

Text of Dutch law on the opening up of marriage for same-sex partners (plus explanatory memorandum)

summary-translation by Kees Waaldijk (www.emmeijers.nl/waaldijk)

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This is an unofficial translation and I am not a professional translator. Please consult me before publishing this text elsewhere. All explanations and comments between square brackets have been added by me. Square brackets are also used to indicate omitted or summarised passages.

See also: [Text of Dutch law on adoption by persons of the same sex. Summary-translation by Kees Waaldijk](#) (October 2000).

Staatsblad van het Koninkrijk der Nederlanden
2001, nr. 9 (11 January) (Official Journal of the Kingdom of the Netherlands)

For the original version in Dutch, see:

Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

[This Act results from proposal nr. 26 672, introduced by the Government on 8 July 1999, amended by the Government on 3 May 2000 and 4 August 2000, adopted by the Lower House of the States-General on 12 September 2000 and by the Upper House of the States-General on 19 December 2000, and signed into law on 21 December 2000. As a result of the Royal Decree of 20 March 2001 (*Staatsblad* 2001, nr. 145) it has entered into force on 1 April 2001.]

We Beatrix [...];

[*preamble:*]

considering that it is desirable to open up marriage for persons of the same sex and to amend Book 1 of the Civil Code accordingly;

Article I

A, B and C

[amendments to articles 16a, 20 and 20a, concerning administrative duties of the registrar]

D

[amendment of article 28, concerning the change of sex in the birth certificates of transsexuals: Being not-married shall no longer be a condition for such change.]

E

Article 30 shall read as follows:

Article 30

1. A marriage can be contracted by two persons of different sex or of the same sex.
2. The law only considers marriage in its civil relations.

[Until now, article 30 only consists of the text of the second paragraph.]

F

Article 33 shall read as follows:

Article 33

A person can at the same time only be linked through marriage with one person.

[Until now, the text of article 33 only outlaws heterosexual polygamy.]

G

[Insertion of the words „brothers" and „sisters" in article 41, which will now read as follows:

Article 41

1. A marriage cannot be contracted between those who are, by nature or by law, descendant and ascendant, brothers, sisters or brother and sister.
2. Our Minister of Justice can, for weighty reasons, grant exemption from this prohibition to those who are brothers, sisters or brother and sister through adoption.]

H

A new article 77a shall be inserted:

Article 77a

1. When two persons indicate to the registrar that they would like their marriage to be converted into a registered partnership, the registrar of the domicile of one of them can make a record of conversion to that effect. If the spouses are domiciled outside the Netherlands and want to convert their marriage into a registered partnership in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.
2. Articles 65 and 66 apply correspondingly.
3. A conversion terminates the marriage and starts the registered partnership on the moment the record of conversion is registered in the register of registered partnerships. The conversion does not affect the paternity over children born before the conversion.

I

[consequential amendment to article 78, concerning proof of marriage]

J

[amendments to article 80a, concerning registered partnership. The minimum age for marriage and registered partnership is 18, but for marriage it is reduced to 16, if the woman is pregnant or has given

birth; this exception shall now also apply to registered partnership. Furthermore, annulment of an underage marriage is not possible after the female spouse has become pregnant; the same shall now apply to an underage registered partnership.]

K

[consequential amendment to article 80c]

L

A new article 80f shall be inserted:

Article 80f

1. When two persons indicate to the registrar that they would like their registered partnership to be converted into a marriage, the registrar of the domicile of one of them can make a record of conversion to that effect. If the registered partners are domiciled outside the Netherlands and want to convert their registered partnership into a marriage in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.
2. The articles 65 and 66 apply correspondingly.
3. A conversion terminates the registered partnership and starts the marriage on the moment the record of conversion is registered in the register of marriages. The conversion does not affect the paternity over children born before the conversion.

M

[consequential amendment to article 149]

N

Article 395 shall read as follows:

Article 395

Without prejudice to article 395a, a stepparent is obliged to provide the costs of living for the minor children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his

nuclear family.

[Until now this article only applies to marriage, not to registered partnership.]

O

Article 395a, second paragraph, shall read as follows:

2. A stepparent is obliged to provide [the costs of living and of studying] for the adult children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his nuclear family and are under the age of 21.

[Until now this article only applies to marriage, not to registered partnership.]

Article II

[technical amendments concerning registered partnership]

Article III

Within five years after the entering into force of this Act, Our Minister of Justice shall send Parliament a report on the effects of this Act in practice, with special reference to the relation to registered partnership.

Article IV

This Act shall enter into force on a date to be determined by royal decree.

[This Act entered into force on 1 April 2001, as a result of the Royal Decree of 20 March 2001, *Staatsblad* 2001, nr. 145.]

Article V

This Act shall be cited as: Act on the Opening up of Marriage.

[...] Given in The Hague, 21 December 2000: **Beatrix**

The State-Secretary for Justice: **M.J. Cohen**

Published on 11 January 2001 (The Minister for Justice: **A.H. Korthals**)

Lower House of the States-General, session 1998/1999

Parliamentary paper 26672, nr. 3 (8 July 1999)

Amendment of Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

EXPLANATORY MEMORANDUM

[The explanatory memorandum which accompanied the original Bill of 8 July 1999, is a lengthy text. Therefore only some brief passages have been translated.]

[...]

Amendments – where necessary – in other books of the Civil Code and in other legislation will be proposed in a separate bill. [introduced on 22 August 2000, Parliamentary Papers II 1999/2000, 27256, nr.2] [...]

1. *History*

[...]

From the government's manifesto of 1998 (Parliamentary Papers II, 1997/1998, 26024, nr. 9, p. 68) it appears that the principle of equal treatment of homosexual and heterosexual couples has been decisive in the debate about the opening up of marriage for persons of the same sex.

2. *Equalities and differences between marriage for persons of different sex and marriage for persons of the same sex.*

[...]

As to the conditions for the contracting of a marriage no difference is made between heterosexuals and homosexuals [...].

[For example, only one of the persons wishing to marry needs to have either his or her domicile in the Netherlands or Dutch nationality.]

The differences between marriage for persons of different sex and marriage for persons of the same sex only lie in the consequences of marriage. They concern two aspects: firstly the relation to children and secondly the international aspect. [...]

[According to article 199 the husband of the woman who gives birth during marriage is presumed to be the father of the child.] It would be pushing things too far to assume that a child born in a marriage of two women would legally descend from both women. That would be stretching reality. The distance between reality and law would become too great. Therefore this bill does not adjust chapter 11 of Book 1 of the Civil Code, which bases the law of descent on a man-woman relationship. Nevertheless, the relationship of a child with the two women or the two men who are caring for it and who are bringing it up, deserves to be protected, also in law. This protection has partly been realised through the possibility of joint authority for a parent and his or her partner (articles 253t ff.) and will be completed with a proposal for the introduction of adoption by same-sex partners [introduced 8 July 1999, Parliamentary Papers II 1998/1999, 26673; this proposal became law on 21 December 2000, see my [Summary-translation](#)], with a proposal for automatic joint

authority over children born in a marriage or registered partnership of two women [introduced 15 March 2000, Parliamentary Papers II 1999/2000, 27047], and with a proposal to attach more consequences [such as inheritance] to joint authority [not yet introduced]. [...]

As far as the law of the European Union is concerned, the Kortmann-committee [advising the government about the opening up of marriage in 1997] concluded that it is certainly not unthinkable that the rules of free movement of persons relating to spouses will not be considered applicable to registered partners or married spouses of the same sex (report, p. 20). A recent judgement of the Court of Justice in Luxembourg strengthens this conclusion (see Court of Justice of the EC 17 February 1998, *Grant v South-West Trains*, case C-249/96). [...]

Treaties relating to marriage are almost all dealing with private international law. [...] An interpretation of these treaties based on a gender-neutral marriage seems improbable. Just because of this it will be necessary, when opening up marriage for persons of the same sex in the Netherlands, to design our own rules of private international law. The Royal Commission on private international law will be asked to advise on this, as soon as this bill will have been approved by the Lower House of Parliament.

3. *Relation to registered partnership; evaluation.*

Registered partnership was introduced in the Netherlands on 1 January 1998. In 1998 4556 couples (including 1550 different-sex couples) have used the possibility of contracting a registered partnership [...]. Compared to other countries with registered partnership legislation the interest in registered partnership in the Netherlands is relatively high [...].

The relatively high number of different-sex couples that contracted a registered partnership in 1998 and the results of a quick scan evaluation research [Yvonne Scherf, *Registered Partnership in the Netherlands. A quick scan* (Amsterdam: Van Dijk, Van Someren en Partners, 1999); that is the English translation of the original report] make it plausible that there is a need for a marriage-like institution devoid of the symbolism

attached to marriage.

Therefore the government wants to keep the institution of registered partnership in place, for the time being. After five years the development of same-sex marriage and of registered partnership will be evaluated. Then [...] it will be possible to assess whether registered partnership should be abolished. [...]

4. *International aspects*

[...]

As the Kortmann-committee has stated (p. 18) the question relating to the completely new legal phenomenon of marriage between persons of the same sex concerns the interpretation of the notion of public order to be expected in other countries. Such interpretation relates to social opinion about homosexuality. The outcome of a survey by the said committee among member-states of the Council of Europe was that recognition can only be expected in very few countries. This is not surprising. [...]

Apart from the recognition of marriage as such, it is relevant whether or not in other countries legal consequences will be attached to the marriage of persons of the same-sex. [...]

As a result of this spouses of the same sex may encounter various practical and legal problems abroad. This is something the future spouses of the same sex will have to take into account. [...] However, this problem of "limping legal relations" also exists for registered partners, as well as for cohabiting same-sex partners who have not contracted a registered partnership or marriage.

5. *Conversion of marriage into registered partnership and of registered partnership into marriage*

[...]

6. *Adaptation of computerised systems*

[...]

7. *Explanation per article*

[...]

Article I – D

[...] The principle of gender-neutrality of marriage is expressed by [the new article 30, paragraph 1].

[...]