become foster parents. (From January 1998, foster parents can have joint authority over their foster children; art. 282 Book 1 CC, as amended by the law of 30 October 1997, *Staatsblad 1997, nr. 506*.)

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

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
1. Properties of each partner are considered joint property	Yes, but	Yes, but	Yes, but	Yes, but	No, but	No, but
2. Debts of each partner are considered joint debt	Yes, but	Yes, but	Yes, but	Yes, but	No, but	No, but
3. In case of splitting up, statutory rules on alimony apply	Yes	Yes	Yes	Yes	No, but	No, but
4. In case of splitting up, statutory rules on redistribution of properties apply	No	No	No	No	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	Yes	Yes	Yes	Yes (1992)	Yes (1992)
6. When one partner dies without testament, the other is an inheritor	Yes	Yes	Yes	Yes	No	No
Level of legal consequences	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	1x3 + 2x0 + 3x1 = 6	1x3 + 3x1 + 2x0 = 6

Notes to table B - part one

B1 - Art. 93 and 94 Book 1 CC provide that, in the absence of a prenuptial contract, spouses have community of property: from the moment of marriage almost all present and future goods and debts of each spouse are considered joint property. According to art. 80b this also applies to registered partners. There are exceptions for some gifts and inherited goods (art. 94(1), for some very personal goods and debts (art. 94(3)), and for some pension rights (art. 94(4)). The (future) spouses and (future) registered partners can prevent some or all of their goods and/or debts from becoming joint property, by agreeing a prenuptial contract (*'huwelijks voorwaarden'*; art. 114-148 Book 1 CC). For informal cohabitants, the sole fact of cohabitation does not result in joint property. However, the cohabitants can become the joint owners of a specific good if they if they acquire the property jointly.

B2 - Idem, but household debts are always joint (art. 85 Book 1 CC).

B3 - When a marriage ends in court, the court may stipulate alimony for one partner (art. 157 Book 1 CC). The same applies when a registered partnership ends in court (art. 80e). When a registered partnership is ended by mutual contract, the contract must contain a provision on alimony (art. 80d). Cohabiting partners may make a cohabitation contract in which alimony is stipulated. In theory this can be an implicit, unwritten contract or stipulation (see W.M. Schrama, *Vermogensrecht voor ongehuwde samenlevers*, Kluwer, Deventer, 2000, p. 31-33).

B4 - The law makes no provision for a re-distribution of properties, so they will be distributed according to existing ownership; joint properties are divided (see B1).

B5 - According to art. 108 Book 6 CC the married, registered or cohabiting partner is entitled to compensation for loss of financial or other support. For registered partners this is so since the law of 17 December 1997, *Staatsblad 1997, nr. 660*; for cohabiting partners since the revision of the Civil Code in 1992.

B6 - In the absence of a testament the married or registered partner inherits in the same way as a child (art. 10 Book 4 CC). This does not apply to cohabitants.

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

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
7. Relationship can result in lower property tax	No, but	No, but	No, but	No, but	No, but	No, but
8. Relationship can result in lower income tax	No, but	No, but	No, but	No, but	No, but	No, but
9. Public health insurance of one partner covers medical costs of other partner	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but (1989)	Yes, but (1989)
10. Relationship can have positive impact on basic social security payment in case of no income	No	No	No	No	No	No
11. Relationship can have positive impact on statutory old age pension	No, but	No, but	No, but	No, but	No, but (1987)	No, but (1987)
12. When one partner dies, the other can get a statutory survivor's pension	No, but	No, but	No, but	No, but	No, but (1996)	No, but (1996)
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	Yes	Yes	Yes	>6 months: Yes, but (1981/1985/2002)	>6 months: Yes, but (1981/1985/2002)
Level of legal consequences	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	2x2 + 4x1 + 1x0 = 8	2x2 + 4x1 + 1x0 = 8

Notes to table B - part two

B7 - In general it must be said that (since 2001) there is no property tax in the Netherlands. However, the phenomenon that is usually known as property tax can be said to be incorporated in the Dutch income tax: taxes are not imposed on the basis of property itself, but on what is supposed to be gained from it. Accordingly, a hypothetical rent value of the owned home is added to the owner's tax able income (art. 3.112 of the *Wet Inkomstenbelasting 2001*, Income Tax Act 2001, *Staatsblad 2000, nr. 215*). The income tax legislation also assumes a 4% profit on savings and investments, whatever the actual level of interest or dividend; a 30% tax is imposed on this 4% profit. The fact that a relationship can result in a lower 'property' tax follows from art. 5.1, 5.2, 5.5 and 1.2 of the *Wet Inkomstenbelasting 2001*. No tax is imposed over the first circa EUR 19.000 owned (for most people over 65 a higher threshold applies). In case of marriage, registered partnership or informal cohabitation, this amount can be doubled for one of the partners if the other partner is willing to forgo that tax-free threshold. If the latter owns less than circa EUR 19.000, this will result in a lower tax for the couple as a whole.

B8 - For most purposes income tax is the same for individuals and for persons in any relationship. However, in some cases a relationship can result in lower income tax, e.g. when all mortgage payments on the home owned by the couple can be tax-deducted by the partner with the highest income (art. 2.17 of the *Wet Inkomstenbelasting 2001*, Income Tax Act 2001, *Staatsblad, 2000, 215*), or when one partner works without salary in the company of the other partner (art. 3.78 of the *Wet Inkomstenbelasting 2001*). See also note B7.

B9 - Public health insurance (which takes the form of a statutory, compulsory insurance for mainly employees) is only available for people with an income below a certain level. If the partner of the person with such a low income earns even less or nothing, that partner is mostly also covered by the insurance (art. 4 *Ziekenfondswet*, Public Health Insurance Funds Act, *Staatsblad, 1964, nr. 392*). Art. 1(2) includes the insured person's registered partner (since the law of 17 December 1997, *Staatsblad 1997, nr. 660*, in force since 1998) in the

definition of spouse, and (since the law of 15 December 1988, *Staatsblad 1988, nr. 610*, in force since 1989) art. 1(3) does this for the unmarried/unregistered partner with whom the insured person has a joint household.

B10 - A relationship cannot have a positive impact with respect to basic social security.

B11 - In some cases, where the person entitled to the old age pension has a (married, registered or cohabiting) partner younger than 65 years whose income is below what he or she would receive at 65, the relationship may have a positive impact on the total income of the couple. See art. 8 and 11 of the *Algemene Ouderdomswet*.

B12 - Art. 14 and 3 *Algemene nabestaandenwet* (General Survivors Act, of 21 December 1995, *Staatsblad 1995, nr. 690*) only provides a statutory survivor's pension to the surviving (married or cohabiting, or since 1998 registered) partner who either was born before 1950, or who has an unmarried child under 18 which is not being raised in someone else's household, or who is medically unfit to have paid employment at the moment his or her partner dies, or who is pregnant.

B13 - The married or registered surviving partner does not pay inheritance tax over the first EUR 485,000 (art. 32 *Successiewet 1956* (Inheritance Tax Act 1956), as amended from time to time), and a lesser percentage than other inheritors over any amount above that sum (art. 24(1)). The same applies (since 1981/1985) to informal cohabitants who have had a joint household for at least five years. Since the law of 14 December 2001 (*Staatsblad 2001, nr. 643*) the same also applies to informal cohabitants who have had a joint household for less than five years but more than six months, but only if at least six months ago they have gone to a public notary to make a cohabitation contract containing a mutual obligation of support, and if they have also chosen to be treated as a couple for the purposes of income tax (art. 24(2)). Informal cohabitants were first recognised in an amendment to the *Successiewet 1956* by the law of 17 December 1980 (*Staatsblad 1980, nr. 686*), and first on an equal footing to married partners in an amendment by the law of 8 November 1984 (*Staatsblad 1984, nr. 545*).

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

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	No	No	No	No	No
15. Relationship can result in higher income tax	No, but	No, but	No, but	No, but	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	Yes	Yes	Yes	Yes (1965)	Yes (1987)
17. Relationship can have negative impact on statutory old age pension	Yes	Yes	Yes	Yes	Yes (1987)	Yes (1987)
Level of legal consequences	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 2x0 = 6	2x3 + 2x0 = 6

Notes to table B - part three

B14 - A relationship cannot result in a higher 'property' tax ; see note B7.

B15 - Only in very exceptional cases (e.g. small profit from a company) a marriage or registered partnership can result in a higher income tax . Informal cohabitants can always choose to be tax ed as individuals.

B16 - In principle a single person entitled to basic social security ('*bijstand*') will receive a payment which is 50% of the payment provided to a couple entitled to basic social security (see art. 30 *Algemene bijstandswet* (General Social Security Act, *Staatsblad*, 1995, nr. 199). However, for two reasons a relationship can have a negative impact on basic social security payments. Firstly, there is no entitlement to basic social security, if the (married, registered or cohabiting) partner earns enough to support both partners. And secondly, the local authorities have a discretionary power to pay out more than 50% to a single person, if he or she cannot share with someone else the basic costs of living (art. 33 *Algemene bijstandswet*); this supplement will stop as soon as the single beneficiary enters into cohabitation, marriage or registered partnership. Already under the predecessor of this Act (the *Algemene Bijstandswet* of 1965) different-sex cohabiting partners were treated in the same way as married partners. The law of 6 November 1986 (*Staatsblad* 1986, nr. 564) codified this equal treatment of different-sex cohabiting and married partners, and introduced the equal treatment of same-sex and different-sex cohabitants (see J.L.M. Schell, *De Algemene bijstandswet*, Tilburg University Press, 1995, p. 142-143). The equal treatment of married, registered and informal cohabitants can now be found in art. 3 of the *Algemene bijstandswet* (as amended by the law of 17 December 1997, *Staatsblad* 1997, nr. 660).

B17 - The statutory old age pension provided to a single living person constitutes 70% of the minimum wage, whereas (married, registered or cohabiting) partners will only receive 50% each. See art. 1 and 9 of the *Algemene Ouderdomswet*, General Old Age Act, of 31 May 1956, *Staatsblad*, 1956, nr. 287; art. 1 of the Act was amended by the law of 6 November 1986, *Staatsblad* 1986, nr. 563 to include informal cohabitants per 1987, and by the law of 17 December 1997, *Staatsblad* 1997, nr. 660 to include registered partners per 1998).

Table C (Netherlands): Other legal consequences

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
1. One partner can have or use surname of the other	Yes	Yes	Yes	Yes	No, but	No, but
2. Foreign partner of resident national is entitled to a residence permit	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but (1975)	Yes, but (1975)
3. Relationship makes it easier for foreign partner to obtain citizenship	>3 years: Yes	>3 years: Yes	>3 years: Yes (2003)	>3 years: Yes (2003)	> 3 years: Yes, but (1985)	>3 years: Yes, but (1985)
4. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	Yes	Yes	Yes	No	No
5. When one partner uses violence against other partner, specific statutory protection applies	No	No	No	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	Yes	Yes	Yes	Yes (1995)	Yes (1995)
7. Organ donation from one living partner to the other is lawful	Yes	Yes	Yes	Yes	Yes	Yes
8. When one partner dies, the other can continue to rent the home	Yes	Yes	Yes	Yes	>2 years: Yes (1979)	>2 years: Yes (1979)
9. Partners have a duty to have sexual contact	No	No	No	No	No	No
Level of legal consequences	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	3x3 + 2x2 + 1x1 + 3x0 = 14	3x3 + 2x2 + 1x1 + 3x0 = 14

Notes to table C

C1 - No one gets a different name through marriage or partnership registration: in Dutch law each partner keeps his or her own name. However, according to art. 9 Book 1 CC, a married or registered woman or (since 1998) man is entitled *to use* the name of his or her partner, or *to use* a combination of his or her own name and that of the partner (even without permission by that partner). In theory unmarried/unregistered partners may give each other permission *to use* each other's name, but this is not specified in the Civil Code.

C2 - Art. 3.13 to 3.17 of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*, *Staatsblad 497*, in force since 1 April 2001) allow for the immigration of married, registered and unmarried/unregistered partners, provided that they live together and have a joint household. One of the conditions is that the 'receiving' partner has a sufficient income, i.e. 100% of the official minimum wage (art. 3.22 and 3.74; until 1 April 2004, 70% of the official minimum wage was considered sufficient for most married or registered partners; but not for informal

cohabitants). See www.immigratiedienst.nl/Home.asp?LangID=1. Until 1 April 2001 the right to immigration of partners was contained in policy guidelines (*Vreemdelingencirculaire*), which since 1975 recognized informally cohabiting different-sex and same-sex partners of Dutch citizens (see A.H.J. Swart, *De toelating en uitzetting van vreemdelingen*, Deventer, Kluwer, 1978, p. 165-166).

C3 - To acquire Dutch citizenship, a foreigner normally must have resided in the Netherlands for at least five years (art. 8(1) of the *Rijkswet op het Nederlanderschap*, Act on Dutch Nationality, *Staatsblad*, 1984, nr. 628). This condition does not apply to a foreigner who has been married to a Dutch citizen for at least three years (art. 8(2)). From 1 April 2003 the five year condition no longer applies to a foreigner who has been the registered partner of a Dutch citizen for at least three years (this follows from art. 1(2) as amended by the law of 21 December 2000, *Staatsblad* 2000, nr. 618). With respect to a foreigner who has been living together for at least three years in a permanent relationship with an unmarried/unregistered Dutch citizen, the requirement of five years of residence is reduced to one of three years of residence (Art 8(4), in force since 1985). See <www.immigratiedienst.nl/Home.asp?LangID=1>.

C4 - Art. 217 of the Code of Criminal Procedure (*Wetboek van Strafvordering*, as amended in by the law of 17 December 1997, *Staatsblad* 1997, nr. 660) exempts current and former married or registered partners, but not cohabitants.

C5 - Legislation is being prepared to increase the limited protection now provided under criminal law (art. 300 and 304 Penal Code, *Wetboek van Strafrecht*) and in divorce law (art. 821 and 822 Code of Civil Procedure, *Wetboek van Burgerlijke Rechtsvordering*).

C6 - Art. 450 and 465 Book 7 CC provides that for the purposes of a 'medical treatment contract' a patient who is incapable of considering his or her own interests, may be represented (in the absence of anyone mandated in writing by the patient) by his or her married or registered partner or by his or her 'life companion' (*levensgezel*). (This and the other articles on the 'medical treatment contract' were inserted into the Civil Code in 1995, by law of 17 November 1994, *Staatsblad* 1994, nr. 837; the reference to 'registered partner' has been inserted by the law of 17 December 1997, *Staatsblad* 1997, nr. 660.)

C7 - The Law on Organ Donation (*Wet op de orgaandonatie*, *Staatsblad* 1997, nr. 580) makes no restrictions as to those who can benefit from an organ donation by a living person over 18 years of age (see art. 3).

C8 - According to art. 268 Book 7 CC the rent contract is continued on the death of the tenant by the co-tenant. According to art. 266 the tenant's married partner is automatically the co-tenant; since 1998 this rule also applies to the tenant's registered partner, as amended by the law of 17 December 1997, *Staatsblad* 1997, nr. 660). According to art. 267 (as amended by the law of 21 June 1979, *Staatsblad* 1979, nr. 330) the tenant's partner in a 'lasting joint household' is entitled to become co-tenant after two years of cohabitation. Art. 268 (as amended by the said law of 1979) provides that the sub-district court may allow the continuation of the rent also to a tenant's cohabiting partner who on the death of the tenant has not yet become a co-tenant. Until 1 August 2003, the articles 266 to 268 could be found (as articles 1623g to 1623i) in Book 7A CC; on that day the law of 21 November 2002 (*Staatsblad* 2002, nr. 587) recodifying rent law came into force (see *Staatsblad* 2003, nr. 230).

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

	Between married spouses and registered partners (1998)	Between married spouses and informal cohabitants (1994)	Between registered partners and informal cohabitants (1998)	Between same-sex and different-sex partners (with same status) (1992/1994)
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	Yes	Yes	Yes
5. With respect to other services	Yes	Yes	Yes	Yes
6. With respect to an occupational survivor's pension	Yes, but (1998/2000)	No	No	Yes
7. With respect to other spousal benefits in employment	Yes	Yes	Yes	Yes

Notes to table D

D1 - With respect to provision of goods and services, and to contracts relating to such provision, art. 7 General Equal Treatment Act (*Algemene wet gelijke behandeling, Staatsblad, 1994, nr. 230*) prohibits discrimination on many grounds, including sexual orientation and civil status. According to the text of art. 7, almost all forms of commercial, professional or public provision of services are covered, including services provided by institutions in the field of housing, welfare, health care, culture and education. From the *travaux préparatoires* of the law introducing registered partnership it appears that anyone can have one of three possible civil statuses: married, registered as partner, or unmarried/unregistered (see the Parliamentary Papers of the Second Chamber: *Kamerstukken II 1996/1997, 23761, nr. 11, p. 3*; and the Parliamentary Debates of the Second Chamber: *Handelingen II 1996/1997, p. 3285*). Since 1992, most sexual orientation discrimination in the performance of a 'profession, business, or official capacity' was already prohibited by art. 429quarter Penal Code (as amended by the law by the law of 14 November 1991, *Staatsblad 1991, nr. 623*); that provision does not cover civil status discrimination.

D2 - Idem.

D3 - Idem.

D4 - Idem. That this service is not excluded from the anti-discrimination rules governing other services, was confirmed by the Equal Treatment Commission (*Commissie Gelijke Behandeling*) in its opinion of 7 February 2000 nr. 2000-4. See <www.cgb.nl>.

D5 - See D1.

D6 - In the Netherlands most employees automatically are covered by the pension fund of their employer. Pensions therefore are part of the conditions of employment. With respect to employment, sexual orientation discrimination is prohibited by art. 5 of the General Equal Treatment Act of 1994, and since 1992 also by art. 429quarter Penal Code (see D1). Civil status discrimination in the field of employment is also prohibited by art. 5 of the General Equal Treatment Act (see D1), but art. 5(6) exempts survivor's pensions from that prohibition of civil status discrimination. Nevertheless, the Equal Treatment Commission has given a narrow interpretation to the exception of art. 5(6). According to several opinions of the Equal Treatment Commission only discrimination between cohabitants on the one hand, and married or registered partners on the other, is exempted; distinctions between married and registered survivors are not generally exempted from the prohibition (opinions of 13 August 2002, nrs. 2002-111 and 2002-113, see <www.cgb.nl>). However, art. 2c of the *Pensioen- en spaarfondsenwet* (Pension Funds Act), inserted by the law of 17 December 1997 (*Staatsblad 1997, nr. 660*) and amended by the law of 25 May 2000 (*Staatsblad 2000, nr. 256*), provides that surviving registered partners whose partner died, retired or changed to another pension scheme between January 1998 and June 2000 may receive a substantially smaller pension than surviving married partners (this probably affects less than 100 persons).

A limited number of pension funds in the Netherlands continue to exclude unmarried/unregistered partners from their schemes for survivor's pensions. However, art. 2b of the *Pensioen- en spaarfondsenwet* (inserted by the law of 21 December 2000, *Staatsblad 2000, nr. 625*) demands that employees covered by such a fund may opt-out from the provision for a (hypothetical) surviving partner; instead they would then get a higher (or sooner) old age pension for themselves. This opt-out system only mitigates the discriminatory effects of any remaining exclusion of unmarried/unregistered partners.

D7 - With respect to other spousal employment benefits all civil status and sexual orientation discrimination is prohibited (see D6)

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

		Civil marriage		Registered partnership (1998)	
		Different-sex	Same-sex (2001)	Different-sex	Same-sex
Resident national with:	1. Resident national	Yes	Yes	Yes	Yes
	2. Non-resident national	Yes	Yes	Yes	Yes
	3. Resident foreigner	Yes	Yes	Yes	Yes
	4. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Non-resident national with:	5. Non-resident national	Yes	Yes	Yes	Yes
	6. Resident foreigner	Yes	Yes	Yes	Yes
	7. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Resident foreigner with:	8. Resident foreigner	Yes	Yes	Yes	Yes
	9. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Non-resident foreigner with:	10. Non-resident foreigner	No	No	No	No
11. Sister or brother with sister or brother		No	No	No	No
12. Parent with child		No	No	No	No

Notes to table E

E1 - Both art. 43(1) Book 1 CC, and art. 2 of the Act on Conflicts of Law with Respect to Marriage (*Wet Conflictenrecht Huwelijk, Staatsblad 1989, nr. 392*), require for marriage that one partner either has residency in the Netherlands or has Dutch citizenship. Since April 2001 the same applies to partnership registration (art. 80a(4) Book 1 CC, as amended by the law of 13 December 2000, *Staatsblad 2001, nr. 11*). Whether or not the law of the country of origin of a foreigner permits or recognises registered partnership or same-sex marriage is not relevant in the Netherlands (see Katharina Boele-Woelki, 'Registered Partnership and Same-Sex Marriage in the Netherlands', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 43).

E2 - Idem

E3 - Idem

E4 - Idem. From January 1998 to 1 April 2001 a foreigner without lawful residency in the Netherlands could not enter a registered partnership.

E5 - Idem

E6 - Idem

E7 - See E4.

E8 - See E1.

E9 - See E4.

E10 - See E1. Two non-resident foreigners cannot come to the Netherlands to get married or to register their partnership.

E11 - This follows from art. 41(1) Book 1 CC, declared applicable to partnership registrations by art. 80a(6). However, the Minister of Justice may allow a marriage or partnership registration between those who are brother(s) / sister(s) through adoption (art. 41(2)).

E12 - This, too, follows from art. 41(1) and 80a(6) Book 1 CC.

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

	Civil marriage		Registered partnership (1998)	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex
1. Registry of births, marriages and deaths	Yes	Yes	Yes	Yes
2. Local population administration	No	No	No	No
3. Church	No	No	No	No
4. Court	No	No	No	No
5. Private person with special authorisation	No	No	No	No
6. Public notary	No	No	No	No
7. Administrative magistrate	No	No	No	No

Notes to table F

F1 - Art. 63 of Book 1 CC, declared applicable to partnership registrations by art. 80a(6). Normally, the Registry is in the town hall.

F2 - Not applicable.

F3 - Church weddings have no legal effect in the Netherlands. Art. 68 Book 1 CC even prohibits church weddings of couples who have not first married each other at the Registry (see F1).

F4 - Not applicable.

F5 - Not applicable.

F6 - Not applicable.

F7 - Not applicable.

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

	Civil marriage		Registered partnership (1998)	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex
1. By court decision (after joint or individual petition)	Yes	Yes	Yes	Yes
2. By mutually agreed contract (outside court)	No, but (2001)	No, but	Yes	Yes
3. Unilaterally by one partner (outside court)	No	No	No	No
4. By conversion of marriage into registered partnership, or vice versa (outside court)	Yes (2001)	Yes	Yes (2001)	Yes (2001)
5. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	No	No	No
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	No	No	No
7. By administrative decision (after joint or individual petition)	No	No	No	No

Notes to table G

G1 - For marriage this follows from art. 149 Book 1 CC, for registered partnerships from art. 80c and 80e. The Registry is at the town hall.

G2 - For registered partnership this follows from art. 80c Book 1 CC. Both partners and at least one advocate or notary has to sign a declaration that the partners have agreed a contract to end the registered partnership. To sort effect, the declaration has to be registered in the same way as the divorce judgment of a court. Art. 80d specifies which points need to be covered in the contract. Indirectly, the possibility of a contractual divorce is also available for mutually agreeing married couples: they can first convert their marriage into a registered partnership (see G4), and then dissolve that by contract as provided by art. 80c.

G3 - Not applicable.

G4 - For marriage this follows from art. 77a Book 1 CC and for registered partnerships from art. 80g. Conversion only requires the consent of the two partners, and takes place at the Registry of births, marriages and deaths.

G5 - For a marriage or partnership registration both partners need to be unmarried and not registered as anyone's partner (art. 33, 42, 80a(1) and 80a(2) Book 1 CC).

G6 - Idem.

G7 - Not applicable.

Some literature in English

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