

General Patterns in Registration Schemes for Unmarried Couples and the Implications for Ireland

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Introduction

In 2005, Senator David Norris moved his Civil Partnership Bill into Seanad Éireann.² This was not the first time that the partnership rights of same-sex couples came under public scrutiny in Ireland. In June 2000, the Equality Authority published a report that attempted to identify the areas of Irish law in which opposite-sex and same-sex couples were subject to different treatment.³ This was expanded upon by a further report entitled “Implementing Equality for lesbians, gays and bisexuals”.⁴ These two reports led to a motion in Seanad Éireann proposed by Senator Norris calling for,

“[t]he government to give an assurance that it will either accept the Independent benches or introduce on its own imitative legislation to cover the recognition of domestic partnerships.”⁵

In 2003, the issue was taken up by the National Economic and Social Forum and another study was published.⁶ This steady stream of reports, studies and research, coupled with Fine Gael’s policy pledge to introduce a form of civil partnership,⁷ culminated in the submission of the 2005 Bill.

During the debate, Senator Norris noted that change is inevitable and that legislation like that represented in his bill would eventually make its way onto the Statute Book.⁸ Although this statement may be somewhat optimistic for the short term, it is true that since 1989 more and more countries are dealing with the issues surrounding non-marital relationships. There are currently more than 40 jurisdictions that have created a form of registry for non-marital relationships. While in some countries this has been restricted to same-sex couples, in others a broader approach has been adopted to deal simultaneously with the problems faced by both same-sex and different-sex couples.⁹ Some commentators have suggested that the diversity of these registration schemes is illustrative of the current diversity in the field of family law in Europe.¹⁰ This article will seek to determine whether any general trends or patterns in legislation can be discerned.

This article is divided into six sections. The first section is an historical analysis of non-marital registered relationships and of the various approaches that have been taken to the problems faced by same-sex couples. I will then examine the similarities and differences with respect to the registration of the relationship, the dissolution procedures and the rights and duties attributed in the various registration schemes. After sketching some of the main reasons behind the various models outlined, I will explore the future for Irish legislation in this field.

The historical perspective

Until recently, gays and lesbians were for all intents and purposes legally invisible. Hiding behind closed doors and frightened of discovery, gays and lesbians lived at risk of persecution and prosecution. The dawning of a new millennium has, however, ushered in a new era. The days of criminal prosecutions for homosexuality in Europe are gone,¹¹ as are the days when European homosexuals were sentenced to psychological treatment for their “disease”. It must be remembered, however, that it was not until 1993 that the World Health Organisation removed homosexuality from its list of diseases, and it was only in 2003 that Armenia finally decriminalised homosexuality.

A new era of tolerance and acceptance has also heralded a willingness to recognise the stability and value of same-sex relationships. At this juncture it is important to note two approaches to the problems associated with the legal recognition of same-sex relationships: the cohabitation approach and the registration approach.¹² In the cohabitation approach, which can also be described as an “opt-out system”, couples are automatically granted limited rights, duties and protections on the basis of the fulfilment of pre-determined conditions. These conditions often relate to minimum periods of cohabitation as well as minimum age, residency and exclusivity requirements. In the registration approach, often described as an “opt-in system”, couples are only entitled to certain rights and duties once they register their relationship in accordance with domestic substantive law. Although the sole focus of this article will be on the registration approach, it is important to note the extensive use of the cohabitation approach both inside and outside Europe, especially in Australia and New Zealand.¹³ It is also important to stress that these approaches need not operate exclusively. In France, for example, both approaches were introduced in the same piece of legislation,¹⁴ whereas in Sweden the cohabitation approach predated the registration approach by little under a decade.¹⁵

The task before the comparative lawyer using the registration approach is to determine whether any uniform trends can be discerned. In 1989, Denmark became the first country in the world to introduce a registration scheme for same-sex couples.¹⁶ No one could have predicted the exponential increase in the number of jurisdictions that would follow the Danish example. This author is aware of 40 jurisdictions worldwide that have introduced a similar form of registry for same-sex couples. The sheer diversity of these regulations has sparked some to call for a private international law instrument,¹⁷ while others have argued that the multiplicity and variety of such registration schemes is illustrative of the present lack of uniformity in approach in the field of family law.¹⁸ It is necessary to question, however, whether these registration schemes are in fact so diverse— are there no signs of common tendencies and uniform approaches?

In attempting to answer this question, it is important to distinguish between three separate yet interrelated facets of these registration schemes. First, one must examine the conditions imposed on those wishing to register their relationship. Prior to registration, both parties to the

relationship must satisfy a number of formalities. Both will normally, for example, be required to have reached a certain age, often equivalent to the age of majority or the age requirement imposed on those wishing to marry. Although numerous other conditions must also be satisfied, only two of these requirements will be dealt with here—those relating to residency and gender. A second issue is how the parties, once registered, are able to terminate their relationship. The formation and dissolution of the relationship can be seen as the casing of a particular relationship, around which rights and duties can be attached. Finally, the different extents of the rights, duties, responsibilities and obligations attributed to the parties must be noted. In Maryland, USA, for example, parties to a life partnership are only entitled to benefits in the field of health care.¹⁹ At the other end of the spectrum, other jurisdictions, such as Sweden, have chosen to create an identikit to the marital status. Despite this variety, certain uniform patterns can be identified and a number of different models of same-sex relationship regulation can be distinguished.

Registration of the relationship

When Denmark created a registration scheme, certain restrictions were imposed regarding the parties' residence and nationality.²⁰ In this way, problems of an international character, including "registration tourism", were significantly reduced.²¹ While these restrictions have been a feature in other jurisdictions, it appears that the initial wave of strict residency requirements has crested. In Denmark, for example, a partnership can now be registered as long as both parties have been permanently resident in Denmark.²² Furthermore, Norwegian, Swedish and Icelandic citizenship have been placed on an equal footing to Danish citizenship.²³ In The Netherlands, meanwhile, the initial disparity between the more stringent residency requirements imposed on those wishing to register a partnership in comparison to those wishing to celebrate a marriage have been removed.²⁴

A relatively straightforward explanation for the initial stringency and subsequent relaxation of the rules can be proffered. Seeking to avoid creating "limping" relationships²⁵ but wanting to improve the domestic situation for same-sex couples, national legislatures were left with few other options than to introduce strict residency requirements. Although fears of "registration tourism" have been raised in legislatures around the globe, these fears have yet to be realised. As more jurisdictions have enacted legislation protecting same-sex couples, the need to introduce residency requirements different to those imposed on aspirant spouses has also decreased. The recent enactment of the Civil Partnership Act 2004 in the UK is a clear indication of this trend, with couples subject to identical residency requirements as aspirant spouses, despite the relative leniency of these requirements.²⁶

Three models of registration

With regard to the gender requirements imposed on aspirant couples, one is able to discern two distinct approaches. While some countries restrict registration to couples of the same-sex, others make registration open to opposite-sex couples. It is therefore constructive at this point to analyse the registration schemes in the broader framework of

institutionalised or formalised intimate relationships. Three distinct models can be distinguished.

(1) *The monistic model.* In this approach, no separate registration scheme for same-sex couples is created. Instead the prohibition on same-sex marriage is removed, creating a single, formalised institution open to both same-sex and opposite-sex couples—marriage. This approach has only been followed in a relatively small number of jurisdictions: Ontario, British Columbia, Yukon Territory, Saskatchewan and Newfoundland in Canada, and Massachusetts in the USA. Political concerns about making such a monumental change to existing legislation are part of the reason for the relatively low uptake of this model. As a result, this model is currently restricted to common law jurisdictions where judges have taken the initiative to strike down gender-based marital restrictions, often on the basis of their unconstitutionality. If the proposal currently before the Spanish Parliament is successful,²⁷ Spain will become the first civil law country to have enacted same-sex marriage legislation prior to the enactment of a national non-marital registration scheme.²⁸

(2) *The dualistic model.* In this approach, a registry is created that is restricted to same-sex couples. Opposite-sex couples wishing to formalise their relationship are able to do so via the traditional marriage route. In this way, two institutions operate side-by-side; one for opposite-sex couples, marriage, and one for same-sex couples, registered partnership. This approach has been followed in Argentina (Río Negro), Denmark, Finland, Germany, Greenland, Iceland, Norway, Sweden, Switzerland, the UK and the USA (Connecticut and Vermont).

(3) *The pluralistic model.* In this final approach, a registry scheme is created that is open to both same-sex and opposite-sex couples. Opposite-sex couples are therefore provided with a choice of institutional forms: marriage or registration. Same-sex couples, on the other hand, are provided with only one option: registration. Because it treats same-sex and opposite-sex couples differently, this approach actually strengthens the arguments for opening marriage to same-sex couples. In Belgium, The Netherlands, Manitoba, Nova Scotia and Quebec, such arguments have been successful, and civil marriage has been opened up to same-sex couples, creating a truly pluralistic system for all. The pluralistic model has been followed in Andorra, Argentina (Buenos Aires), Australia (Tasmania), France, Luxembourg, New Zealand, Spain (Andalucia, Aragon, Asturias, Balearic Islands, Basque Country, Canary Islands, Catalonia, Extremadura, Madrid, Navarre and Valencia) and the USA (California,²⁹ Hawaii,³⁰ Maine, Maryland and New Jersey³¹).³²

Dissolution of the relationship

Although the dissolution procedures for non-marital relationships vary, two distinct approaches can be discerned. On the one hand, some countries aim to make the dissolution procedures available to non-marital registered partners mirror those available to spouses wishing to terminate their marriage. Although slightly modified, the general grounds and procedural provisions for dissolution are the same for both sets of couples. On the other hand, some countries draw a distinction between marriage and non-marital registered

relationships. A salient feature of the dissolution procedures for non-marital registered relationships in these countries is their relative informality. Three jurisdictions—the UK, The Netherlands, and France—illustrate these different approaches to dissolution.

Three approaches to dissolution

In the UK, the legislature has decided to preserve the judicial mechanisms for dissolving non-marital registered relationships. Accordingly, no administrative form of dissolution is provided for.³³ In retaining the judicial monopoly on relationship dissolution, all three jurisdictions in the UK have, as far as possible, attempted to follow the existing divorce procedures in crafting a dissolution procedure for civil partners. Although a number of minor differences are apparent, this is generally due to the nature of the civil partnership legislation. For example, although adultery is not an explicit ground for the dissolution of a civil partnership, as is the case for marriage, couples wishing to use adultery as a ground to dissolve their relationship will be able to file for dissolution on the basis of unreasonable behaviour. The reason for the absence of this ground can be traced to the government's unwillingness to alter the common law definition of adultery.³⁴ Nonetheless, the legislature was keen to ensure that parties entered into a civil partnership with commitment and sincerity. This is apparent not only in the formalities that must be completed prior to registering a relationship but also in relation to the dissolution procedures.

This approach has not, however, been followed in The Netherlands or France. In both of these countries, distinctive procedures have been created enabling couples to dissolve their non-marital registered relationships on grounds not available to spouses wishing to divorce. In opening registration to couples of the opposite-sex, the governments in both jurisdictions have attempted to draw a clear line between marriage, on the one hand, and the less traditional form of registration on the other, and in so doing have contrived new dissolution procedures. In contrast to the administrative methods available for terminating non-marital registered relationships in both these jurisdictions,³⁵ marriages can only be terminated on the basis of a judicial procedure.³⁶

This statement must however be read with caution with respect to The Netherlands, where a marriage may in fact be terminated administratively by means of the two-step lightning divorce procedure.³⁷ This procedure is extremely controversial and forms one of the focal points of proposals currently before the Dutch parliament.³⁸ Both proposals aim to remove the possibility offered to married couples to convert their marriage into a registered partnership. Nonetheless, partners wishing to terminate their registered partnership in The Netherlands are provided with a judicial alternative. If the parties are unable to agree upon the need to terminate their partnership, Dutch law adopts a protective stance in providing resort to a judicial mechanism. Even if the parties opt for an administrative procedure, the weaker party is afforded protection by ensuring that the declaration to terminate their relationship is signed by one or more lawyers or notaries.³⁹ The involvement of a legal professional helps to ensure the fairness of any agreements reached by

the parties, while retaining respect for the principle of party autonomy.

The Dutch government alleged that opposite-sex couples opting for registered partnership would typically be childless.⁴⁰ The perceived absence of children in the case of registered partnership allowed the government to provide for a simple, non-judicial procedure to terminate the relationship if the parties were in agreement on the need to do so. Although this argument could possibly have been supported in 1998, this is certainly no longer the case in 2005.⁴¹ Nonetheless, the government saw the need to protect the parties' respective interests, thus creating a two-track dissolution procedure. In this way, a balance has been struck between respecting the principle of party autonomy and bestowing adequate protection on the weaker party.

In France, on the other hand, less protective measures have been adopted. The dissolution procedures available to couples involved in a non-marital registered relationship are totally devoid of judicial involvement. If the parties disagree on the need to terminate their relationship, either party may unilaterally terminate their relationship. In condoning such measures, the French government argued that a *pacte civil de solidarité* does not bring about a new stage in the parties' lives, and pointed instead to the contractual nature of the relationship. However, in allowing parties to marry while still involved in a non-marital registered relationship and providing a unilateral termination procedure, the French legislature has not entirely adhered to general principles of contract law with respect to indefinite contracts. According to French law, contracts for an indefinite period may be terminated unilaterally only after a period of reasonable notice.⁴² Non-adherence to a reasonable period of notice can lead to a *rupture brusque* and constitutes an *abus de droit*.⁴³ The ability of either party to the non-marital registered relationship to unilaterally terminate the relationship without notice of a reasonable length by celebrating a marriage, especially if this marriage is celebrated with a third person, not only provides for a non-protective dissolution procedure but also contravenes the basic tenets of contract law.⁴⁴ If one holds that a non-marital registered relationship is as a purely contractual matter then one should adhere to the normal rules applicable to contracts, but this is not the case in the legislation creating the *pacte civil de solidarité*. Furthermore, it may not be reasonable for a non-marital registered relationship that has, for example, lasted one year be subject to the same notice period as a relationship that has lasted 20 years.

Hence, although France and The Netherlands have opted for a solution very different to that currently offered to married couples, they have not approached this solution in the same manner. Two different approaches must therefore be distinguished: protective dissolution (The Netherlands) and non-protective dissolution (France).

While the distinctions between these three countries may appear surprising, the existence of two different approaches to dissolution is a logical consequence of the aforementioned differences concerning the establishment of non-marital registered relationships. In those countries adhering to the dualistic model, the fact that non-marital registered

relationships were restricted to couples of the same-sex negated the need to apply different rules to the dissolution procedure. The starting point in these countries was such that non-marital registered relationships should be treated identically to marriages, unless there was a good reason for doing otherwise. No reason exists to treat the dissolution of a non-marital registered relationship any differently from the dissolution of a marriage. In those countries adhering to the pluralistic model, these arguments are not sustainable and hence alternative dissolution procedures have been introduced.

Attributed rights and duties

A different yet interconnected facet of these new relationship schemes relates to the package of rights and duties attributed to those who register their relationship. Although it is almost impossible to make discrete distinctions between different approaches, a rough continuum is perceptible in the schemes that have been enacted. The rights and duties attributed to those who have registered their relationship can be divided into four categories: (1) property rights, (2) fiscal rights, (3) family law partnership rights and (4) family law rights in relation to children.

(1) The rights and duties associated with property rights are generally not particularly politically sensitive. It is assumed that parties involved in an intimate relationship wish to commit to each other, and by imposing duties such as a duty to cohabit or contribute to the costs of the household, the State is merely indicating its moral stance and accepting little financial burden. Although opinions as to the best matrimonial property regime differ markedly and have resulted in protracted political debates in many countries, the question of whether to enact rules determining the property law effects of registering a non-marital relationship is by and large uncontroversial. Moreover, in many legal systems parties are in any case able to draw up a contract regulating such issues themselves. The State simply provides for a default system to operate in the absence of such an expression of the parties' will. In addition, it appears that in any debate concerning the protection that should be offered to cohabitants, discussion centres on this field of law.⁴⁵ It is therefore unsurprising that this field is one of the first to be legislated upon for non-marital registered relationships.

(2) Although fiscal rights and duties are generally of a less sensitive political nature than those in the third or fourth categories, the extension of fiscal benefits in the form of tax breaks, social security benefits and access to pension schemes obviously comes at great financial cost to the government. The political will to remove fiscal discrimination is therefore often pitted against available government funds.

(3) A shift of emphasis is noticeable in the category of family law partnership rights. If one accepts the extension of rights in this field, it becomes difficult to make distinctions as to which rights should or should not be extended. Extending one right or duty in this category invariably means extending others. In many countries, rights and duties in the field of family law also have a long-standing association with the law on marriage. On the European continent, the celebration of a marriage has an important impact on those

personal law rights associated with one's civil status, name and nationality. This is to some extent also true of common law countries, where according to old authorities the celebration of a marriage fused, for many purposes, the legal personalities of husband and wife. As a result, the extension of such rights to those outside of the marital bond is a much more sensitive matter than the rights in the first two categories.

(4) Family law rights in relation to children, untouched in the vast majority of legal systems, is possibly the most sensitive category of all. This sensitivity stems from a multiplicity of dynamic factors: biology, tradition, third party rights and moral values. The law on parentage was originally based on the presumption of biology. The idea of extending such presumptions to same-sex couples involves an enormous excursion from biological realities. Even if the husband of the legal mother is not the father of the child, there is a biological possibility that he could be, whereas such a biological possibility is completely absent in same-sex couples.⁴⁶

The more rights and duties a government attaches to a registration scheme, the stronger it is deemed to be. In general, those registration schemes restricted to property and fiscal rights and duties are deemed to be weak, while those involving partnership and child family law are deemed to be strong.⁴⁷ Although this division into rough categories of rights is merely illustrative, it helps to identify the crucial difference between those countries adhering to a system of strong registration and those adopting a system of weak registration.

Choices and reasoning

Although the determination of uniform patterns is important, it is equally important to understand the underlying rationale for their existence. In choosing between the monistic, dualistic and pluralistic models, a number of factors play a role. In some jurisdictions marriage is afforded constitutional protection. In Germany, for example, Art.6(1) of the German Constitution provides that "marriage and the family shall enjoy the special protection of the State". As a result, it would have been political suicide to attempt to introduce a registration scheme offering opposite-sex couples an alternative to marriage. Furthermore, the role of the church in the celebration of marriages often plays a determining factor in the approach adopted by a particular jurisdiction. In the UK, Denmark, Norway and Iceland, recognised religious bodies or State churches are legally entitled to celebrate marriages. Any debate on opening registration to opposite-sex couples would therefore encounter religious objections. If neither of these factors exists, the objections to opening registration schemes to opposite-sex couples are much weaker. If either or both factors exists, then it would appear that a legislature is more inclined to meander down the pluralistic path. Moreover, the monistic path appears, at present, only to have been approached by those "activist judges" who have declared the prohibition on same-sex marriage to be unconstitutional.

Yet opening registration to opposite-sex couples and opting for the pluralistic model do not necessarily go hand-in-hand with a weak registration scheme. In The Netherlands,

for example, although both same-sex and opposite-sex couples are entitled to register their partnership, the package of rights and duties associated with such a registration is almost identical to that offered to spouses. Similarly, restricting registration to couples of the same sex does not necessarily endorse a strong registration scheme. A new trend of registration proposals is beginning to emerge in eastern Europe, where the dualistic approach is coupled with a weak registration scheme. Politicians often see the need to confront issues relating to same-sex couples as a direct result of ascension to the EU and an imposition from beyond national frontiers. That these issues have been only reluctantly addressed is reflected in the relatively restrictive nature of the proposals.

This article has shown that despite the diversity of global solutions, uniform trends are perceptible. In a similar fashion to the division of the world into legal families, the formalised registration schemes for same-sex couples can be divided into five different models: a monistic model (e.g. Massachusetts), a dualistic model with weak registration (e.g. eastern European proposals), a dualistic model with strong registration (e.g. the UK and Switzerland), a pluralistic model with weak registration (e.g. France and Belgium) and a pluralistic model with strong registration (e.g. The Netherlands, Quebec)

Possibilities for Ireland

According to the models identified in this article, the most recent proposal in Ireland regarding non-marital relationships falls squarely into the same category as that adopted in The Netherlands, namely a pluralistic model with a strong registration scheme and a protective dissolution procedure. Although these proposals are not identical, comparisons can be drawn between them, and the Irish legislature might learn lessons from the Dutch legislation. Since its introduction in 1998, the registered partnership scheme in The Netherlands has come under increasing attack. The differences between registered partnership and marriage have become so minimal that many have called into question the continuing need to maintain the institution of registered partnership.⁴⁸ With s.6 of the proposed Irish Civil Partnership Bill going even further than the original Dutch Registered Partnership Act, one has to question whether the lessons learnt in The Netherlands are being heeded in Ireland.

Where does Ireland go from here? With the Civil Partnership Act 2004 soon to come into force in the UK, there will undoubtedly be more calls in Ireland for the recognition of non-marital relationships. The lack of any form of residency requirement in registering a civil partnership in Northern Ireland means the practical obstacles for Irish couples to register a civil partnership in Northern Ireland will be almost non-existent. On the basis of the comparative research conducted, it seems likely that the Irish legislature will proceed along the same path as the Nordic countries. The involvement of the church in the celebration of marriages and the constitutional protection afforded the institution of marriage, while not providing sound legal barriers, are certainly important political obstacles⁴⁹ to opening registration to opposite-sex couples.⁵⁰

With the number of European jurisdictions introducing such legislation on the increase, and the harmonisation of international legislation in the field of private international law increasingly becoming a distinct possibility, it is difficult to see how Ireland can remain on the outskirts of such developments. It would seem that the only thing missing is the political will to make the necessary changes. It is to be hoped that in addressing the domestic need for recognition of different family forms, the Irish government does not ignore the international implications. It is ignorance of foreign developments and international repercussions that has caused many of the issues currently under discussion. Perhaps this is indeed an area where attention should have been paid to the Irish proverb: "An old broom knows the dirty corners best".

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² Seanad Éireann, Parliamentary Debates, February, 16, 2005, vol.179, no.8, p.675-716.

³ The Equality Authority, *Partnership rights of same sex couples* (Dublin, June 2000).

⁴ The Equality Authority, *Implementing Equality for Lesbians, Gays and Bisexuals* (Dublin, 2001).

⁵ Seanad Éireann, Parliamentary Debates, October 16, 2002, vol.170, p.353-384.

⁶ National Economic and Social Forum, "Equality Policies for Lesbian, Gay and Bisexual People: Implementation Issues", Forum Report no.27 (Dublin, April 2003).

⁷ Fine Gael, "On Your Side: Civil Partnership" (Dublin, 2004). Available at www.finegaele.ie.

⁸ Seanad Éireann, Parliamentary Debates, February 16, 2005, Vol.179, No.8, p.675-716.

⁹ If the Civil Partnership Bill as submitted by Senator Norris had been successful, this legislation would have fallen into the later category. s.3(1), Civil Partnership Bill 2004.

¹⁰ H.U. Jessurun D'Oliveira, "Vrijheid van verkeer voor geregistreerde partners in de Europese Unie", (2001), *Nederlandse Juristenblad*, p.205-210.

¹¹ Since 2003, homosexuality has been decriminalised in all 45 Member States of the Council of Europe.

¹² See R. Wintemute, "Conclusions", in R. Wintemute and M. Andemæs (eds.), *Legal recognition of same-sex partnerships: A study of national, European and international law* (Hart Publishing, Oxford/Portland, 2001), p.759-773.

¹³ See, for example, the Property (Relationships) Act 1984 (New South Wales), Property Law Act as amended (Queensland); Property Law Act as amended (Victoria), Domestic Relationships Act 1994 (Australian Capital Territory), Relationships Act 2003 (Tasmania), De Facto Relationships Act 1996 (South Australia, although restricted to opposite-sex couples), De Facto Relationships Act 2004 (Northern Territory) and Property (Relationships) Amendment Act 2001 (New Zealand).

¹⁴ The *pacte civil de solidarité* is created by Arts 515-1 to 515-7, French Civil Code, whilst Arts 515-8, French Civil Code, formally recognise a non-registered form of *concubinage*.

¹⁵ Cohabitees (Joint Homes) Act 1987 and Homosexual Cohabitees Act 1987.

¹⁶ Act No.372 of June 7, 1989.

¹⁷ K. Boele-Woelki, "De wenselijkheid van ee IPR-verdrag inzake samenleving buiten huwelijk", *Tijdschrift voor familie-en jeugdrecht* (1999), p.11-13.

¹⁸ P. Senaeve, Closing speech at the 2003 Ius Commune Conference in Maastricht, to be published in the lustrum issue of *Jura Falconis* in 2005.

¹⁹ Medical Decision Making Act 2005.

²⁰ One of the parties needed to be a Danish citizen and permanently resident

in Denmark. I. Lund-Andersen, "The Danish Registered Partnership Act", in K. Boele-Woelki and A. Fuchs (eds.), *EFL series: Volume 1. Legal recognition of same-sex couples in Europe* (Intersentia, Antwerp, 2003), p.19.

²¹ "Registration tourism" refers to the belief that couples with no connection to a particular country will travel there to have their relationship registered and then move back to their home State.

²² s.2(2)(ii), as amended by Act No.360 of June 2, 1999.

²³ s.2(3), as amended by Act No.360 of June 2, 1999.

²⁴ *Staatsblad* 2001, no.11.

²⁵ This is a technical term given to the relationships recognised in one state and not in another.

²⁶ Only seven days residency is required in England & Wales (Civil Partnerships Act 2004, s.8(1)(b)), whilst no residency is required in Scotland or Northern Ireland.

²⁷ Proyecto de ley por la que se modifica el Código Civil en materia de derecho a contraer matrimonio, Nos.18-1, January 21, 2005.

²⁸ This statement must be qualified by the fact that 11 autonomous regions of Spain have already legislated on this topic.

²⁹ Restricted to opposite-sex couples over the age of 62: s.297(b)(5)(B), Pt 1, Division 2.5, California Family Code.

³⁰ Restricted to opposite-sex couples within the prohibited degrees of marriage: s.572C-4(3), Title 31, Division 3, HRSA.

³¹ Restricted to opposite-sex couples over the age of 62: C.26:8A-4b(5), Ch.246, PL 2003.

³² These jurisdictions have only succeeded in achieving the first stage, i.e. the creation of a registration scheme open to all, but maintaining the gender restrictions imposed on marriage.

³³ Civil Partnership Act 2004, s.44(1), (England & Wales), s.117(1) (Scotland), and s.168(1) (Northern Ireland).

³⁴ Women and Equality Unit, *Responses to Civil Partnership. A framework for the legal recognition of same-sex couples* (London, 2003), p.36.

³⁵ Art.1:80c(c), Dutch Civil Code; Art. 515-7, French Civil Code.

³⁶ Art.1:150, Dutch Civil Code; Art. 228, French Civil Code (even after the reforms made by the Law No.2004-439 of May 26, 2004).

³⁷ Art. 1:77a, in combination with 1:80c(c) and 1:80d, Dutch Civil Code.

³⁸ Dutch Second Chamber, 2004-2005, 29676, No.3. The other proposal is not yet published, but see the press release from May 31, 2005, available at www.justitie.nl/pers/persberichten.

³⁹ Art.1:80c(c), Dutch Civil Code. For further information on this form of relationship dissolution see I. Sumner, "Dissolution of Registered Partnerships: An Excursion in Conversion", *International Family Law* (2004), p.201-204, and "Transformers: Marriages in Disguise", *International Family Law*, 2003, p.15-23.

⁴⁰ Dutch Second Chamber, 1993-1994, 23761, no.3, p.10.

⁴¹ K. Boele-Woelki, "Registered partnership and same-sex marriage in the Netherlands", in K. Boele-Woelki and A. Fuchs (eds.), *Legal recognition of same-sex couples in Europe*, (Intersentia, Antwerp, 2003), p.41-53.

⁴² A. Bénabent, *Droit de la famille*, (Litec, Paris, 2000), p.212-214, s.312-314.

⁴³ *Cour de Cassation*, Commercial Chamber, December 5, 1984, *Bull. Civ. IV*, no.33. This is also supported by art.1:302 Principles of European Contract Law. See further U. Lando and H. Beale (eds.), *Principles of European Contract Law. Parts I and II (Combined and Revised)* (Kluwer, The Hague, 2000), p.316-317.

⁴⁴ Furthermore, there is, as far as this author is aware, no other form of contract that is automatically terminated by the simple fact of a subsequent marriage celebration.

⁴⁵ See, for example, W. Schrama, *De niet-huwelijkse samenleving in het Nederlandse en Duitse recht* (Kluwer, Amsterdam, 2004); A. Barlow, *Cohabitants and the law*, (3rd ed., Butterworths, London, 2001), P. Senaeve (ed.), *Concubinaat. De buitenhuwelijkse tweerelatie*, (Acco, Leuven, 1992).

⁴⁶ Kortmann Commissie, *Commissie inzake openstelling van het burgerlijk huwelijk voor personen van hetzelfde geslacht* (Ministry of Justice, The Hague, 1997), p.5, s.2.1.

⁴⁷ R. Wintemute, "Conclusions", in R. Wintemute and M. Andemæs (eds.), *op. cit.* p.759-773.

⁴⁸ W.M. Schrama, *op. cit.* p.563.

⁴⁹ Amending the Constitution is an arduous task and requires substantial political will, and even though the church would not be directly affected by legislation offering a registration scheme to same-sex couples, the opposition would probably be strong enough to destabilise any amendment to the Constitution.

⁵⁰ The Constitution can always be amended and the opening up of a registration scheme does not necessarily affect the status of the Church.