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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 Sweden

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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)

## Introduction

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The tables refer to the legal situation as of 5 April 2004.

The term '*resident*' in the tables and notes shall be taken as meaning the same as what is often called 'having habitual residence' in private international law.

A reference between brackets containing a year, ':' and a number, refers to the year and number of publication in SFS (Svensk författningssamling), i.e. the official bulletin for the publication of all Acts of Parliament and Government decrees. Example: Registered Partnership Act (1994:1117). A searchable free of charge data base - albeit in Swedish language only - of all Acts of Parliament and Government Decrees presently in force, as well as some of the travaux préparatoires can be found at the web site of the Swedish Parliament at [www.riksdagen.se/debatt/Index.asp](http://www.riksdagen.se/debatt/Index.asp). For Acts of Parliament and Government Decrees, you then click on '*Författningar i fulltext*' (full text) or '*Författningsregister*' (references to amendments and dates of entry into force and reference data to search for texts of travaux préparatoires). Then you either type the number of the Act (or Government Decree) in the box titled '*SFS-nummer*' or you type any word you expect to be found in the text of the document in the box titled '*Fritext*'. For access to the full text of the travaux préparatoires of Acts of Parliament from 1993 and onwards, you instead click on '*Propositioner och skrivelser*'.

The Registered Partnership Act (also in English) and the Cohabitation Act can also be found at the web site of the Ombudsman against Discrimination on grounds of Sexual Orientation at [www.homo.se](http://www.homo.se). An English translation of the Registered Partnership Act can also be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003. For translations into English of (other) Swedish Acts of Parliament or Government Decrees, please write to: Regeringskansliet, SE-103 33 STOCKHOLM, Sweden.

### *Civil marriage*

According to older Swedish law, a marriage brought with it several important legal consequences on a personal level. Thus, in older times a woman's public rank and status would follow that of her husband. Domestically her husband would also have the right to take decisions with respect to the children and servants of the common household. He would also be the legal guardian of his wife in all matters except where she was the defendant in a criminal investigation or in matters of legal conflict between the spouses themselves.

With the introduction of the Matrimonial Code [Giftermålsbalken] of 1920, the position of the husband as legal representative of his wife disappeared altogether. From then on, under Swedish law, spouses are considered equal with respect to both economical and personal status matters. The purely personal rights and obligations between spouses were considered to be more of an ethical nature and were only reflected in legal terms in a catalogue (chapter 11 of the Code) of acts committed by one spouse, which gave the other spouse an immediate right to divorce. This list of reasons for immediate divorce was abolished in the reform of 1973 (Prop. [Government Bill] 1973:32, bet. [Parliament Standing Committee Report] LU 1973:20). Since then, marriage and divorce law in principle ignores how spouses treat each other from a purely personal perspective.

Under older Swedish marriage law, there was an obligation for the spouses to live together. To obtain dissolution of a marriage, a court order regarding physical separation was therefore necessary. Present day marriage legislation contains no corresponding obligations.

Today's Marriage Code [Äktenskapsbalken (1987:230)] entered into force 1 January 1988. Under this Code the spouses are equal. The general principle is that each spouse is the owner of her or his property and is solely responsible for her or his debts. However, there are some legal restrictions on what a spouse can do with important parts of her or his property, notably e.g. the common home, without the formal consent of the other spouse. Upon divorce, there is also a right to redistribution of property between the former spouses in the absence of a pre-nuptial agreement. Scattered provisions throughout Swedish legislation make reference to the marital status of a person. In general, however, spouses are treated as individuals rather than as couples. Exceptions from this general approach are found primarily in rules on property (fortune) taxes and parts of social security and pension law.

There is at present no possibility for same-sex couples to marry under Swedish law. Different-sex partners can, on the other hand, not register their partnership; see below regarding this latter legal instrument. The Swedish Parliament, however, on 29 April 2004 requested that the Government set up a special commission to look into the possibility of amending the Marriage Code in order to make it gender neutral.

For a comprehensive guide to the Swedish Marriage Code, albeit in Swedish, see Tottie, Lars, *Äktenskapsbalken* [a commentary to the Marriage Code], Norstedts Förlag, Stockholm 1990.

### *Registered partnership*

The Registered Partnership Act [*Lag (1994:1117) om registrerat partnerskap*] entered into force 1 January 1995 (Bet. [Parliament Standing Committee Report] 1993/94:LU28). The Act was adopted explicitly to create a possibility for same-sex couples to legalise their relationship in order to have most of the legal rights and obligations of a heterosexual marriage applied to their relationship. At the same time, to simply open up access to marriage under the Marriage Code itself for same-sex couples was not considered politically possible.

According to the general equal treatment rule of the Registered Partnership Act (art. 1 of chapter 3), the legal consequences of a registered partnership are the same as that of a marriage and all provisions in Swedish law regarding married spouses apply *mutatis mutandis* to registered partners, unless specifically exempted.

Originally the possibility of adopting children, jointly or in the form of second-parent adoption, as well as the possibility to exercise joint custody over children, was exempt from this rule. Through an amendment of the Registered Partnership Act, which entered into force on 1 February 2003 (Förordning (2002:769) om ikraftträdande av lagen (2002:603) om ändring av lagen (1994:1117) om registrerat partnerskap [Government Decree (2002:769)] on the entering into force of the Act (2002:603) amending the Registered Partnership Act [1994:1117]), registered partners and married spouses are now treated equally also in these respects. Still exempted from the material rule of equality between married spouses and registered partners are provisions regarding presumption of paternity of children and access to assisted procreation within the public health service.

#### *Informal cohabitation*

Some statutory minimum protection for the financially more vulnerable party in a cohabiting different-sex couple has been in existence under Swedish law since 1974. With legal effect from 1 January 1988, similar legislation was introduced for same-sex couples. As of 1 July 2003 these earlier existing separate pieces of legislation that have applied to informal cohabitation depending on whether the cohabitees are of the same sex or different sexes respectively, are now merged into one single Cohabitation Act (2003:376) (Prop. [Government Bill] 2002/03:80, bet. [Parliament Standing Committee Report] 2002/03:LU19). The merger brings about only few material legal changes.

For the Cohabitation Act to apply to couples (irrespective of sexes), there is no need for any registration or similar formalities. After a certain time (no statutory time limit exists) of cohabitation, the rules of the Act simply begin to apply, provided that both persons are unmarried and not in a registered partnership, that they share a common household and that their relationship is of the kind, in which sexual relations is generally an integral part. In the individual case, however, a sexual relation between the parties concerned is no requirement for the rules to apply. The provisions concern only the joint home and household goods. Such property is subject to redistribution rules in the event of a breakdown of the relationship. There are also restrictions regarding the right of a cohabitant to dispose of her or his property, which is used as common home or household goods to the couple, without the formal consent of the other cohabitant.

#### **Abbreviations**

**FB** = the Parents and Children Code [*Föräldrabalken* (1949:381)].

**ÄktB** = the Marriage Code [*Äktenskapsbalken* (1987:230)]

**PL** = the Registered Partnership Act [*Lag* (1994:1117) *om registrerat partnerskap*]

**Cohabitation Act** = *Sambolag* (2003:376); in force 1 July 2003, replacing *Lag* (1987:232) *om sambors gemensamma hem*, i.e. the Cohabitees (Joint Home) Act and *Lag* (1987:813) *om homosexuella sambor*, i.e. the Homosexual Cohabitees Act, both in force 1 January 1988

**1999 Sexual Orientation Discrimination Act** = *Lag* (1999:133) *om förbud mot diskriminering i arbetslivet på grund av sexuell läggning*

**Table A (Sweden): Parenting consequences**

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	Yes, but	Yes	Yes, but
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 (2003)	No	No
5. Partners can jointly adopt a child	Yes	X	X	Yes (2003)	No	No
6. One partner can individually adopt a child	No, but	X	X	No, but	Yes, but	Yes, but
7. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
<b>Level of legal consequences</b>	5x3 + 2x1 = 17	7x0 = 0	7x0 = 0	3x3 + 1x2 + 2x1 + 1x0 = 13	2x3 + 1x2 + 2x1 + 2x0 = 10	1x3 + 2x2 + 1x1 + 3x0 = 8

**Notes to table A**

A1 - Art. 1 of Chapter 1 FB. This provision on statutory legal parenthood for the husband, over a child born by a married mother was already from the start exempt from the general rule in art. 1 of chapter 3 PL that all legal consequences of a marriage apply in the same way for a registered partnership and registered partners. The exception is still found in art. 3 of chapter 3 PL. When a child is born by an *unmarried* woman, her male partner (informal cohabitation) can become the legal parent of the child by signing a confirmation that he is indeed the father. For such a confirmation to become legally valid and binding, it must however also be approved both by the mother and by the local social security board (art. 3-4 of chapter 1 FB). As the law now stands, a female partner of the mother can only become a legal parent of the child through a step child (second-parent) adoption.

A2 - The key words here are 'lawful for women'. Medically assisted insemination is yet another area which was exempt (art. 2 of chapter 3 PL) from the equal treatment clause of the Registered Partnership Act. This means that access to assisted procreation through the public health system is denied to lesbian couples. It is even a punishable offence (art. 7 of the Insemination Act [*Lag* (1984:1140) om insemination]) to perform insemination on a woman who is neither married nor living in a long-term relation with a man, if it is done 'habitually' or for money. For a woman living in a lesbian relationship it is however perfectly lawful to have the insemination carried out in private with the non-commercial assistance of e.g. a male friend or to go to a clinic abroad. At the time when the possibilities of being considered for joint and second-parent adoption were opened up for registered same-sex partners, the government announced that it would come back to Parliament with a bill making also assisted procreation available on equal terms for lesbian couples as soon as possible. However, no such bill has been presented yet.

A3 - A partner - of whatever sex and civil status - can never have parental authority over his or her partner's child, together with the parent. Nevertheless, some *responsibilities* can fall upon such a partner in relation to the child. The partner is obliged to support the child financially together with his or her partner who is a

parent of the child, to the extent that the child can not obtain sufficient child support from the other legal parent who is not living with the child. This special obligation can occur only if the partner is the married or registered partner of the parent of the child, or if they, apart from the child in question, also have other children who are the children of both partners (art. 5 of chapter 7 FB). With respect to the former condition, the obligation could occur in the case of same-sex couples only from the entry into force of the Registered Partnership Act on 1 January 1995. With respect to the latter, the situation can clearly occur from 1 February 2003 when the amendment opening up the possibility for registered partners to adopt children together entered into force. However, also for same-sex informal cohabitants, at least theoretically, the situation could occur. This could be the case if they were joint adoptive parents after legally having adopted a child together (or after a second-parent adoption) abroad, where according to the law of that country such adoptions are possible. Under Swedish private international law, such an adoption is then valid also in Sweden automatically, albeit only under certain conditions (see art. 3 of the Act on International Legal Relations concerning Adoption [*Lag (1971:796) om internationella rättsförhållanden rörande adoption*]).

A4 - Married spouses as a general rule can only adopt jointly (art. 3 of chapter 4 FB). An exception from that general principle is given for the situation where one spouse wants to adopt a child of the other spouse, in order for them both to become the legal parents of that child (art. 3 last sentence of chapter 4 FB). In accordance with the general equal treatment rule of the Registered Partnership Act (art. 1 of chapter 3), the same applies to registered partners. Only married spouses and registered partners are allowed to adopt each other's children (a contrario art. 1 of chapter 4 FB). Therefore these possibilities do not exist for informal cohabitants of whatever sexes.

A5 - Art. 3 of chapter 4 FB and art. 1 of chapter 3 PL. Through the amendment of the Registered Partnership Act that entered into force 1 February 2003 (see also the general note above), registered partners can now adopt children jointly (including all forms of international adoptions) on the same conditions as married spouses. Only married spouses and registered partners are allowed to adopt jointly (art. 4 of chapter 4 FB).

A6 - According to art. 3, first sentence, of chapter 4 FB and art. 1 of chapter 3 PL, married spouses and registered partners are only allowed to adopt jointly or to adopt the child of the spouse/registered partner in order for both spouses/registered partners to become legal parents of that child. This general rule has one exception. According to the provision in art. 3, second sentence, of chapter 4 FB and art. 1 of chapter 3 PL, a spouse or registered partner may adopt individually if the other spouse or registered partner has disappeared or is suffering from a serious mental disorder. When it comes to informal cohabitants (of whatever sex), there is no legal provision stopping them from adopting individually. Since they will need the consent of the local social security board (subject to legal appeal) to obtain a court ruling granting the adoption, this may however be difficult in practice. During the home investigation, which is carried out to assess whether an adoption would be in the best interest of the child, questions would probably be raised as to why the cohabitants do not opt to marry or register their partnership in order to be able to adopt the child jointly. An unwillingness to do so may perhaps be interpreted as a sign of instability of the relationship or inability to put the best interest of the child first. I do not know of any such applications being turned down for this reason, however.

A7 - Without the permission of the local social security board (*'socialnämnden'*), a child must not be received for the purpose of care or fostering in the home of anyone who is not a legal parent of the child or who does not have parental authority over it (art. 6 of chapter 6 of the Social Services Act [*Socialtjänstlagen (2001:453)*]). There are no provisions with respect to sexual orientation or civil status in the Act, defining who can obtain such a permission. Sometimes when a child is placed in foster care also the parental authority over the child is transferred to the foster 'parents'. Such a transfer is possible under art. 10a of chapter 6 FB. This provision together with art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act (*Sambolag [2003:000]*) respectively makes no difference between same-sex and different-sex couples.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No, but	No, but	No, but
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, but	X	X	Yes, but	Yes, but	Yes, but (1988)
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes (2002)	X	X	Yes (2002)	Yes (2002)	Yes (2002)
6. When one partner dies without testament, the other is an inheritor	Yes, but	X	X	Yes, but	No, but	No, but
<b>Level of legal consequences</b>	2x3 + 2x2 + 1x1 + 1x0 = 11	6x0 = 0	6x0 = 0	2x3 + 2x2 + 1x1 + 1x0 = 11	1x3 + 1x2 + 2x1 + 2x0 = 7	1x3 + 1x2 + 2x1 + 2x0 = 7

**Notes to table B - part one**

B1 - Chapter 7 ÄktB deals with property of spouses. There are no provisions that would make property of any of the spouses joint property of them both. The fact that distribution rules apply after the split-up of a marriage is a different matter, see B14 below. The same property regime applies to registered partners (art. 1 of chapter 3 PL). The Cohabitation Act also does not contain any joint property rules. Also for these relationships, there are distribution rules if the relationship breaks down.

B2 - There are no such provisions for any of the categories. A different matter is that if one spouse, partner, or cohabitant has a lot of debts, this will affect what the other will be able to get in accordance with the distribution rules after a split-up. This is so because the debts of one party have to be covered by property belonging to that party before any distribution can take place (art. 2 of chapter 11 ÄktB, art. 1 of chapter 3 PL and art. 13-14 of the Cohabitation Act). Also bankruptcy rules and some rules of procedure applicable for the purposes of securing the payment of debts of one spouse, partner or cohabitant can make it difficult to prove that certain property in joint *possession* (normally in the joint home) does not belong to the indebted partner but to the other and should therefore not be liquidated to cover the debts in question.

B3 - Art. 7 of chapter 6 ÄktB stipulates that after a divorce, each spouse is responsible for herself or himself, but also that under certain conditions an obligation to pay alimony can be imposed on one of the spouses, for a limited or longer period of time. These provisions apply also to registered partners (art. 1 of chapter 3 PL). There are no provisions on alimony in the Cohabitation Act.

B4 - Chapters 9-13 ÄktB deal extensively with the issue of distribution of properties after divorce. These provisions apply also to registered partners (art. 1 of chapter 3 PL). The possibility of opting out of the distribution rules exists through (pre-)nuptial agreements. Informal cohabitants are also subject to distribution of property rules in case of a breakdown of their relationship. These rules are found primarily in sections 8-22 of the Cohabitation Act, but only apply to the joint home and household goods (as a difference from the rules for married couples and registered partners which include all their properties as a general principle). Also for informal cohabitation, regardless of sexes, there is a possibility to opt out of most of the statutory distribution rules (art. 9 of the Cohabitation Act).

B5 - In the absence of statutory rules on this subject, case law from the Supreme Court (*Högsta domstolen*) had gradually developed. Entering into force 1 January 2002, this case law has now been codified and somewhat extended through art. 2 of chapter 5 of the Tort Act [*Skadeståndslag* (1972:207)] as amended by the Act (2001:732) amending the Tort Act. Compensation can now be claimed by anyone who was 'particularly close to

the deceased'. There is no doubt that married spouses, registered partners and informal cohabitants of whatever sex would all qualify for such compensation under this provision.

B6 - Art. 1 of chapter 3 of the Inheritance Code [*Ärvdabalken* (1958:637)] stipulates that a surviving spouse inherits from her or his deceased spouse. There are however some limitations to this right if the deceased also leaves children that are not the children also of the surviving spouse. On the other hand there is a special minimum protection rule (art. 1(2) of chapter 3 of the Inheritance Code), which even in such cases always gives the surviving spouse the right to enough property from the estate as to cover the equivalent of a certain minimum sum of money (approximately EUR 16000 for the year 2003), even if what the spouse would have a right to under the distribution rules is not enough to reach that sum. All these rules apply also to registered partners (art. 1 of chapter 3 PL). Informal cohabitants do not inherit from each other in lack of a testament. There are, nevertheless, rules applicable regardless of the sexes of the cohabitants, that give the surviving cohabitee a certain minimum level of protection, unless the cohabitants have opted out of the distribution rules (see B14 above). The surviving cohabitee thus always has the right to enough property from the estate as to cover the equivalent of a certain minimum sum of money (approximately 8 000 Euros for the year 2003), even if what the surviving cohabitee would have a right to under the distribution of joint home and household goods rules is not enough to reach that sum (art. 18 of the Cohabitation Act).



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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	No	X	X	No	No	No
9. Public health insurance of one partner covers medical costs of other partner	No	X	X	No	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes, but	X	X	Yes, but	Yes, but	Yes, but
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	Yes	Yes
<b>Level of legal consequences</b>	1x3 + 1x2 + 5x0 = 5	7x0 = 0	7x0 = 0	1x3 + 1x2 + 5x0 = 5	1x3 + 1x2 + 5x0 = 5	1x3 + 1x2 + 5x0 = 5

**Notes to table B - part two**

B7 - There are no such rules for any of the categories, see further under B15 below.

B8 - For the purposes of income tax everyone is taxed individually.

B9 - The public health insurance is individualized.

B10 - There are no such rules for any of the categories, see also B16 below.

B11 - There are no such rules for any of the categories, see also B17 below.

B12 - In accordance with chapter 4 of the Act on Survivor's Pension and Pension for Surviving Children [*Lag (2000:461) om efterlevandepension och efterlevandestöd till barn*], the conditions for getting a statutory survivor's pension are that, at the time of death, you have not reached the age of 65 and that you and the deceased partner were living together. Furthermore, one of the two following criteria must be fulfilled: 1. You had been living together for at least five years at the time of death, or 2. at the time of death, you were living together with a child under the age of 18 over whom you, or you and the deceased together, had parental authority. This provision is applied also to registered partners (art. 1 of chapter 3 PL). For informal cohabitants, this applies if earlier they have been married to each other or have lived together in a registered partnership or if, at the time of death, they had, or had had or were awaiting children together. The latter could apply to same-sex informal cohabitation with respect to adoptive children.

B13 - According to Section 28 (as amended by the Act amending the Inheritance and Gifts Taxation Act [*Lag (2003:1198) om ändring i lagen (1941:416) om arvsskatt och gåvoskatt*]), married spouses, registered partners (by virtue of the general equality provision in art. 1 of chapter 3 PL) and informal cohabitants (with respect to same-sex cohabitants by virtue of the general equality provision in art. 1 of the Cohabitation Act) pay no inheritance tax at all.

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

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
14. Relationship can result in higher property tax	Yes	X	X	Yes	Yes, but	No, but
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	No, but	X	X	No, but	No	No
<b>Level of legal consequences</b>	2x3 + 1x1 + 1x0 = 7	4x0 = 0	4x0 = 0	2x3 + 1x1 + 1x0 = 7	1x3 + 1x2 + 2x0 = 5	1x3 + 1x1 + 2x0 = 4

**Notes to table B - part three**

B14 - According to art. 19 and 21 of the Act on State Tax on Property [*Lag (1997:323) om statlig förmögenhetsskatt*], married spouses are taxed together for the purposes of property tax (or 'fortune tax'), as a difference from the ordinary income tax. This results in the couple reaching the limit for how much property you can own without having to pay property tax, quicker than if they had been taxed separately. The same rules apply to registered partners (art. 1 of chapter 3 PL). For informal cohabitants these 'negative' rules apply only if they have been married to each other or have been living in a registered partnership with each other before (to avoid sham divorces) or if they have, or have had, children together (art. 21 of the Act on State Tax on Property).

B15 - For the purposes of income tax everyone is taxed individually. See also under B7 above.

B16 - Rules on social security payment are found in art. 1-3 of chapter 4 of the Social Services Act [*Socialtjänstlag (2001:453)*], supplemented by art. 1 of chapter 2 of the Social Services Decree [*Socialtjänstförordning (2001:937)*]. Persons who share a common household always get a lower basic social security payment each than they would have got if they had been living alone. This is the case regardless of whether they have an intimate relation of one kind or another with any of the other members of the same household. See also under B10 above.

B17 - The pension system is extremely complicated and can not be described here in any comprehensive manner. The information is therefore limited to what is in general relevant for the majority of the population and only to strictly statutory payments. There are no such rules in the *general* statutory old age pension schemes for any of the categories. For persons born before 1954, there are some special rules due to the total reform of the Swedish pension system. For such persons being married or in a registered partnership may result in a lower old age pension than if they are single or living in informal cohabitation. The relevant legislation is primarily the Act regarding Income-based Old-age Pension [*Lag (1998:674) om inkomstgrundad ålderspension*] and the Act on Pension Guarantees [*Lag (1998:702) om garantipension*]. See also under B11 above.

Table C (Sweden): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	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	X	X	Yes	Yes (1970s)	Yes (1970s)
3. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	Yes (2001)	Yes (2001)
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	Yes (1998)	X	X	Yes (1998)	Yes (1998)	Yes (1998)
6. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	Yes	Yes
7. Organ donation from one living partner to the other is lawful	Yes	X	X	Doubt	Yes	Doubt
8. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes	Yes
9. Partners have a duty to have sexual contact	No	X	X	No	No	No
<b>Level of legal consequences</b>	8x3 + 1x0 = 24	9x0 = 0	9x0 = 0	7x3 + 1x1 + 1x0 = 22	7x3 + 2x0 = 21	6x3 + 1x1 + 2x0 = 19

## Notes to table C

C1 - Art. 9-10 and 24 of the Names Act [*Namlagen* (1982:670)] and art. 1 of chapter 3 PL. When contracting a marriage, the spouses have some options. They can each of them keep their own surname or they can decide to take the surname of one of them as their common surname. One spouse who has taken the surname of the other as her or his surname may opt to also keep her or his own former surname as a 'middle name'. If they have chosen to keep each one their own surname, one of them may still take the surname of the other and use it as a 'middle name'. Both spouses can not use the surname of the other as a 'middle name'. These options are open to the spouses also later on during the marriage. All these options are open also to registered partners. Informal cohabitantes of whatever sex do not have these possibilities.

C2 - It has been a very long tradition (at least since the 1970s) not to tie the right to obtain a residence permit to civil status. Instead the immigration authorities have evaluated every application on its own merits, trying to determine if an intimate relationship between a legal resident and her or his non-resident foreign partner (regardless of sexual orientation) is a genuine one or not. This practice is now codified in art. 4 of chapter 2 of the Aliens Act [*Utlänningslag* (1989:529)], art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act.

C3 - According to art. 12(2) of the Swedish Citizenship Act [*Lag (2001:82) om svenskt medborgarskap*], an applicant who is married to or cohabiting with a Swedish citizen can obtain citizenship after a shorter time of residence in the country than the statutory terms otherwise prescribe. It is not specified in the provision how much shorter the term can be. The rule also applies to registered partners and cohabitants of the same sex (art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act). Before the entering into force in 2001 of this new Act on Swedish Citizenship, these shorter time requirements only applied to married couples and, with the entering into force in 1995 of the Registered Partnership Act, to registered partners.

C4 - Art. 3 of chapter 36 of the Code of Judicial Procedure [*Rättegångsbalk (1942:740)*] states that any person who is married to or in any similar way closely related to a party in the proceedings may refuse to testify against that party. After the entering into force of the Registered Partnership Act in 1995, the marriage exemption applies also to registered partners (art. 1 of chapter 3 PL) and informal cohabitants of whatever sex have for a long time been considered to be 'in a similar way related to a party...', for the purposes of this provision.

C5 - In 1998 the Penal Code [*Brottsbalk (1962:700)*] was amended through the Act (1998:393) amending the Penal Code, which introduced two new provisions (art. 4a(1-2)) into chapter 4 of the Penal Code, making it an specially aggravated offence to commit certain violent or threatening crimes against e.g. a partner or an ex-partner, making no distinction between married spouses, registered partners and informal cohabitants of whatever sex.

C6 - Art. 2b of the Health and Medical Services Act [*Hälso- och sjukvårdslag (1982:763)*] states that a patient shall be given individualised information about her or his state of health and about the existing methods for examination, care and treatment. If the information can not be given to the patient, it shall instead be given to 'someone who is close to the patient' (*'närstående'*). In an authoritative commentary on the Act, the term '*nära anhörig*' - which appeared in earlier versions of the Act and which must be interpreted as a more narrow concept - is described. Examples given include the person that the patient herself or himself has indicated as the next of kin upon admittance to e.g. a hospital. In the absence of such information, the term would include a spouse or informal cohabitee of whatever sex (the Registered Partnership Act did not exist at the time of release of the Commentary), children (including adopted children), parents and sisters and brothers (see Jan Sahlin, Jan, *Hälso- och sjukvårdslagen med kommentarer* ['The Health and Medical Services Act with Commentary'], 3 ed., Stockholm, Norstedts Tryckeri, 1990, p. 82).

C7 - According to Art. 7 of the Act on Transplantation [*Lag (1995:831) om transplantation m.m.*], biological material that does not reproduce itself (e.g. a kidney) may only be taken from a living human being if the donor is a relative of the receiver or otherwise is 'close to' the receiver. The purpose of this statutory limitation, according to the travaux préparatoires (*Prop. [Government Bill] 1994/95:148*), is to avoid commercial trade in organs. Spouses, registered partners and informal cohabitants of whatever sex are considered to be 'close to' the receiver. There is however one specific complication for registered partners and cohabitants of the same sex. The National Board for Health and Welfare [*Socialstyrelsen*] has issued administrative instructions and guidelines [*Föreskrifter och allmänna råd*] to avoid transmission of disease in relation to transplantations (SOSFS 1994:4 M - see [www.sos.se/sosfs/1994\\_4/1994\\_4.htm](http://www.sos.se/sosfs/1994_4/1994_4.htm)). The instructions (binding upon health and medical services staff) forbid the use of a donor who 'can be suspected of having been exposed to hiv infection'. In the guidelines (not binding upon health and medical services staff) to this instruction, examples are given of such persons. The examples include men who have or have had sexual relations with other men. I know of no case where the issue has been raised.

C8 - Chapter 12 of the Real Estate Code [*Jordabalk (1970:994)*] deals, among other things, with the renting of houses or apartments for the purpose of using them as homes. Art. 34(2) of that chapter states that a person 'close to' (*'närstående'*) a deceased tenant who has lived in the home with the tenant, has a right to take over the contract of the apartment, unless the landlord has good reasons to object. Married spouses, registered partners and informal cohabitants are all considered 'close to' a deceased tenant for the purposes of this provision. Furthermore, they all have an even stronger right, than other persons, visavis the landlord to continue renting the home. This is a consequence of the distribution of properties rules (art. 8 of chapter 7 ÄktB, art. 1 of chapter 3 PL and art. 16, 18 and 22 of the Cohabitation Act, respectively; see B4 above).

C9 - No such obligation exists in the individual case for any of the categories. However, for an informal cohabitation to come under the provisions of the Cohabitation Act the relationship must be of such a nature, that sexual relations are usually considered an integral part of it.

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

	Between married spouses and registered partners (1995)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants (1995)	Between same-sex and different-sex partners (with same status)
1. With respect to housing	Yes	No	No	Yes (1987)
2. With respect to life insurance	Yes	No	No	Yes (1987)
3. With respect to health insurance	Yes	No	No	Yes (1987)
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes	No	No	Yes (1987)
6. With respect to an occupational survivor's pension	Yes (1999)	No, but (1999)	No, but (1999)	Yes (1999)
7. With respect to other spousal benefits in employment	Yes (1999)	No, but (1999)	No, but (1999)	Yes (1999)

**Notes to table D**

D1 - There are no anti-discrimination provisions in Swedish law that specifically target discrimination on grounds of civil status, i.e. a non-justified difference in treatment between persons that are married and those that live in a registered partnership, in informal cohabitation or are single. Nevertheless, such differences in treatment can be construed as directly or indirectly discriminatory on grounds of (homo-)sexual orientation, which indeed is a protected category under both criminal law anti-discrimination provisions regarding goods and services and civil law provisions prohibiting such discrimination in employment. With respect to housing, art. 9 of chapter 16 of the Penal Code is applicable. This provision forbids private businesses as well as all public officials (employees as well as persons holding public office) to treat a person less favourably than they would treat another on grounds of his or her homosexual (NB not 'sexual') orientation. The provision is not applicable to the relationship between an employer on the one hand and employees or employment seekers on the other. The amendment to this provision, extending its protection from ethnic and religious discrimination only to also homosexual orientation discrimination, entered into force on 1 July 1987. However, at that point in time there was no registered partnership legislation in Sweden. Therefore, demanding that a person be married to be allowed to rent or buy an apartment or a house, would have amounted 'only' to discrimination of all unmarried persons on grounds of civil status, which is not covered by this prohibition. It also does not cover indirect discrimination, since there has to be a direct - albeit not malicious - link between the difference in treatment and the homosexual orientation. With the entering into force of the Registered Partnership Act in 1995, the issue must be judged differently. The Registered Partnership Act was adopted explicitly to create a possibility for same-sex couples to legalise their relationship in order to have access to a legal institution corresponding to that of civil marriage for heterosexual couples. Under Swedish law only different-sex couples can marry and only same-sex couples can register partnership in spite of the fact that the two systems result in virtually the same legal consequences. As a result, treating persons who are registered partners less favourably than how persons who are married would be treated most probably would amount to direct discrimination on grounds of homosexual orientation and therefore be unlawful under this penal code provision. The issue has never been tested in the courts as far as I know. However, according to an authoritative commentary on the provision, different treatment of cohabitants (who also come under two 'different but equal' sets of rules) depending on whether they are of the same sex or different sexes, amounts to unlawful discrimination under this provision of the Penal Code (see Lena Holmqvist, '16 kap. Om brott mot allmän ordning' ['Chapter 16 On Crimes against Public Order'], in: L. Holmqvist, M. Leijonhufvud, P.O. Träskman & S. Wennberg, 'Brottsbalken - En kommentar' ['The Penal Code - a Commentary'], Stockholm, Norstedts Juridik AB, 2002, p. 16:43-53). It is therefore most likely that the same would apply to registered partners compared to married spouses.

D2 - See D1.

D3 - See D1.

D4 - The anti-discrimination provision in art. 9 of chapter 16 of the Penal Code requires that a comparison is made between how a homosexual person is treated compared to how a heterosexual person would be treated.

This indicates that the persons compared must be, if not in an identical, at least in a similar (comparable) situation. In the case of medically assisted procreation, there are specific provisions excluding women in registered partnerships from access to such services. It is even a punishable offence (art. 7 of the Insemination Act) to perform insemination on a woman who is neither married nor living in a long-term relation with a man, if it is done 'habitually' or for money. Therefore, the situations of a married woman and a woman living in a registered partnership would probably not be considered 'comparable' for the purposes of this penal code anti-discrimination provision.

D5 - See D1.

D6 - Being married as well as being a registered partner (or living in a registered partnership) are different but equal civil statuses under Swedish law. Same-sex couples are not allowed to marry and different-sex couples are not allowed to register as partners. Instead, the Registered Partnership Act was meant precisely to create the same rights and obligations for same-sex couples as a marriage gives to different-sex couples. Therefore, if an occupational survivor's pension is included in the employment benefits for persons who work for a certain employer - private or public - it would amount to direct sexual orientation discrimination to treat married employees differently from how employees living in a registered partnership would be treated. Thus, such a difference in treatment would be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 3 and 5. The Act makes no exception from the discrimination prohibition for differential treatment on grounds of marital status. Discrimination between *married spouses* and *same-sex informal cohabittees* could be construed as indirect sexual orientation discrimination, since same-sex couples can not marry under Swedish law, and would therefore also be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 4 and 5. Such a difference in treatment visavis *different-sex informal cohabittees* would however not violate the discrimination prohibition since there is no general prohibition in Swedish law against discrimination on grounds of marital status alone. Discrimination between *registered partners* and *informal different-sex cohabittees* could likewise be construed as indirect (hetero-)sexual orientation discrimination, since different-sex couples can not register partnership under Swedish law, and would be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 4 and 5. Such a difference in treatment visavis *same-sex couples* would however not violate the law since there is no general prohibition against discrimination on grounds of civil status alone in Swedish law. Discrimination between *same-sex* and *different-sex informal cohabittees* would be direct sexual orientation discrimination and therefore also unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 3 and 5.

D7 - Any employer who treats employees differently with respect to any form of spousal benefits on grounds of sexual orientation violates the discrimination prohibitions in art. 3-5 of the 1999 Sexual Orientation Discrimination Act; see D6 above.

**Table E (Sweden): 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 (1995)
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	Yes, but (2000)
	7. Non-resident foreigner	Yes	X	X	No
Resident foreigner with:	8. Resident foreigner	Yes	X	X	Yes, but (2000)
	9. Non-resident foreigner	Yes	X	X	Yes, but (2000)
Non-resident foreigner with:	10. Non-resident foreigner	Yes	X	X	No
11. Sister or brother with sister or brother		No, but	X	X	No, but
12. Parent with child		No, but	X	X	No, but

**Notes to table E**

E1 - The general principle in Swedish Private international law with respect to the possibility of entering into marriage before a Swedish authority is that the right to marry is tried for each of the future spouses individually, applying the law of the state of which he or she is a citizen; see art. 1 of chapter 1 of the Act on certain International Legal Conditions regarding Marriage and Guardianship [*Lag (1904:26 s. 1) om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*]. Therefore when a Swedish national wants to marry another Swedish national, regardless of residence, internal Swedish law will apply. According to art. 3 of chapter 1 PL, the right to register partnership is always considered applying Swedish law. Originally the PL stipulated that a partnership could only be registered if at least one of the partners was a resident Swedish national (art. 2 of chapter 1 PL of 1 January 1995). This provision has since been amended by the Act (2000:374) amending the Act (1994:1117) on Registered Partnership, which entered into force 1 July 2000. The purpose of the amendment was to broaden the possibilities of partnership registration in Sweden to a wider category of same-sex couples. The provision as it stands now says that at least one of the parties must *either* be a resident Swedish national (Art. 2(2) of chapter 1 PL) *or* have been residing in Sweden for at least 2 years (Art. 2(1) of chapter 1 PL). For the purposes of the Registered Partnership Act, Danish, Dutch, Icelandic and Norwegian citizens are treated as if they were Swedish citizens (last sentence of art. 2 of chapter 1 PL). To conclude, a resident national (or of equivalent nationality) can always register partnership with another resident national (or of equivalent nationality).

E2 - Since both parties are Swedish nationals, they can always marry in Sweden; see E1. Since one of the partners is a resident Swedish national they can register their partnership; see E1.

E3 - *Marriage*: So long as the law of the state of which a resident foreigner is a citizen does not prevent him or her from marrying, neither does Swedish law; see E1. If a foreigner has been resident since at least two years he or she can also have the right to marry considered exclusively under Swedish law (art. 2 of chapter 1 of the Act on certain International Legal Conditions regarding Marriage and Guardianship). Foreigners who are not resident or who have not been resident that long can still obtain this possibility by applying specially to the Government (last sentence of art. 2 of chapter 1 of the same Act). *Registered partnership*: Since one of the partners also in this example is a resident Swedish national, the couple can register their partnership; see E1.

E4 - See E3

E5 - *Marriage*: See E1. *Registered partnership*: Since there is always a residence requirement for at least one of the parties wanting to enter into a registered partnership before a Swedish authority and according to Swedish law, partnership registration is not possible in this situation; see E1.

E6 - *Marriage*: See E3. *Registered partnership*: Since only the foreigner is a resident, he or she must *either* be a Danish, Dutch, Icelandic or Norwegian citizen (i.e. equivalent to Swedish citizenship) *or* have been residing in Sweden for at least two years for the partnership registration to be allowed; see also E1.

E7 - *Marriage*: See E3. *Registered partnership*: See E5.

E8 - *Marriage*: See E3. *Registered partnership*: As long as at least one of the parties *either* has Danish, Dutch, Icelandic or Norwegian citizenship (i.e. equivalent to Swedish citizenship) *or* has been resident for at least two years in Sweden, they can register their partnership; see E1.

E9 - *Marriage*: See E3. *Registered partnership*: As long as the resident foreigner *either* has Danish, Dutch, Icelandic or Norwegian citizenship (i.e. equivalent to Swedish citizenship) *or* has been resident for at least two years in Sweden, they can register their partnership; see E1.

E10 - *Marriage*: See E3. *Registered partnership*: See E5.

E11 - It is not allowed for sisters and brothers (biological or by adoption) to marry each other (Art. 3(1) of chapter 2 ÄktB). Half-brothers and half-sisters may not marry each other without a special permission from the state (Art. 3(2) of chapter 2 ÄktB). The same rules apply to partnership registration (Art. 3(1-2) of chapter 1 PL).

E12 - Parents and biological children are neither allowed to marry each other (Art. 3(1) of chapter 2 ÄktB), nor are they allowed to register as partners (Art. 3(1) of chapter 1 PL). However, if an adoptive parent marries the adopted child, the adoption automatically ceases to have any legal effects. The same goes for registered partnerships between adoptive parents and children (Art. 7(2) of chapter 4 FB and art. 1 of chapter 3 PL). From this you can conclude that such marriages and registered partnerships are possible. This has been widely criticised and the Government has on several occasions announced that this possibility will be abolished.



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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)
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	Yes	X	X	Yes
5. Private person with special authorisation	Yes	X	X	Yes
6. Public notary	No	X	X	No
7. Administrative magistrate	No	X	X	No

**Notes to table F**

F1 - No such possibility is provided for; see F3-F5 below.

F2 - Idem.

F3 - A legally valid marriage can be performed either by a priest belonging to the Church of Sweden (art. 3(1) of chapter 4 ÄktB) or a priest or other official of certain other churches or religious organisations (art. 3(2) of chapter 4 ÄktB). No such possibilities exist for legally valid celebrations of registered partnerships.

F4 - A legally valid marriage can also be performed by a district court judge (Art. 3(3) of chapter 4 ÄktB). The same goes for a legally valid celebration of a registered partnership (art. 8 of chapter 1 PL). The ceremonies are almost identical.

F5 - A legally valid marriage can also be performed by any individual who has received special authorisation from the County administration to do so (Art. 3(4) of chapter 4 ÄktB). The same goes for a legally valid celebration of a registered partnership (art. 8 of chapter 1 PL). The ceremonies are almost identical. The use of this alternative is less common than the one mentioned in F4 above, both for marriages and registered partners.

F6 - No such possibility is provided for; see F3-F5 above.

F7 - Idem.

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

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)
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 partnership with a third person)	No	X	X	No
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
7. By administrative decision (after joint or individual petition)	No	X	X	No

**Notes to table G**

G1 - Art. 2 of chapter 2 PL stipulates that chapter 5 ÄktB applies *mutatis mutandis* also to the dissolution of a registered partnership. Chapter 5 ÄktB provides that dissolution can be obtained by a court decision, immediately if the spouses agree and neither one of them is living with a child under the age of 16 over which that spouse has parental authority, and otherwise after a 6 months period of reconsideration (art. 1-2 of chapter 5 ÄktB).

G2 - No such possibility is provided for.

G3 - Idem.

G4 - Idem.

G5 - Idem. In fact, marrying a third person would be a criminal offence for any person who is already married or a registered partner (art. 1-1a of chapter 7 of the Penal Code).

G6 - No such possibility is provided for.

G7 - Idem.

**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. 94-103.
- Åke Saldeen, 'Sweden', in: C. Hamilton & A. Perry (eds.), *Family Law in Europe*, second ed., London/Edinburgh, Butterworth Lexis Nexis, 2002, p. 619-660.
- Matti Savolainen, 'The Finnish and Swedish Partnership Acts - Similarities and Divergencies', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 24-40.
- Lars Tottie, *Äktenskapsbalken* [a commentary to the Marriage Code], Norstedts Förlag, Stockholm 1990.
- Hans Ytterberg, 'From Society's Point of View, Cohabitation Between Two Persons of the Same Sex is a Perfectly Acceptable Form or Family Life". A Swedish Story of Love and Legislation', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 427-436.

For more literature references, see the database of the CERSGOSIG project at [www.cersgosig.informagay.it/](http://www.cersgosig.informagay.it/).

