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## National Report: Norway

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# NATIONAL REPORT: NORWAY

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## Questions 1 and 2

Norway is a constitutional monarchy with the King (or a Queen) as the formal head of State. His duties are, however mainly representative and ceremonial. The Norwegian Constitution of 1814 states that Parliament (Storting) exercises the legislative power.<sup>1</sup> According to the Constitution the Government is a council chosen by the King. This regulation is overruled by constitutional customary law, which states a system where the Government as a main rule needs the support of the party or parties representing the majority of the members of Parliament. This means that the executive power is executed by the Government. At the head of the judiciary is the Supreme Court. Its decisions are final. Most of the provisions of the Norwegian Constitution regulate the power of the King (the Government), the Parliament, and the Judiciary. An amendment of the Constitution requires that two thirds of Parliament agree thereto. The Constitution contains a list of fundamental rights, i.e. on personal freedom, personal property, private ownership, free enterprise, freedom of speech and the prohibition of retroactive effect of laws. In § 110 c of the Constitution there is a provision regarding human rights: "It is the responsibility of the authorities of the State to respect and ensure human rights." There are no constitutional regulations directly applicable to same-sex partnerships.

## Questions 3 and 4

In June 2008 (in force from 1 January 2009), the Norwegian Marriage Act section 1 was amended to allow same-sex marriages: "Two persons of opposite sex or the same sex may contract marriage."<sup>2</sup> It was not specified in the former version of § 1 that solely persons of the opposite sex could contract marriage, the inclusion of same-sex marriages, however, had to be expressly stated in the Marriage Act. Norway was among the first States

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1. Kongeriget Norges Grundlov. 17 mai. 1814.

2. Lov om ekteskap. 4 juli. Nr. 47 1991. Amended through Lov Nr. 53/2008.

(1993) to allow registered partnerships between persons of the same sex.<sup>3</sup> Registered partnerships were, with some exceptions (i.e., regarding adoption and the right to conclude the partnership in a church), given the same legal treatment as marriage. The Registered Partnership Act was repealed as of 1 January 2009 (the date when the amended Marriage Act came in force). It is not possible to conduct a registered partnership in Norway after this date. An existing registered partnership may although be converted into a marriage with the consent of both partners. If such consent is not made, the registered partnership stays in force.

Along with the introduction of same-sex marriages in Norwegian law, most of the exceptions regarding differential treatment from the Partnership Act were removed. Under the new regime of a common Marriage Act for heterosexual and homosexual couples there are only two differences in the treatment between different-sex and same-sex marriages.

One difference concerns the performance of a marriage. The regulations on the registration procedures in the Registered Partnership Act were different from those applying to the performance of a marriage. A Partnership could only be registered by a notary public (a judge), whereas a marriage also can be celebrated by a clergyman of the Church of Norway, or a priest, or minister of a registered religious community that has been given the authority to conclude marriages. The Marriage Act now gives the same regulations both to different-sex and same-sex marriages. There is nevertheless one difference as a clerical solemniser may refuse to solemnise a marriage if the parties are of the same sex (Section 13).

The other difference concerns the right to adopt a child. Registered partners are excluded from adopting jointly. Registered partners can however request a stepchild adoption unless the child was adopted in a country that does not permit such adoption. Along with the amendments of the Marriage Act also spouses of the same sex were given the access to joint adoption, but the limited access to commit a stepchild adoption was carried on as with regards to same-sex spouses.<sup>4</sup>

Other differences between registered partnerships and marriages have been removed, but some of the diverging regulations from the Partnership Act have also been included in the common Marriage Act for heterosexual and homosexual couples and in other Acts in the way that they now apply to both different-sex and same-sex marriages.

The Partnership Act made reference to the regulations on the dissolution of marriages. Section 5 of the Partnership Act also decided that proceedings concerning the dissolution of a partnership can always be

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3. Lov om registrert partnerskap. 30 april. Nr. 40. 1993.

4. The Act relating to adoption, section 5 a. Lov om adopsjon. 28 februar. Nr. 8. 1986.

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brought before a Norwegian court when the partnership was registered in Norway. To replace section 5 of the Partnership Act, the Marriage Act was supplemented with a letter f) in Section 30 b: “When the marriage was contracted in Norway and it is proved that the plaintiff would not be able to institute proceedings in the country of which he or she is a national or is resident,” matrimonial proceedings may be brought before a Norwegian court. This means that the special regulation applying to partnership has been included in the Marriage Act in a slightly amended version.

The Registered Partnership Act § 2 contained requirements on the partner’s connection to Norway to conduct a partnership in Norway. These requirements were seen as necessary to avoid so-called partnership-tourism, as Norway, by the introduction of the Partnership Act, was one of very few countries that had passed an act on registered partnerships. The special requirements regarding the partner’s connection to Norway have not been succeeded in the Marriage Act, which means that foreign nationals are able to enter into a same-sex marriage in Norway if they have lawful residence in Norway.

With the introduction of a common Marriage Act for heterosexuals and homosexuals, the Act relating to the application of biotechnology in medicine was also amended. Now lesbian spouses and cohabitants have the same access to medically assisted reproduction as heterosexual couples and cohabitants; see section 2-2 of the Biotechnology Act.<sup>5</sup>

The Children Act was also amended, and the term co-mother was introduced. Section 4 letter a) of the Children Act states: “The mother’s female spouse or cohabitant shall be regarded as the co-mother of the child if the co-maternity follows from marriage, acknowledgement or judgment.”<sup>6</sup>

### Question 5

As Norway permits same-sex marriages, there is no civil union regulation. There are, nevertheless, several regulations on co-habitation that are applicable to heterosexual and homosexual couples.

### Questions 6 and 7

Not relevant. See question 5.

### Question 8

Same-sex partnerships are considered as equal to partnerships between persons of the different sex. When the expression cohabitants, or

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5. Lov om humanmedisinsk bruk av bioteknologi. 5 desember. Nr. 100. 2003.

6. Lov om barn og foreldre. 8 april. Nr. 7. 1981.

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cohabitants living in a stable relationship resembling marriage, are being used in the legislation, this also includes same-sex partnerships. For this reason, there are no specific regulations on same-sex partnerships that specifically recognize same-sex partnerships for particular purposes.

#### **Questions 9 and 10**

Not relevant since Norway allows same-sex marriages.

#### **Question 11**

Because of the equal treatment of same-sex partnerships and partnerships between persons of the different sex, there is no need for specific benefits/rights to same-sex couples in Norwegian law. The definition of a patient's next of kin in the Patients Rights Act Section 1-3 letter b) may serve as an example of this. A patient's next of kin is: "the person whom the patient names as his or her kin or next of kin. If the patient is incapable of naming his or her next of kin, the next of kin shall be the person who to the greatest extent has had lasting and continuous contact with the patient, based however on the following order: spouse, registered partner, persons who live with the patient in a relationship resembling a marriage or partnership, children of full legal age and legal capacity . . . ."<sup>7</sup>

#### **Question 12**

There are no relevant Norwegian decisions that have had or may have future impact on the legal construction of same-sex marriage or in the legal recognition of same-sex unions/partnerships.

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7. Lov om pasientrettigheter. 2 juli. Nr. 63. 1999.