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THE NORWEGIAN ACT  
ON  
REGISTERED PARTNERSHIPS FOR  
HOMOSEXUAL COUPLES

The Ministry of Children and Family Affairs

Oslo, Norway

August 1993

## PREFACE

In April 1993 the Norwegian Storting (Parliament) adopted a law which gives gay and lesbian couples the right to officially register their partnerships. All laws and regulations that apply to married couples will apply to registered homosexual partners, with the exception of the right to adopt children and to marriage as such.

The law concerns mutual rights and obligations between two adults, and between the couple and society. It does not affect rights and duties between parents and children. Any children that either of the two may have, remain the responsibility of the biological parents.

This booklet is a translation of the Bill submitted by the Government to the Storting in December 1992. Certain technical sections of presumably little interest outside Norway have been omitted, and the text is slightly abbreviated and amended for foreign readers.

The Act entered into effect August 1993.

Oslo, Norway

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Ministry of children and Family Affairs

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### DRAFT BILL ON REGISTERED PARTNERSHIPS

**Ministry of Children and Family Affairs**

**Proposition No. 32 to the Odelsting  
(1992-93)**

**ACT ON REGISTERED PARTNERSHIPS**

*Recommendation from the Ministry of Children and Family Affairs, 18 December 1992, approved  
in the Council of State on the same day.*

## CHAPTER 1

### SUMMARY

The Ministry of Children and Family Affairs hereby proposes an Act on the Registration of Homosexual Partnerships. The Act will give gay and lesbian couples the possibility to legally regulate their relationship.

Personal relationships based on mutual commitment, family ties and lasting friendships are important parts of everybody's life. They satisfy fundamental emotional needs and provide security in times of crisis and various stages of life, including old age. Lasting relationships counteract isolation and loneliness. They combat rootlessness, and protect and maintain the integrity of individuals. To these permanent and committed relationships among homosexuals should be encouraged.

The Act will not give homosexual partnerships equal status with marriage. Marriage is the most fundamental social unit and the natural framework for bringing up children. Marriage has a unique status, and no provision is proposed for marriage between homosexuals. The Bill employs the expressions "registration" and "partnership". The terms "wedlock" and "marriage" are reserved for the heterosexual marriage, with its ideological and religious status.

There are, however, obvious practical parallels between permanent homosexual partnerships and marriage. Most of the rules that apply to married couples (apart from those involving relations between parents and children) are based on the need to regulate the mutual rights and obligations between the two adults on the one hand, and between them and society on the other.

It is therefore proposed that all provisions applicable to married couples should also apply to registered partnerships, with the exception of the right to wedlock and the right to adopt children.

The Bill is virtually identical to a private member's bill that was submitted to the Storting in 1991. It is also very similar to the Danish act of 1989 on registered partnerships.

The possibility for gay and lesbian couples to register their partnerships will imply that society accepts the consequences of two people of the same sex living together in a permanent emotional relationship. Attitudes to homosexuality have undergone considerable change during the last few years, parallel to greater insight into homosexuality and the social situation of homosexuals. Homosexual acts between men constituted a criminal offence until 1972, (homosexual relationships

between women were not prohibited). In 1981, just nine years later, discrimination against homosexuals was prohibited.

The causes of homosexuality are still unclear, but there is good evidence that sexual orientation is established at a very early age. Homosexuality is an engrained and permanent part of the personality, and as inescapably a part of one's nature as heterosexuality. About 5 per cent of the population is purely homosexual. Others have a tendency towards heterosexuality, in the same way that many who are mainly heterosexual have a tendency towards homosexuality. The predominant expert view is that apart from their sexual orientation homosexuals are as normal and as different individually as are heterosexuals.

Homosexual disposition is still, however, often the cause of great personal problems. Society's attitudes result in difficult lives and social isolation for many gays and lesbians. The possibility of public registration and statutory regulation, help to stabilize relationships between homosexuals and make their social lives easier, in addition to solving practical, legal and financial problems.

An estimated 300 to 400 homosexual couples are expected to register annually.

The term "homosexual" is used here for both men and women. The homosexuals' organizations advocate a more widespread use of the term "lesbian" because they feel that the situation of homosexual women has been given insufficient attention. We have nevertheless chosen to use the term "homosexual" fairly consistently since it applies to both sexes.

In July 1992 the Ministry of Children and Family Affairs circulated a memorandum on registration of homosexual partnerships to interested organizations. The memorandum was almost identical to the present Bill.

Many organizations responded. Most statements were of a general nature. A clear majority either positively supported the proposal or were neutral to the central question of legal regulation. In addition to the homosexuals' own organizations, those who gave full support to the proposal included the Association of Public Family Counselling Agencies, the Faculty of Theology at the University of Oslo, the Student Christian Movement in Norway, the Norwegian Federation of Trade Unions, the Confederation of Vocational Unions, the Equal Status Council and the Equal Status Ombud. The majority of the approximately 20 bodies that opposed the proposal were religious organizations.

Several bishops in the Church of Norway pointed out that there is a distinction between the ethical responsibility of the individual and that of the lawmakers. The bishops considered that the proposal went too far in its recognition of homosexual partnerships as equal to marriage. They did not see a need to give particular rights to homosexuals over and above other forms of cohabitation. They emphasized that marriage is a fundamental social institution and considered that the proposal would weaken its unique position. Society should continue to make clear through legislation as well as by other means that matrimony between a man and a woman is the form of cohabitation society wishes to emphasize as the norm.

Some bishops, however, appreciated that the Government wishes to take account of every member of society and ensure that individual rights are upheld under all circumstances. They therefore saw a need to regulate the legal rights of homosexual couples, but felt that this should be achieved through amendments to existing legislation, in particular through an extension of the Joint Household Act.

A few courts of justice also opposed the proposal and instead favoured an extension of the Joint Household Act to meet the homosexuals' needs for legal protection. Of the county governors who made statements, the only one who opposed the proposal in its entirety was the County Governor of Oslo and Akershus.

the remaining organizations basically supported the proposal. Homosexual organizations as well as a few others were also in favour of giving registered partners the possibility to adopt children.



## CHAPTER 2

### WHY LEGISLATION?

The Government proposes that homosexual couples who wish to be registered be granted legal rights and obligations in relation to each other and to society. The proposal is similar to the private member's Bill which was sent by the Storting for the Government's consideration in 1991 and to the Danish law of 1989.

The Government sees several reasons for such legislation:

#### Regulation of financial and legal rights and obligations

An important reason is the need to regulate the mutual financial and legal rights and obligations between the partners themselves and the couple and society. Regardless of attitudes on the origin of marriage and its central importance, it should be emphasized that marriage is *also* a legal contract that regulates the financial situation of two people who live in a close union and become dependent on each other. Also, others than married couples may live in such close fellowship that they need to regulate their joint economic affairs. An increasing number of gay and lesbian couples form permanent relationships, with close ties and an interwoven economy.

The difference between marriage as a religious institution and as a financial and legal contract is perhaps clearer in countries where there is an obligatory civil marriage ceremony with legal consequences, and a church ceremony that is a religious act without legal consequences.

The economic conditions under which homosexual couples live are of the same nature as those for married couples, apart from those concerning responsibility for children. Gay and lesbian couples have the same emotional and practical reasons for desiring reciprocal rights and obligations, and there is the same need to protect the weaker party.

Homosexual couples have the same opportunities as cohabiting heterosexual partners to enter into private legal contracts on inter alia inheritance and joint ownership of their residence and household goods. To some extent they can thus achieve what married couples are automatically entitled to under the law. However, such agreements are often not sufficient. There are legal limits to how far private contracts may go. Experience also shows that like cohabiting heterosexual couples, very few homosexual partners make use of the opportunity to enter into such agreements, partly because they do not foresee the need for them in case of crisis, such as the death of one of the couple or dissolution of the relationship in other ways.

There is little doubt as to the necessity for legislation in such areas. It is difficult to dispute that a couple who has lived with a joint economy for many years should be able, for example, to inherit from one another without having to make a will and that the survivor should be able to retain the joint residence and property.

This is the main principle underlying the present Bill. There are, however, a number of different options based on this principle. One could choose to regulate either certain particularly important economic aspects or a broad spectrum of factors, including the couple's obligations towards society as a whole. This involves, for example, that the partners in a registered partnership are mutually obliged to support each other, that the rules which apply to married couples concerning property also apply to registered partnerships, that one partner is legally entitled to inherit following the death of the other, and that the rules regarding joint taxation and social benefits which apply to married couples should also apply to registered partnerships. A considerable number of legal provisions also exist which are intended to prevent married couples from using their position to the other person's advantage. There are good reasons why such provisions should apply also to homosexual couples.

*Various legislative options are discussed in Chapter 3.*

### Changes in attitudes

Legislation governing homosexuality has changed dramatically over the last 20 years. Homosexual relations between men were considered a criminal offence until 1972 when the law was repealed (homosexual relations between women had not been prohibited). Prohibition of discrimination against homosexuals followed only nine years later, in 1981. Attitudes towards homosexuals have altered considerably. A more tolerant attitude has developed along with increased knowledge of the nature of homosexuality and the social situation of gays and lesbians (see chapter 4).

It is not possible to demonstrate a clear link between the laws on the one hand and attitudes towards homosexuality on the other. There is probably an interaction between the two, with mutual reinforcement. The authorities have a responsibility in influencing public opinion. In spite of the recent changes homosexuality and relationships between gays and lesbians are still unfamiliar to many people, and are surrounded by prejudice and misunderstanding. Homosexuals are still in a disadvantaged situation. A partnership act will in itself help to increase understanding of their needs.

The Act will mean a public acceptance of homosexual relationships. The Act will therefore encourage gays and lesbians to come out, and thus reduce the problems created by their need to hide their nature and live in isolation.

### 2.3 Stabilization of homosexual relationships

A strong argument put forward by homosexuals themselves in favour of legal regulation is their desire for stability and reciprocal obligations. There is little information available as to whether homosexual relationships are more transitory than heterosexual ones. It would not be surprising if this were the case. All relationships go through periods of crisis. When married couples have problems, many factors are mobilized to prevent an immediate break-up of the relationship. Support from family and friends, the responsibility for children, and a long tradition that break-up is a last resort are significant factors. For homosexual couples the situation is usually different. Most of these relationships are stigmatized and the couples keep them secret. There is generally no open relationship with family and friends that makes it natural to turn to them for help. It is difficult to mobilize support from a family that does not approve of the situation. A partnership act will not solve all these problems, but will have a stabilizing effect.

A formal, registered partnership will be a signal from a gay or lesbian couple to their families, friends and society that they wish to enter into a committed relationship. This will be emphasized by their formal, legal status. Many homosexual couples find it a great injustice that even after many years' cohabitation, they are still regarded - legally, economically and socially - merely as two people who share a residence.

A formally established partnership will in itself represent a commitment. It is a sign to others that the couple wishes to form a lasting relationship. This commitment may mean that greater efforts are made to avoid a break-up if the relationship undergoes a crisis. A registered partnership will imply seriousness, and a departure from the traditional invisibility of gay and lesbian relationships will provide many homosexuals with positive role models.

Stable relationships provide security and a sense of belonging. Most homosexuals live alone and are prone to be lonely and socially isolated. But most of them wish to live as couples. Homosexuals have the same need for security and growth within a lifelong relationship as do heterosexuals, and should therefore be given the same support in establishing permanent, committed relationships.

### Relevance to the family and links with the marriage act

Some have objected that to give gay and lesbian couples the right to register their relationship and to have it regulated by law will weaken the institution of marriage and increase family dissolution. The Ministry cannot see that this fear has any foundation.

Marriage is the fundamental social institution and the natural environment for upbringing of children. Marriage is a relationship between a man and a woman. Lifelong monogamy is the ideal that most people hope to achieve. Many married couples fail to live up to this ideal, and divorce, often followed by remarriage, is increasing, affecting a large number of children.

Divorce and the prevalence of unmarried cohabitation have reduced the importance of marriage as the dominant family institution. But this applies to relations between men and women. It is not homosexual relationships that have weakened the status of matrimony and contributed to the evolution of families.

Marriage has a twofold purpose. It has traditionally been a social and religious institution whose main function is to care for children and for the mother while the children are dependent on her. Recently another purpose has become increasingly important: marriage is a stable and preferably lifelong relationship between two adults - a relationship that involves strong feelings, openness and vulnerability, and which has its own value whether or not the couple have children.

Most people consider that a close and stable relationship with another person, with mutual respect, care and support, is one of the most desirable aims in life. Many couples wish to give this an institutional framework in order to demonstrate to society their mutual commitment, and that they intend it to last for life.

Couples who form such an attachment, wish their relationship to be binding. This encourages the development of attitudes and a mutual sense of support which make it more difficult to separate when crises arise.

Couples who know that they will not be able to have children, for example because of sickness or old age, nevertheless often choose to marry. Their reason is based on this second aspect of marriage - providing a stable and lifelong setting for a life together.

Homosexual couples have the same desire to form such a framework around their relationship. The proposed legislation is intended to enable them to achieve this.

The desire of gay men and lesbians to give greater commitment to their relationships is a confirmation of the value of marriage - a desire for a permanent relationship based on mutual caring. A homosexual relationship can however never be the same as a marriage, neither socially nor from a religious point of view. It does not replace or competes with heterosexual marriage. The only other option available

to a homosexual couple is for their relationship to remain unregulated. The opportunity for homosexuals to register their partnerships will not lead to more people opting for homosexual relationships rather than marriage.

As discussed in more depth in Chapter 3 most of the legislation that applies to marriage is based on the practical need to regulate the economic and legal relations between the spouses on the one hand, and between the married couple and society on the other hand. The pragmatic, practical basis of this legislation is illustrated by the fact that although marriage is a central institution in most cultures, legislation governing marriage varies considerably. Homosexual couples have the same need for these things. In this respect they resemble married couples more than they resemble other people who live together, such as friends or relatives. Their emotional closeness leads to the same close economic and legal relationship as for married couples.

The Bill confines itself to relationships between two adults. It does not affect the relationship between parents and children. Legislative amendments have gradually led to a situation where there is one set of provisions directed at adults and another set that concerns children, such as the Children's Act and the Adoption Act. The proposed legislation will not affect legislation involving children with very few exceptions: there are certain legal rules where the parents' civil status can affect the child, such as child benefits, social security rules, the Act relating to Personal Names etc. Homosexuals will not be given the opportunity to adopt children, and in cases where one of them have children, the children will continue to be the responsibility of the biological parents.

The Ministry wishes to exclude the right of gay and lesbian couples to adopt children. Adoptive parents are chosen with the child's best interests in mind - adoption must benefit the child. Little is known about the effects of growing up in a family setting of two adults of the same sex. The question of adoption must be considered independently of the right to a registered partnership.

The lack of an accepted social framework for gay and lesbian relationships makes such relationships precarious. Homosexuals cannot be open about their lifestyle and choices, and cannot publicly acknowledge their choice of partner in relation to their families and the community. The opportunity to accept responsibility and commit themselves to their partner is weakened. The right to legal and publicly recognized partnerships will help to reinforce the value of permanent relationships. Couples who wish to form a mutually committed emotional relationship will be granted corresponding obligations and rights. This will enable homosexual couples to connect more fully with central moral principles in our society, without weakening on the importance of these principles.

This view is supported by a statement in 1988 from a Swedish Church Committee. The Committee

considered that the emerging new attitudes on cohabitation have as their aim to protect the central element in all forms of cohabitation: empathy with our fellow human beings and their integrity. From this perspective acceptance of homosexual life does not represent anything new. It is not an expression of a new sexual morality, but rather an attempt to shape morality so as to protect individuals and strengthen their opportunities to live faithfully together in love.

The committee considered, however, that the term "marriage" should be reserved for relationships between a man and a woman, since marriage also includes bringing up children, in addition to affection and faithfulness.

The Danish Government's Family Commission reached a similar conclusion in 1992:

"Statutory regulation of marriage no longer attempts to uphold particular ethical or moral values; their objective is to solve practical issues that arise from the relationship. Therefore there do not appear to be any ethical or religious obstacles to regulating partnerships between two people of the same sex, along the same line as the Marriage Act".

#### **From criminal offence to protection under criminal law**

Legislators' view of homosexuality has altered radically during the last 20-30 years. Up until 1972 homosexual acts between men constituted a criminal offence. A mere 9 years later, in 1981, homosexuals were granted specific protection under the criminal law. These two legislative developments are discussed below.

The Penal Code of 1687 prescribed "burning at the stake" as a penalty for "acts which oppose nature", a formulation which was interpreted as applying both to homosexual acts and to sexual acts with animals. An amendment of 1842 retained the definition of such acts as a criminal offence, but the penalty was "penal servitude in the fifth degree", in other words between 6 months and 3 years.

#### **ABOLITION OF THE PROHIBITION ON HOMOSEXUAL ACTS**

The Penal Code (section 213) was altered to read as follows:

"If indecent acts take place between male persons, those who are guilty thereof or are an accessory thereto shall be penalized by imprisonment for a term not exceeding one year. Any person engaged in indecent acts with animals or being an accessory to such acts shall be subject to the same penalty. Prosecution shall take place only when required in the public interest."

As can be seen, the clause only applied to men, not to women.

1925, the Council on Criminal Law suggested that the penalty clause on homosexual acts should be repealed. The majority proposed instead the introduction of a special age of consent for homosexual acts and prohibition of homosexual prostitution. The following was proposed to replace section 213:

The following will be penalized with imprisonment for a term not exceeding two years: 1) any person who seduces another of the same sex and below the age of 21 for the purpose of indecent acts, 2) any person over 25 years of age who carries out indecent acts with a person of the same sex under 25 years of age, 3) any person over 18 years of age who offers himself for sale for indecent acts with persons of the same sex for the purpose of earning an income thereby. An error in the apprehension of the law does not exclude guilt."

A minority in the Council did not consider that homosexual prostitution should be penalized, but were otherwise basically in agreement with the majority.

The Ministry of Justice did not follow up this proposal, since it considered it to be "most unsound to legalize perverse relations of the above-mentioned kind".

In the 1950s the Council on Criminal Law again proposed that the penal clause against homosexual intercourse between men should be repealed. This time the Ministry of Justice endorsed the proposal, with the proviso that it could be replaced by special provisions for homosexual relations among young people. The Council had also proposed restrictions on homosexual organizations and on publication of magazines announcing meetings or other gatherings of homosexuals, but this proposal was not supported by the Ministry.

Justice Committee in the Storting found, however, that the Ministry's proposal needed more detailed examination.

In 1971 the Ministry of Justice once again proposed a repeal of section 213 with inter alia the following arguments:

"Use of punishment should in principle be limited to situations where such means are necessary and appropriate for combating actual harmful consequences. It is often difficult to decide whether punishment is appropriate for a particular type of act. As regards homosexual acts between consenting adults, it seems relatively clear that a penalty clause cannot be said to have a positive effect on people's behaviour. A penalty clause against homosexual relations between adult men cannot be regarded as having any independent significance in combating a more general development in society towards homosexuality. Nor can the existence of a penalty clause be said to contribute to making an homosexual person heterosexual."

The Ministry also pointed out that:

"Section 213, first paragraph, has in practice been applied very rarely recent years. If the penalty clause has had any function at all, this has mainly been as an expression of a moral stand against homosexuality."

That:

"It should not be the task of the lawgiver to set or maintain penalties for all acts against which society has a moral reaction. It seems especially unreasonable to retain a penalty clause as a symbol of morality when its retention may have a discriminatory effect and create extra difficulties for a minority who already often experience great problems."

At this stage, special provisions concerning homosexual relations with young people were considered, but the Ministry of Justice found no reason to lay down such provisions.

The majority of the Justice Committee in the Storting endorsed the Ministry's conclusions and repealed section 213 of the Penal Code. The majority also recommended that the authorities follow up the decision with positive action. Textbooks and other information material should be critically reviewed and supplemented. It was also suggested that there was a great need for social and psychiatric advisors.



## INTRODUCTION OF SPECIAL CRIMINAL LAW PROTECTION FOR HOMOSEXUALS

In 1981 the Ministry of Justice proposed for an amendment of the Penal Code that would provide special protection for homosexuals. The proposal made it a criminal offence to make grossly insulting statements about people because of their "homosexual disposition, lifestyle or orientation". It would also make it a criminal offence for a business to refuse a person goods or services because of their "homosexual disposition, lifestyle or orientation".

In 1995, the Ministry of Justice had asked the Council on Criminal Law to consider whether homosexuals or bisexuals should be granted "special criminal law protection against unlawful discrimination". In its report the Council summarized its conclusions as follows:

"The Council on Criminal Law has not reached agreement on the question of whether homosexuals should be given special criminal law protection. The two specially summoned members proposed that the provisions of sections 135a and 349a of the Penal Code relating to insulting statements and intentional discrimination of persons on the basis of their beliefs, race, skin colour or national or ethnic origin should be expanded to include corresponding insulting statements relating to a person's 'sexual orientation or way of life'. The two permanent members of the Council have not found it necessary to recommend such an expansion of sections 135a and 349a."

The specially summoned members pointed out that as a group homosexuals have a particular need of protection. Insulting statements about homosexuals are usually made in the form of generalizations and are often characterized by stereotyped ideas about homosexuals' personal qualities, such as that they drink too much, are lazy, over-sexed or seduce minors. They also pointed out that when the group as a whole is exposed to insults and discrimination, feelings of group identification mean that in many cases this will be taken personally, even by people who normally do not feel closely identified with this group.

In a proposition to the Storting the Ministry of Justice stated that:

"Homosexuals are a vulnerable minority group. Surveys have shown that considered as a group, homosexuals are liable to suffer as a result of collisions with society's norms and values. One way of compensating for this is to make a stand in legal terms against the humiliation of homosexuals. This stand, in the form of criminal law provisions, will protect the integrity of individual homosexuals."

The Ministry also commented that by introducing criminal law protection against the insulting of homosexuals, society would be expressing its official attitude and that this in itself may have an effect. Criminal law provisions would have a clear symbolic and policy function. The Ministry felt

such provisions might also have other consequences, such as making it easier for homosexuals live "openly". The question of freedom of speech in this context was also discussed. The Ministry said that:

The proposed extended application will have relatively little effect on freedom of speech. It has been pointed out that in order it is not sufficient that a remark be capable of promoting hatred, contempt, The remark must be of a qualified insulting nature in order for the section to apply."

The proposed amendments were passed in 1981. Norway thereby became the first country to include gays and lesbians in its anti-discrimination legislation.

The provision has only been tested in court once, in 1983, when a clergyman made certain statements on a local radio broadcast. The lower court judged in favour of the clergyman. The case was appealed to the Supreme Court, where the majority found that the remarks were unduly insulting to homosexuals and consequently subject to section 135a of the Penal Code.

Although the provision has only been tested once, its significance should not be underestimated. It has a symbolic value which probably has altered attitudes to gays and lesbians as well as own respect and self image.

## CHAPTER 3

### ALTERNATIVE LEGAL SOLUTIONS

#### Alternative solutions for legal regulation of homosexual partnerships

The Ministry has considered four alternatives for legal regulation of homosexual partnerships.

*Alternative 1:* All provisions that apply for married couples should also apply for a registered partnership, with the important exception of adoption of children and marriage as such. This corresponds to the Danish law of 1989 and to the private bill submitted to the Storting in 1990 by the two-party group of members.

*Alternative 2:* More limited legal consequences, restricted to central private matters such as inheritance.

*Alternative 3:* An extension of the Joint Household Act of 1991, which regulates the disposition of joint residence and household goods for anyone who has shared a household with others for more than two years - relatives, friends, cohabiting couples and homosexual partners.

*Alternative 4:* Similar regulations for both heterosexual cohabitants and homosexual couples.

The four alternatives are discussed below. *The Government proposes Alternative 1.*

Whatever alternative is chosen, the provisions must apply only to those who voluntarily register their partnership. It must be a matter of choice to accept the legal rights and obligations involved. It is difficult to estimate how many couples may wish to register. Danish figures indicate that it may be 300-400 couples annually.

There must also be rules on the registration process itself and on dissolution of the relationship.

#### *Alternative 1: Statutory regulation based on an analogy with marriage*

The Government considers that homosexual couples should have approximately the same rights and obligations as married couples, as provided for in the Danish act of 1989. The Danish act provides that homosexual couples who register their relationship have the same rights and obligations as married couples except for the right to adopt children and the right to enter into wedlock. The Act

very short, only five sections long. After mentioning the exceptions, it simply states that the provisions in all other laws that apply to married couples also apply to homosexual couples who have entered their relationship.

In most legal and economic contexts the situation for a homosexual couple who live together in a registered relationship is similar to that of a married couple. A crucial difference is that a homosexual couple cannot have children together. This difference has, however, little significance for the statutory regulation of economic and legal rights and obligations between the partners on the one hand and their obligations and rights toward society on the other hand. Since most adults now regulate themselves, legislation has gradually changed. There is basically one set of rules governing relationships between adults, and another separate set of rules concerning children. It is the first set that applies to gay and lesbian couples.

Relationships between parents and children are regulated by a separate set of laws, such as the Marriage Act, the Adoption Act, the Child Protection Act, the Child Benefits Act.

The parallel between marriage and registered partnerships means that a very large number of provisions apply for a registered homosexual partnership. In addition to the Marriage Act itself, several statutory provisions apply to married couples, usually as individual paragraphs in specialized laws. Most of these rules limit or protect the rights of married couples. Their common denominator is that they regulate relationships for two adults who live together in a close economic and emotional relationship.

The same body of rules should apply to partnerships as well. The practical needs for them are the same as for married couples. It is hard to see good reasons why some of these provisions should be limited but not others. We will not here go into details, but confine ourselves to areas where marital law is especially important. A more detailed overview is available from the Ministry of Children and Family Affairs.

Marriage is a personal, sexual and economic relationship, intended to last until the death of one of the partners. Marriage has a number of legal consequences, giving the parties certain rights and obligations in relation to each other and to society.

One consequence in the Marriage Act is the mutual duty to provide economic support. The parties must contribute as far as they are able towards their joint maintenance, and the couple is jointly responsible for the work, and expenses of maintaining a joint household, the upbringing of children and the particular needs of either of the spouses.

Each party holds at his or her disposal what he or she owned at the time of marriage or acquires during married life. Property acquired by both spouses are common property. Each party is liable for debts he or she has incurred. There are, however, certain restrictions on the right of disposal and responsibility for debt, such as the need for the other party's consent to assign, mortgage, lease, enter into or terminate a lease agreement for a property that is used as the joint residence. Corresponding provisions apply to ordinary household goods in the joint residence.

There are many legal consequences of marriage in other laws, including social security, income tax, and insurance. Social security is of special interest. It includes inter alia provider's supplements in old-age and disability pensions, and rehabilitation allowances. Single parents' benefits (supplementary allowances, transitional pension, etc.) are normally stopped if the single parent marries. Married old-age pensioners receive a smaller basic pension between them than single pensioners and cohabiting pensioners.

Marital status may also affect the level of income tax deductions and property taxes.

Property arrangements are significant when a marriage is dissolved by separation, divorce or death. Division of the estate depends on whether provisions governing joint property, common property or separate property apply. If a marriage breaks up, any agreements deviating from the statutory norm for division of property is, however, valid only if it was entered into during the marriage. The form and content of such an agreement differ from other types of cohabitation. The legal consequences are particularly significant when a marriage is dissolved by death, where the differences between marriage and other forms of cohabitation are especially great. Spouses have the right to disinherit from one another and are exempt from inheritance tax. The survivor may retain an undivided share. If the surviving spouse was dependent for support on the deceased, he or she will receive a widow's pension from the National Insurance Office.

Marital status also has consequences in a number of other legal areas, for example in questions of evidence and the duty to testify. Cohabiting partners are usually considered to be in the same legal position as spouses, but only after individual assessment.

In addition to these more central provisions several hundreds of individual regulations apply to married couples, spread over a wide variety of areas. A few examples are the rules limiting the possibility of carrying out commercial activities if the other spouse works with the enforcement of laws on Weights and Measures, provider's supplement for those serving in the armed forces or working abroad for the Ministry of Foreign Affairs or the Norwegian Agency for Development Cooperation, and the prohibition against occupying a position as the other spouse's superior in the

ral government ministries.

There are about 800 such rules distributed among about 120 different laws.

Many of these provisions are intended to prevent people who have a very close relationship with one another from abusing their position or from being exposed to unreasonable pressure. None of them apply to homosexual couples. There is, however, no rational reason why they should not do so.

Gay and lesbian couples may to a certain extent come under such rules through private agreements. Freedom of contact is limited, however. Inheritance laws, for instance, put some restrictions on the testator. A certain portion must go to life heirs. And the making of wills often involves an economic outlay, whereas the rules of inheritance are automatically regulated for married couples.

Homosexual couples often have practical difficulties in taking out insurance, such as collective group insurance policies, on the same terms as heterosexual couples. The Banking, Insurance and Pensions Commission limits the definition of cohabitants to couples who *could have been* legally married.

The Joint Household Act of 1991 provides a solution of possible conflicts in connection with residence and household goods following the termination of a joint household, if the relationship has lasted for at least two years. This Act does not, however, solve other problems such as those of inheritance. It may be quite costly for one partner in a homosexual relationship to retain the joint residence if the other dies. The remaining partner must pay inheritance tax on the same level as distant relatives, and there is often the additional cost of legal aid in connection with the making of a will and administration of the estate. It is not reasonable that a couple who have spent much of their lives together and with a joint economy are subject to the same provisions that apply to any two people who have lived together for two years. The Joint Household Act does not require any form of registered relationship between the parties, provides no rights in connection with income tax, social security or insurance, and has no application to other issues such as competence rules (cf. also 6.4).

Provisions concerning next of kin in the event of disease and death may also seem unreasonable for a homosexual couple. It may be emotionally very important for a homosexual partner to be defined as "next of kin" or "closest surviving relative". Under present biological relatives are counted as close relatives, whereas a cohabiting partner of many years' standing, with strong emotional ties to the other, is not.

Summarize: *the reciprocal economic and legal needs of two people of the same sex who live*

together in a committed relationship will be virtually the same as those of a married couple. There is a need for legal provisions that protect the weaker party, regulate the joint economic dispositions and regulate matters which arise if the partnership is dissolved.

It would be unreasonable if statutory regulation of homosexual relationships were only to apply to the relations between the partners. The legal provisions should also include rights and obligations in relation to society in general. It is in society's interests that the couple should be regarded as an economic and legal unit in order to prevent the abuse of close personal relations and of public benefits, including taxation and security benefits.

A partnership act should therefore be almost identical to the legislation for married couples. Marriage and homosexual relationships raise the same legal and economic issues. In the Ministry's opinion, the most appropriate course of action is to make the whole body of rules, with the exception of those relating to marriage as such and adoption, applicable to homosexuals as well.

#### **Alternative 2: An act restricted to certain economic dispositions**

Statutory regulation of homosexual relationships could also have a more restricted scope, confined to some central economic questions.

In that case, areas in the private sphere, such as *inheritance and property* seem most relevant.

There are strong arguments in favour of giving homosexual couples who have lived together in a long relationship for several years the right to *inherit* each other, in the same manner as married couples, and have the same exemptions from inheritance tax. Spouses pay no inheritance tax when they inherit from one another, while cohabiting partners pay full inheritance tax on whatever they inherit through a will. Objections have been raised against the idea that inheritance should be passed on to other than biological descendants and relatives. This objection may be limited to a traditional notion of inheritance as particularly important when it comes to family farms, which were regarded as the property of previous and future generations, linked by blood ties, while each current generation was regarded as a temporary caretaker. Allodial right is still important in preserving this system, including for the prevention of subdivision of farms. For the great majority of modern families this concept of inheritance is irrelevant. Property normally consists of what one generation has built up in the form of a home and perhaps a holiday home and savings. There is no compelling reason why relatives, rather than the surviving homosexual partner, should inherit what a homosexual couple has worked together to acquire. Direct descendants are a different matter.

The right of a survivor to *retain an undivided estate* in cases where there are other legal heirs, should also be regulated. The arguments are the same as for inheritance. The estate is usually the result of

efforts on the part of the couple, and the matter is especially important in cases where the family has not accepted the homosexual partnership.

There is also a need for statutory regulation of *property ownership* between partners, both during the partnership and after its dissolution. For married couples the main rule is that what is acquired during marriage is joint property and has to be divided equally on dissolution. Separate property may be defined on by a marriage settlement. Cohabiting partners may make agreements with largely corresponding arrangements. But to protect the interests of the two partners, especially the weaker partner, a system is needed for certain automatic solutions if the relationship is dissolved.

More limited legislation should cover *obligations between the partners and between the couple and society*, not merely their rights. A reciprocal duty to support each other should be considered. There are also strong arguments for giving homosexual couples the same status as married couples towards social security and income tax, since these are closely connected with the reciprocal duty to provide support. Thus, a person who enters into a registered partnership ought to lose her/his status as a single parent, including the right to additional child allowance, extra income tax deduction, transitional support. On the other hand, a surviving partner who has been supported by the deceased, should be entitled to survivors' pension. *Old-age pensions* should also be considered. If homosexuals are given mutual inheritance rights, they should also be treated like married couples as regards old-age pensions, i.e. receive 1.5 times the basic pension instead of two full basic pensions.

If the duty to economically support each other is not introduced, the benefits given economic providers in the social security and income tax systems should also be omitted. Some of these measures are on the way out. Many of them are connected with a traditional family pattern, with the wife working in the home and the husband earning the family income. Today most adults are economically self-supporting, and social security and income tax family benefits are gradually being reduced only to the support of children, not to spouses. It is assumed that very few homosexual couples live according to the traditional pattern, and it may therefore be largely unnecessary to give them these rights.

The Ministry's opinion, however, is that legislation for homosexual partnerships should not be limited to what is considered under this alternative. This would exclude a long list of provisions that are just as important for homosexual couples as for married couples who share a long lasting emotional relationship, with interwoven joint economic interests as discussed in section 6.4.

It will be practically impossible to decide on the principles for selecting some provisions rather than others. Regulation of the couple's obligations to society would be the ones most likely to be omitted.



It is not desirable to limit legislation to rights while omitting duties.

#### 4 Alternative 3: Amendment of the joint household act

The *Joint Household Act* of 1991 was a step towards recognizing that forms of joint households other than marriage should also have economic consequences. The Act regulates conditions for the taking over of the joint residence and joint household goods if a household is dissolved. The law covers everyone who has shared a household for more than two years - a group of students, relatives outside the nuclear family, friends and cohabiting partners, including homosexual couples.

They have proposed that the necessary protection for homosexual couples could be provided through expansion of the Joint Household Act. But this is not a practical solution. The law has a very limited scope. Most people who share a household, except for married couples and the nuclear family, will have retained separate economies, with limited commitments to the common arrangement. Even for friends or relatives to have shared a residence for a few years must not be given wide-ranging consequences. It would, for instance, be highly artificial if they should be entitled to inherit from another or be obliged to economically support each other. The situation of homosexual couples, on the other hand, is similar to that of a nuclear family and married couples. They establish a common household because they desire to form a couple, with all the commitments involved. An expansion of the Joint Household Act would meet neither the needs of the homosexual partner nor society.

This view is supported by the report of the government-appointed Joint Household Commission whose report laid the basis for the Joint Household Act. The Commission was broadly based, with experts and representatives from several different organizations and political parties. The Commission was unanimous in its conclusion that legislation to ensure legal protection to anyone who shares a household for a time, for whatever reason, should not be far-reaching. The Commission explicitly recognized that its proposals would not cover the needs of homosexual couples.

The report was widely circulated, and the comments supported the Committee's view that a joint household law should cover only the limited areas of joint residence and household goods. There are obligations associated with the Joint Household Act, either between those who share a household, in relation to the rest of society. It would have been difficult to make a more comprehensive set of provisions applicable to the wide spectrum of joint households that the law aims at. Comments made, however, that the needs of special groups were not covered, and that the Government should consider other legislation for the rights and protection of homosexual couples who wish to enter into a committed relationship.

Ministry considers it not appropriate to include provisions for homosexuals in an act that is meant to apply to everyone who shares a household, and that the Joint Household Act cannot be expanded. There are no new arguments that give grounds for a re-evaluation of this question.

#### VIEWS OF ORGANIZATIONS CONSULTED:

Some of the organizations that were consulted, including several bishops, considered that amendments to the Joint Household Act would provide the necessary legislative protection for homosexual couples. For example, the statement from *the National Council of the Church of Norway* included:

"The National Council of the Church of Norway is not absolutely opposed to legal regulation of the economic and legal rights and obligations between homosexual partners. The Church has always considered it of central importance that society, through legislation, protects the rights of all individuals, and particularly weaker parties, against abuse and exploitation. The National Council of the Church of Norway therefore considers that an alternative form of legislation could be considered (alternative II or III). The basis must be the need to regulate fundamental private economic and legal rights and obligations between homosexual cohabitants — and not a desire to give a homosexual partnership a legal form which in principle places it in the same position as marriage."

*Orkdal District Stipendiary Magistrate's Office* stated:

"There is felt to be a strong need for strengthening the position of the weaker party in a homosexual partnership, this can, in my opinion be best met through an extension of the Joint Households Act. It is to point out that a large number of heterosexual couples today consider this Act to be sufficient for their needs, when combined with the other possibilities for entering into private legal agreements. If these couples choose not to marry indicates that the alternative is not useless. I would also like to point out the need for improving general awareness of the possibility for private contracts."

A majority of those who responded positively to the Bill and expressed views on the choice of alternative I, felt that an extension of the Joint Household Act could not adequately meet the need for regulation of homosexual partnerships. The Confederation of Vocational Unions stated:

"Homosexual couples do not have the opportunity to contract a marriage. The Joint Household Act does not address the needs which arise in long-term committed relationships."

In *opinion The Joint Council of Gay and Lesbian Organizations in Norway* was that:

"The Council has not demanded that homosexual and lesbian couples should be able to marry. However, it has demanded that there should be economic and legislative equality between homosexual/lesbian partnerships and heterosexual partnerships. Our aim is not to equate the two, but to make them equal worth. People vary, and so do their choices. Society's duty is to try to provide

and opportunities for all. The Council's opinion is that only a Partnership Act similar to the Danish will meet our requirements of equal worth."

#### **CONCLUSION OF THE MINISTRY OF CHILDREN AND FAMILY AFFAIRS:**

The Ministry has noted that a number of the organizations that wish to extend the Joint Household Act emphasize the need to protect the weaker party in a relationship.

The Ministry cannot see that any ethical misgivings associated with homosexual partnerships would be greater under an amended Joint Household Act than through the proposed Partnership Act.

The Ministry considers that an expanded Joint Household Act would need to include mutual obligations - such as the reciprocal duty to economically support one's partner. Extended rights should be accompanied by corresponding obligations of the parties towards each other and towards society. Such expansions of the Joint Household Act could not be made applicable for friends, relatives etc to whom the Act also applies.

The Ministry therefore still considers that an extension of the Joint Household Act is not a practical solution since special provisions for homosexual cohabitants cannot be adapted to an Act which covers all persons who share a household.

#### **Alternative 4: An act for both heterosexual and homosexual cohabitants**

There is a feeling of a need for legal regulation of heterosexual cohabitation, and a common Act for both heterosexual and homosexual couples has been suggested. In the view of the Ministry this is not an appropriate solution.

A fundamental difference between heterosexual cohabitants and homosexual couples is that the former can marry if they wish. They have full access to the legal provisions that apply to marriage, but have chosen not to use these. Homosexual couples do not have the same option; they are excluded from this whole body of law.

The public debate on the need for certain regulation of cohabitation has centered on two aspects: i) the need to prevent cohabiting partners from especially social security benefits and other measures for single parents, and ii) the need to protect the weaker party.

The main abuse of public benefits is felt to concern mothers who retain their status as single parents and thus benefit from extra child allowances, tax allowances, etc., while living with a partner on a permanent basis. Another recent issue is cohabiting old-age pensioners, who receive two public

sions, which is considerably more than a married couple receives. The Government is presently considering this latter issue.

Some areas of possible abuse rules are already in effect. One instance is that since 1985 means testing of educational grants to students take into account the income of cohabiting partners.

Some of these issues also apply to homosexuals, who may also be able to take advantage of such benefits. Since few of them have children, the question of single parent status is relatively unimportant, however. A significant factor is that the homosexuals' own organizations have asked for legal status that would limit their rights; registration of a partnership would involve the voluntary relinquishment of certain economic privileges.

Need to protect the weaker party in a relationship applies equally to cohabiting partners and homosexuals. It is reasonable to assume, however, that there is a greater degree of economic equality and independence between gay and lesbian couples than among heterosexual couples.

When debating the Joint Household Act the majority of the Storting felt that the act did not obviate the need for more comprehensive legislation applying to unmarried cohabitants who live in a marriage-like relationship.

Legislation to protect the weaker party that would apply equally to both heterosexual cohabitants and homosexual partners would have some undesirable aspects. It would give the parties certain rights in relation to property and inheritance that would be more or less the same as those of married couples. It might be tempting for heterosexual cohabitants to make use of these privileges as an alternative to marriage, as a sort of mini-marriage. The couple would benefit from the advantages of marriage without being subject to the whole body of marriage law, including most of its duties. It is unlikely that many cohabiting partners choose this form of relationship on the basis of what is the best financial arrangement. But such lines of reasoning may become more common in the future. Many people come to exploit such legislation and choose what is best for their own financial situation at a given time. This would undermine the status of marriage. Common, and limited, provisions for cohabiting and homosexual partners can therefore not be recommended.

#### **VIEWS OF ORGANIZATIONS CONSULTED:**

Member of the organizations consulted felt that the Bill goes too far in giving homosexual couples rights that do not apply to heterosexual cohabitants. The *Norwegian Housewives' Association* stated

"The proposed legislation contributes to raising the status of homosexual partnerships through an Act which is virtually the same as the Marriage Act, without doing the same for heterosexual cohabiting couples."

The Association of Ministers of the Church of Norway wrote that:

It is common knowledge that many heterosexual couples, for various reasons, choose to cohabit rather than to marry. One of the drawbacks of this arrangement is that when crisis arise, the interests of the stronger party usually dominate. This sometimes leads to considerable problems for the individual. Consideration should be given to the thought that the same situation could arise in a homosexual partnership. Registered partnership will provide an opportunity for those who wish their relationship to take on 'marital status', whereas in situations and relationships where there is a particular need to support the weaker party, legislation will continue to be unsatisfactory. In this context, it would be interesting to consider Alternative 4 in greater depth."

A number of organizations stated that while supporting the Bill, they do not exclude the provision of statutory regulation of heterosexual cohabitation. The *Equal Status Ombud* stated that:

However, I have reservations about the Ministry's apparent dismissal of any form of statutory regulation of heterosexual cohabitation as apparently indicated by some of the statements in Alternative 4. Taking the aims of the proposed Partnership Act into consideration, I am not against applying to homosexual/lesbian partnerships only. But this does not mean to say that there is no need for specific statutory regulation applying to heterosexual cohabitants in order to protect the weaker party in a couple."

The County Governor of Hedmark wrote that:

Coming from the need to regulate partnerships between heterosexual and homosexual couples who do not wish to marry or register their relationship, the County Governor is of the opinion that there is also a need to regulate the legal aspects of these relationships. This is of particular relevance in dealing with problems which may arise when such relationships are dissolved and cohabitation ceases. In this respect, too, in view of the actual situation and the legal aspects involved, the best solution would be legislation which addresses the needs of both groups together."

#### THE CONCLUSION OF THE MINISTRY OF CHILDREN AND FAMILY AFFAIRS:

The Ministry considers that improved information about which regulations apply to cohabiting couples, and what sort of arrangements cohabitants should make, will be a significant step towards meeting the needs of unregistered and unmarried cohabitants. Surveys indicate that many cohabitants believe that the legal aspects of marriage also apply to their situation if they have been cohabitants for more than two years.

is the Ministry's conclusion that a common Act applying to both heterosexual and homosexual  
habitants and providing certain rights but no obligations would undermine marriage as an  
institution. Such an Act would also fail to cover the needs of homosexual couples for legal  
protection.

## CHAPTER 4

### HOMOSEXUALITY AND THE SITUATION OF HOMOSEXUALS

Homosexuals are people who are sexually attracted primarily to others of the same sex. Sexual orientation determines who one becomes emotionally and sexually attracted to, falls in love with and may have a sexual relationship with. Homosexuals are as different from each other as are heterosexuals. Apart from their sexual orientation it is not possible to generalize about homosexuals as individuals.

Homosexual orientation does not change. Most gays and lesbians feel that they have always been homosexual and do not feel that they have had a choice between homosexuality and heterosexuality. Some of them have not accepted or are not fully aware of their sexual nature until later in life, and some have had heterosexual relationships, including marriage.

American sociologist Kinsey's surveys in the 1940s and 1950s are still the most comprehensive and reliable data on the prevalence of homosexuality in the USA and probably in most Western countries. The Kinsey Institute also carried out exhaustive investigations during the 1970s into the nature of homosexuality.

They found that sexual behaviour and sexual feelings could be measured on a scale ranging from completely heterosexual to completely homosexual. In Kinsey's surveys about 5 per cent of the male population answered that they were exclusively homosexual both in their thoughts and behaviour and had been so all their adult life, while a good 10 per cent considered themselves to be mainly homosexual. One of Kinsey's most important findings was that sexual orientation is not always a matter of one or the other — either heterosexual or homosexual. Later studies have indicated that the proportion of homosexuals probably is somewhat lower than Kinsey's estimate.

Attitudes to homosexuality have changed in response to changing cultural norms. A strong prejudice against homosexual acts, which were characterized as sinful and contrary to God's order, was first based by the view that homosexuality was an hereditary or environmentally determined disease. This view has more recently been replaced by the present view of homosexuality as an integrated and changeable part of the individual's emotional life. Parallel with these changes, the general attitude has become increasingly tolerant towards homosexuality.

With the breakthrough of science and medicine at the end of the last century, views on homosexuality underwent a radical change. Homosexuality was transformed by medical science from a sinful or

criminal act to a disease. Opinions were divided as to whether it was hereditary and congenital or a combination of a hereditary disposition and environmental influence.

The views of Freud and other psychoanalysts had a decisive effect. Freud believed homosexuality to be a symptom of inhibited psychosexual development, but considered that homosexuals could achieve self-realization in their jobs, love life and social relationships, even though they were sexually "handicapped".

The psychoanalytical theory prevalent in American psychiatry and clinical psychology after the war held that homosexuality was due to personality traits and behaviour of the parents, and that people therefore could be cured of their homosexual orientation by psychotherapy.

In the wake of the civil rights movement in the USA, women's liberation and the student unrest in the 1960s and 1970s, gay and lesbian organizations began successfully to counter the influence of medical and psychiatric authorities. They pointed out that the diagnosis of homosexuality as an illness was based on old-fashioned morality rather than rational disease criteria. Developments in the 1970s and 1980s have supported this view. It is now generally accepted that the view of homosexuality as a disease and a handicap reflects a particular system of values and has been partly based on myth and prejudice.

Kinsey's investigations also showed that there was no support for the psychiatrists' and psychoanalysts' view of homosexuality as a disease. Kinsey concluded that homosexuality is an alternative form of sexuality and not a disturbance of sexual orientation.

In 1973 the American Psychiatric Association decided to remove homosexuality from the list of mental diseases, and most other Western countries followed suit, including Norway. The view of homosexuality as a variation of normal sexual behaviour is now dominant.

Many have tried to identify the causes of homosexuality. Such research has often been opposed by homosexual organizations, partly because some of the studies have been aimed at finding methods of treatment. Research on the causes of homosexuality have been interpreted as attempts to classify homosexual feelings as second-rate compared to heterosexuality.

During the 1970s, the Kinsey Institute worked on obtaining scientifically more valid material on the causes of homosexuality, and carried out wide-ranging interview surveys among homosexuals in the USA. These showed that there was no evidence for many of the previous theories, including the theory of the role of parents in the development of heterosexuality, which was shown to be greatly



exaggerated. There is no evidence that it is possible to be persuaded or influenced into becoming a homosexual.

The most important finding was that sexual orientation is decided early in life. It is a permanent part of the personality, and accompanies the individual throughout childhood and into adulthood.

Homosexuality appears to be as deeply rooted in the personality as is heterosexuality. The Kinsey group's analysis showed that sexual orientation is the result of a complex interplay of forces. This development starts at a very early age with the perception of oneself and other people, and later influences have little significance.

Later studies have supported the findings of the Kinsey group. Some researchers consider that homosexuality may be due to the influence of hormones in fetal life and/or to genetic factors, but the biological causes are still controversial.

However, it is important to note that both the Kinsey group's findings and later research have shown that many of the persisting theories about homosexuality should be regarded as myths. No one chooses to be a homosexual. There is no evidence that homosexuality is connected with neurotic family relationships or seduction during childhood. Investigations also show that homosexuals are mentally as healthy as heterosexuals. Like heterosexuals, homosexuals are normally attracted to adults of the same age. It is not possible to tell from a person's appearance whether he or she is a homosexual, and notions of the feminine gay and the masculine lesbian are based on myths. Variations in sexual behaviour are just as great among homosexuals as among heterosexuals, and homosexual experiences or marriage will not alter a homosexual nature.

#### The social situation of homosexuals

The problem faced by homosexuals is that society expects people to live as heterosexuals. Gays and lesbians can develop the same deep mutual interpersonal feelings in a relationship as heterosexuals, but negative attitudes to homosexuality can create conflicts and obstacles that heterosexuals usually do not face.

Taboos that still surround homosexuality often make it difficult for gays and lesbians to accept their own feelings and develop a positive self-image. Many choose to suppress or deny their sexual orientation. It is not unusual for gays and lesbians to hide their way of life from their families, friends and acquaintances. The price to be paid in terms of emotional strain and personal conflicts may be high.

Negative attitudes and the need for concealment make it more difficult for homosexuals to establish

a relationship. Maintaining a way of life in defiance of prevailing attitudes requires great strength of character and self-confidence.

The secrecy surrounding homosexuality means that most gays and lesbians lack role models during childhood and early youth. Young people who discover that they are homosexual seldom know other homosexuals. They have learned that homosexuality is not normal and will often have heard a number of myths and prejudices about homosexuals. This can make it difficult for them to accept their own nature.

An open attitude to homosexuality is important in order for gays and lesbians to have the same possibility as heterosexuals to establish a secure framework for their lives. Although attitudes to homosexuality have become much more positive than they were a few years ago, the path from the first realization of homosexual feelings to open acknowledgment of these feelings and self-acceptance is still long and difficult. The process may take a long time, usually many years. The development of more positive attitudes towards homosexuality does not seem to have shortened this process. Many homosexuals are still very afraid of revealing their nature to other people. They do not necessarily deny their feelings, but adapt their way of life in order to conceal their feelings and relationships.

It can be detrimental for a person to have to suppress fundamental feelings concerning attachment and love for another person. Distancing oneself from these feelings or attempts to suppress them may destroy one's self respect.

Studies in Norway have also shown that very many gays and lesbians conceal their sexuality from a widespread fear of rejection. Although few encounter negative reactions from their own families when they admit their homosexuality, many feel that it is easier to be open with friends.

The need for security and support is probably the reason why many homosexuals only make close friends among other homosexuals. Such friendships are essential in order to accept oneself. It is difficult to acknowledge one's own sexuality without a strong network of others in the same situation. This is not solely related to society's negative attitudes and the importance of friendship in creating a buffer against such attitudes. An equally important factor is the need to create cultural and social institutions which are meaningful in terms of one's own situation.

In Norway as well as other countries, a large majority of gays and lesbians live in larger towns, where it is easier to live openly as a homosexual. The anonymity of a large town reduces the possibility of being faced with negative reactions. Greater openness and less opposition will probably in time make it easier for homosexuals to live in smaller communities. However, a large number of

gays and lesbians will continue to be attracted to larger towns which provide wider opportunities to meet other homosexuals.

#### 4.2 Attitudes to homosexuality

Opinion polls have shown that there is a connection between negative attitudes to homosexuality on the one hand, and ignorance of the nature of homosexuality and a belief that others share the same negative views on the other. In addition, growing unrest and uncertainty may particularly affect minority groups who are perceived as the cause of social decay.

Surveys in Norway in 1968, 1983 and 1989 demonstrate however a considerable change in attitudes to homosexuality during this period.

In 1968, 76 per cent of the respondents agreed that "homosexuals should combat their disposition". In 1983, 33 per cent agreed with this statement and in 1989 the figure had been reduced to 25 per cent. To the question of whether it would have harmful or undesirable consequences if gays and lesbians could discuss and admit their nature openly, 60 per cent were in agreement in 1968, while only 36 per cent agreed in 1983.

About half of the respondents in the 1983 survey considered that gays and lesbians should be completely accepted by society, and only 15 per cent considered that it was wrong or immoral to practise homosexuality. Ninety per cent replied that they would accept a homosexual colleague, tenant or close acquaintance.

The changes in attitudes in a more positive direction are greatest among women. People living in and around Oslo have far more positive attitudes than the population in the rest of the country. There is no connection, however, between a more liberal attitude to sexuality in general and changes in attitudes towards homosexuality. Even though the majority of people now accept homosexual relationships, there are still many who are negative to "marriage between homosexuals".

The considerable media coverage of homosexuality and the introduction of criminal law protection have contributed to increased knowledge of homosexuality, and so has the publicity surrounding HIV/AIDS. All in all, greater knowledge and openness have contributed to far more positive attitudes.

### 4.3 Gay and lesbian couples

In our society, the family has a primary responsibility for the care of individuals and their emotional and material needs. Most people have grown up in a traditional nuclear family, and their experience of close ties and relationships are formed by their own family situation. It is here we find the role models for our emotional lives as adults.

The basis of modern marriage or cohabitation are the emotional ties and love that bind the partners together. This is also the basis of homosexual relationships.

A committed relationship involves close ties, where commitment to the relationship takes precedence over individual considerations. Gays and lesbians have the same desires and expectations in their relationships as heterosexuals. A comprehensive Swedish survey showed that 92 per cent of gays and lesbians were either part of a couple or stated that they would like to have a permanent partner. Also Norwegian surveys show that most homosexuals wish to live in a love relationship. There is thus a large discrepancy between the number of homosexuals who wish to live with partners and the number who do so in practice. There may be many reasons for this.

Homosexuals may experience difficulty in meeting other homosexuals. Living together also means that a person's homosexuality becomes visible to family, friends, neighbours and colleagues, which until a few years ago usually represented a great personal strain.

Changes in attitudes over the last few years have made homosexual relationships easier, and the homosexual community has become more open. This has made it easier for gay and lesbian couples to find support in a homosexual community.

But many homosexuals in a permanent relationship still choose to live separately. It is reasonable to associate this with fear of negative attitudes, but it may also be a response to other people's idea that a homosexual relationship is more like a friendship than a committed love relationship.

There is a widespread belief that homosexual relationships are unstable, especially among men, and Norwegian surveys tend to confirm this. The lower level of stability and weaker ties are probably linked with negative attitudes from the social environment. Whereas the attitudes of the community help to prevent heterosexual relationships from breaking up, such attitudes may encourage the opposite among homosexuals.

But it is a myth that gays and lesbians tend to have a large number of short-term relationships. The myth may have arisen because they form relationships later than heterosexuals and therefore also form permanent relationships at a later age. Homosexuals are usually in their early twenties before they begin to acknowledge their own sexual feelings. For many of them this signals the beginning of a difficult period before they can accept their nature. The opportunity to establish a firm relationship with another person may not come until the late twenties.

The lack of legal provisions for homosexual couples may also make it more difficult to establish permanent mutual commitments. It places a homosexual couple on a par with the relationship between any two people who share a home, such as siblings or friends.

Legal provisions that confer greater equality between gay and lesbian couples and married couples in terms of rights, obligations and responsibilities may encourage permanence and stability of the relationships. Norms, behaviour and legislation tend to interact in areas such as this.

More positive attitudes to homosexual relationships and their own increased self-acceptance will probably result in an increasing number of gay and lesbian couples. This must in no way be interpreted to mean that legislation in itself creates more homosexuals. It will merely mean that their lives will have become easier, and in fact more in conformity with the general norms for sexual and emotional behaviour. The relationships will also probably become more stable if they are met with the same expectations and attitudes as heterosexual relationships.

#### **4.4 Changes in the attitudes of the church**

Opposition to homosexuality and homosexual relationships has been particularly strong within the Church. Over the last 20-30 years, significant changes have, however, taken place in the Church's attitude, in parallel with the general development. The following is an account of developments within the Church in Norway over the last 20 years. Such a short summary cannot present the whole picture or give justice to the various views. The aim here is not to join the theological debate, but to emphasize certain main changes.

An important factor has been the influence of Christian homosexuals who openly acknowledge their sexual orientation and have formed visible organizations, particularly the Ecumenical Open Church Group.

Most of the Church now accepts that homosexuality represents a largely pre-determined identity or disposition, which must be recognized as such. Apart from in a few very conservative or charismatic

settings, there is no longer talk of "curing" homosexuals. That homosexuals exist is accepted as a fact. A distinction is usually made, however, between homosexual nature and homosexual practice, and the latter is by and large not accepted.

Changes have also taken place in the social situation for homosexuals in the Church, partly due to official statements from the Church itself.

In a statement from 1977, the Bishops' Conference stated that:

"It cannot be emphasized strongly enough that homosexuals have the same human worth as any other human being."

and

"Furthermore, homosexuals have, as everybody else, their place and function in church and society and in the activities of the Congregation. It is part of the fundamental Christian ethics to include everyone. The exclusion and discrimination that have occurred are a sin against the commandment of brotherly love and a serious breach of human rights."

But this accepting attitude does not always correspond to the reality experienced by many homosexuals. Only a small minority within the Church dares to live openly.

Also individual organizations within the Church of Norway and in other denominations have examined the situation for homosexuals. These include the Norwegian YMCA and YWCA, the Norwegian Santal Mission and the Norwegian Baptist Union. Topics associated with homosexuality and the position of homosexuals are constantly addressed at meetings and seminars in various youth organizations, student organizations, etc.

Although homosexuals today experience a far more open attitude in the Church than in the past, this is much less true when it comes to homosexual practice.

The report of 1977 from the Hygen Committee forms the basis of the present debate. The report presented a thorough study of biblical and historical material. It evaluated the relevance of this material to modern conditions and reached the following conclusion:

"Based on a reasonable interpretation the position of genuine homosexuals does not fit the situations condemned in the Bible, and not all homosexual relationships are in opposition to the Bible's general ethical norms. On the other hand, there is no indication in the Bible of a positive acceptance of homosexual relations on a level with marriage between a man and a woman."

The Hygen Committee thus raised the possibility that what it considered to be "genuine homosexuality" is not necessarily in opposition to Biblical ethics. The Bishops were more restrictive in their comments to the report:

"We can thus not see that the Bible gives grounds for a positive recognition of homosexual relationships on a level with marriage between man and woman. This means that the Church can neither maintain the traditional unequivocal condemnation nor give the approval and blessing of the Church to homosexual relationships."

The Bishops' subsequent attitude has been to accept homosexual disposition but not homosexual practice. This approach was supported by statements in 1988 from the Council of Teachers at the Free Faculty of Theology.

The contrast between the views of the Hygen Committee and those of the bishops reflects a situation which exists in many churches. Special committees and groups of experts have often turned out to be less opposed to changing long-established views than have the highest church authorities. This contrast reflects differences in the interpretation of biblical material. The Bible has always been an important basis for the development of Christian ethics. The traditional rejection of homosexuality is based on certain Bible passages, particularly the writings of St. Paul. Today, the rejection of homosexual relationships is more commonly based on the idea that marriage between a man and a woman represents the created order as described in the Bible. The acceptance of homosexual relationships stems, on the other hand, partially from more recent Bible studies, which seem to conclude that the Biblical condemnation of homosexuality is directed towards abuse and prostitution. This view is also partly based on historical studies, which show that homosexuality in antiquity has to be seen in a very different cultural and social context than today.

There are indications that in the Church as elsewhere, experience and knowledge of homosexuals plays a role in increasing acceptance. This has led to cooperation between the Student Christian Movement, the Open Church Group and the Norwegian Gay and Lesbian Association, and to the formation in 1992 of the Forum for Homosexuality and the Church. A variety of views on homosexual relations emerged at a large national conference entitled "Homosexuality in Church and Society". In 1989 a large group of clergymen and church workers supported a clergyman living in a homosexual relationship in his court case against the National Council of the Church of Norway on his right to hold a position in the Church.

The debate in Christian circles concerning homosexuality became much more intense after the since the Ministry circulated the proposal for a Partnership Act. Certain Christians in influential positions

supported the Bill, as did a number of authoritative bodies such as the Faculty of Theology at the University of Oslo and the Student Christian Movement.

Disagreement about the church's rejection of homosexual relations has emerged clearly. It centres particularly on the distinction between homosexual disposition and practice.

One of the bishops requested that the Bishops' Conference reconsider its statement of 1977. The recommendation was supported by 100 clergymen and church employees as well as by a committee in the Norwegian YMCA and YWCA. At the General Synod, the highest elected organ of the Church of Norway, a number of members called for a reevaluation, and the bishops agreed that the Bishops' Conference would look into the situation for homosexuals once again.

For the past two years, homosexual couples in *Denmark* have been able to register their partnerships. The renewed debate in the Church of Denmark has not yet resulted in any official statement.

In *Sweden*, which has a more organized church administration than Norway, two working groups have produced reports on homosexuality. The first submitted its findings "Homosexuals and the Church" in 1974, and the second produced its report "A Question of Homosexuals and the Church" in 1988. These reports have been recommended for study in individual churches, but the General Synod has not drawn any conclusions. Both reports propose that the Church should support stable, long-term relationships between homosexuals and an institutional framework for them. The statement of 1988 expressed the view that the emergent new attitudes aim to protect the central element in all forms of cohabitation: fellow human beings and their integrity. From this perspective, the acceptance of homosexual cohabitation does not represent anything new. It is not an expression of a new sexual morality, but rather an attempt to shape morality so as to protect individuals and strengthen their opportunities to live faithfully together in love.

However, the committee reserves the term "marriage" for relationships between a man and a woman, since marriage also includes the bringing up of children, in addition to devotion and faithfulness.



## CHAPTER 5

### PUBLIC HEARING OF THE BILL

In July 1992, the Ministry of Children and Family Affairs circulated a memorandum on legal regulation of registered homosexual partnerships. The memorandum was sent to religious organizations, law courts and legal groups, medical groups, family counselling agencies, women's organizations, official authorities, private organizations, homosexual organizations, trade unions, etc. Statements from groups not on the original list were also received.

A clear majority of the statements either supported the Bill or were neutral on the question of legal regulation. Most of the about 20 organizations that opposed the Bill were religious groups. Below is a general summary of the statements. More specific comments are referred to in the relevant chapters.

The *Equal Status Ombud* and the *Equal Status Council* supported the measure. The *Equal Status Council* considered that the blessing of the Church should be offered to gay and lesbian couples who ask for it.

The *Judge Advocate General* opposed the proposal.

The *bishops* and the *National Council of the Church of Norway* concentrated their comments on ethical issues. A number of bishops considered that there is a distinction between the ethical responsibility of the individual and the legislators' ethical responsibility towards society. The bishops felt that the proposal went too far in the direction of creating equality between homosexual partnership and marriage. They did not agree that there is a need to give homosexual couples special rights compared with other forms of joint households. They emphasized the fundamental status of marriage, and considered that the proposed legislation would weaken the position of matrimony.

The bishops feared that the law would weaken the prevalence and traditionally central role of marriage, and that the consequence will be the dissolution of family ties and traditions. For example, the *Bishop of Oslo* wrote:

The legal consequences of marriage as regards inheritance cannot be covered by private arrangements between partners. There are good reasons for not providing such opportunities. The fundamental line of inheritance in Norwegian legal tradition is vertical and not horizontal. An exception from this basic principle is that spouses have the right to inherit from each other, but this exception is based on the idea that the inheritance will in turn be passed on to any children of the

marriage. If reciprocal inheritance between spouses is transferred to homosexual partners where there are naturally no children of the partnership who would inherit, then it must be said that one has, in many ways, departed from the principle that inheritance descends from one generation to the next."

The bishops were of the opinion that the proposal would in practice weaken the position of marriage as the central social institution. Society ought to continue to signal, including through its laws, its support for marriage between man and woman as the primary form of cohabitation. The National Council of the Church of Norway, referred to the statement from the Bishops' Council of 1985 concerning marriage and other forms of cohabitation:

"The marital relationship does not, however, simply concern the two individuals who are living together. It concerns society and is in accordance with the created order. The marital relationship is thus so important that it has a place in the context of the Creation. The reason for this is that the Bible views this type of relationship as essential for the continued existence of humanity. The sexual bond between man and woman is placed in a meaningful context whose purpose is both to enrich the relationship and for the propagation of mankind."

The *Bishop of Agder* stated that the Church's official view is that it cannot accept homosexual relationships because it is committed to the Bible's teachings. This form of relationship is in clear opposition to the main order of nature and society.

Some bishops, however, appreciated that the Ministry wishes to emphasise the rights of the individual, and ensure that they are upheld under all circumstances. They therefore agree that there is a need for statutory regulation of homosexual partnerships, but wish this to be ensured through existing legislation, for example through the Joint Household Act.

Some claimed that the formulation of the circulated memorandum was misleading, because it in practice provides for full marital status for homosexual couples. The *Bishop of Tunsberg* stated:

"In contrast to the memorandum, I am convinced that by linking the statutory regulation of homosexual partnerships to the existing Marriage Act, the memorandum's own intention of not equating partnerships and marriage has been invalidated. I see this reinforced still further when I note a further line of argument which runs alongside the legal arguments in favour of a change of attitude. My conclusion is therefore that I do not consider that the Ministry has given sufficient reasons for not wishing to equate homosexual partnership with marriage. Many of the arguments cited make it difficult for me to understand why the Ministry cannot equally well complete what they have started and propose an 'Act on Homosexual Marriage'".

The *Bishop of Bjørgvin* wrote:

"The impression one is left with is that it would actually be correct to describe this as 'marriage between homosexuals', but that for publicity reasons it is not being referred to by its correct name. I attach weight to this general impression, because especially in present-day society, the expectations among the general public created by the Act are important as regards the meaning of 'partnership' compared with other social relationships and the fundamental values which traditionally have held this society together. My criticism in this respect is not 'Christian' in the sense of being based on specific Biblical terms; it is based on the natural, transcultural awareness of sexual polarity as the foundation for society as a whole. This is established with indisputable clarity in the first chapter of the Bible (man and woman created in God's image), and has been the fundamental basis of society in all types of religions throughout history.

*The Association of Ministers of the Church of Norway, the Church Family Counselling Office, the Norwegian Free Church Council, the Norwegian Lutheran Inner Mission Society, the Evangelical Lutheran Congregations and the Seventh Day Adventists* all basically share the Bishop's views.

Certain Christian organizations, *the Student Christian Movement, Open Church Group, Forum for Homosexuality and the Church, the Faculty of Theology and the Society of Friends (Quakers)* support the Bill on a moral basis. *The Faculty of Theology at the University of Oslo* included the following comments:

"The question at stake is thus not whether society is willing to accept, on a purely legal basis, that homosexuals give practical expression to their sexual identity, but whether homosexuals, since they already have this possibility and in fact already do practise their sexuality, should be provided with a social structure which among other aspects makes it easier for them to take responsibility for one another in a morally acceptable manner."

The Student Christian Movement in Norway stated that the Ministry's emphasis on the needs of homosexuals for a structure which can provide them with economic security and stable partnerships, is in keeping with views and their ethical principles.

A variety of statements were issued by the courts of justice, mainly related to the more technical, legal issues. The District Judge in Orkdal and the City Recorder of Oslo, oppose however the Bill on grounds of principle and favoured an extension of the Joint Household Act or that all relevant acts be examined to find those provisions which apply to homosexual partnerships, in order to meet the homosexuals' requirements for legal protection. The District Judges in Orkdal and Salten considered that provision should be made for the notary public to decline to register a partnership.

Four county governors issued statements. The *County Governor of Oslo and Akershus* opposed the

proposal in its entirety on the grounds that the Bill does not meet the needs in a satisfactory manner. In his opinion, a comparison between homosexual partners and married couples is of little relevance since existing legislation governing marriage is primarily framed to take account of the upbringing of children. Equal treatment of homosexual and heterosexual couples should therefore imply that unmarried heterosexuals with equivalent commitments and social needs are treated in the same way. He also stated that:

"Increased security for those who have become particularly dependent on another person owing to their lifestyle, and better protection for the weaker party in such relationships, should be achieved through legislation which does not link new rights with the sexual orientation of those involved."

The *County Governor of Troms* supported the proposal for equivalent legislation for homosexual partnerships and married couples.

The *County Governor of Hedmark* and the *County Governor of Østfold* supported the Bill and would also favour a single act for homosexual and heterosexual cohabitants.

The remaining organizations were largely supportive of the Bill.

The *Norwegian Federation of Trade Unions* viewed the legislation with approval, and stated:

"We support the proposal that all provisions which apply to married couples should also apply to registered partnerships with the exception of to adoption and wedlock."

The *Confederation of Vocational Unions* stated that:

"The view of the Confederation of Vocational Unions' is that the Bill takes important legal aspects into account and is in keeping with the values on which family and marital legislation is based. The economic life of the community will gain from the establishment of stable and lasting cohabitation and family relationships. The Partnership Act may also encourage greater stability and security among homosexuals."

The *Association of Public Family Counselling Agencies* stated:

"The Association of Public Family Counselling Agencies is positive to the idea of providing those who define themselves as homosexuals with the opportunity to register their partnerships.

The Act will give them better opportunities to improve their quality of life. This accords well with the preventive approach of family counselling.

The Act will provide security for those who register their partnerships in the form of a framework which will facilitate relations with their families and other social networks. It should also have positive side effects for their families.

The Association of Public Family Counselling Agencies supports to the Ministry's draft for a Partnership Act."

Some organizations, and in particular the homosexual organizations themselves, expressed the opinion that the Bill does not go far enough, since it excludes the right of registered partners to adopt children.

*The Human Ethical Association* supported the proposal and stated that the matter of adoption of children within a homosexual partnership should be given further consideration.

The majority of the *Norwegian Bar Association's Standing Committee on Family Rights and Inheritance* supported the proposal and stated:

"In the opinion of the Bar Association's committee, the same needs for protection and regulation exist for homosexuals as for heterosexuals who wish to live together.

The Bar Association's committee does not consider that the institution of marriage would be weakened by a Partnership Act, since marriage always applies to heterosexuals, whereas registered partnership would apply to homosexuals. In addition to the cultivation of a more accepting attitude, the stabilizing effect gained by enabling homosexual couples to register their partnership can have nothing but positive effects for those directly involved, for homosexuals generally, and for society as a whole."

*The Norwegian Gay and Lesbian Association* supported the proposal.

*The Norwegian AIDS Association* pointed out that it is a fundamental social and human right to be able to openly acknowledge one's choices and one's life, in other words to have the possibility of publicly declaring one's choice of a life partner to one's family and to society. The association attached equal importance to the definition of partners as one another's next of kin. It considered that these and other personal issues are, in every respect, best maintained through legislation which has stood the test of centuries, namely that governing marriage. It would be in the interests of society that homosexuals be permitted to make use of the same rights as heterosexuals.

*Legal Counselling for Women* believed that the Act may lead to greater acceptance of homosexuals, and be conducive to long-term, stable relationships for homosexual couples.

*The Church Family Counselling Offices* did not agree that a separate Act to regulate homosexual partnerships should be put forward.

"The national management of the Church Family Counselling Office does not wish for homosexual partnerships to be placed on an equal level with matrimony as a form of cohabitation. The proposal

places far too much emphasis on encouraging acceptance by society, that homosexual partnerships should occupy the same position in society as marriage between a man and a woman.

The current Bill represents a further step away from the fundamental Christian values on which our nation is built. The Government should be aware of its role in forming attitudes. The National Board of the Church Family Counselling Offices views the Government's proposal for a Partnership Act as an erroneous contribution to the moral crisis which is affecting so many aspects of Norwegian society.

In wishing to maintain the special status of marriage as the most socially acceptable form of cohabitation, the Church Family Counselling Offices confirms its fundamental conviction that marriage is the best framework for children. A comparison between homosexual partners and married couples is of little relevance because today's marriage legislation is primarily based on considerations concerning the conditions under which children grow up.

Based on overall considerations, the national management of the Church Family Counselling Office recommends that the Government withdraw the Bill relating to registered partnerships".

*The Norwegian Housewives' Association stated:*

"The Norwegian Housewives' Association does not agree that partnerships of any nature, whether between homosexuals or heterosexuals, should be regulated in a separate Act. Couples should instead be encouraged to enter into individual legal agreements".

## CHAPTER 6

### GENERAL REMARKS

#### 6.1 Who the act applies to and conditions for registration

The Act relating to Registered Partnerships applies to partnerships between two persons of the same sex.

The registration gives the parties certain mutual rights and obligations to each other, as well as to third parties and society in general. As in the Marriage Act, there is no requirement that the couple must live together or have a sexual relationship.

In order to register their partnership, the parties must satisfy the same requirements as spouses, including age, blood relationship and marital status. The registration authorities must verify compliance with these conditions before registration can take place.

The rules governing civil or church marriage ceremonies will not apply to registered partnerships. Marriage in church is obviously excluded, since this is an internal matter for the Church to decide. Registration is not equivalent to marriage, and the ritual of registration must therefore differ from the long-established traditions of matrimony. The registration of partnerships requires a separate arrangement.

The Bill proposes that at least one of the partners is domiciled in Norway and has Norwegian nationality. The Marriage Act does not require such links with Norway, but it is not appropriate to make this correspondingly applicable to homosexuals. Foreign nationals without special connections with Norway have no need to register a partnership in this country, since the registration would have no legal consequences in their country of residence, apart from Denmark.

Regulations will be issued for the registration procedure. The authority to undertake registration should be granted to the office of Public Notary (city recorder, district judge, etc.). A registration procedure will be worked out. A general requirement will be that the parties promise to live together in mutual love, helpfulness and tolerance. These questions will be considered in more detail when the regulations are drawn up.

#### THE VIEWS OF THE CONSULTED ORGANIZATIONS:

*The Norwegian Gay and Lesbian Association, Gay and Lesbian Forum in the Labour Party, Legal*

*Counselling for Women, Forum for Homosexuality and the Church, and the Open Church Group* do not consider the requirement that at least one of the parties should have Norwegian nationality to be necessary. *The Open Church Group* stated:

"The Ministry's proposal does not give adequate consideration to groups of foreign nationals who are resident in Norway for a variety of reasons, whether as students or refugees, or others who have close links to our country. All groups have the same need for security and a framework around their partnership as long as they reside in Norway; we believe this to be of particular importance for refugees, for whom family reunion rights may also be applicable and must be considered within this context."

*Forum for Homosexuality and the Church* also directed attention to the same issue:

"The situation and rights of homosexuals vary widely in different countries. An increasing number of homosexuals may be on the move because they are persecuted in their own countries. They will seek to settle in countries where they can live in safety. The statement from the Ministry that registration would not have relevance in their home country is therefore meaningless, and ignores the fact that the positive aspects of a partnership while the couple is resident in Norway will contribute to stabilizing the relationship after they have left Norway."

*The Joint Council of Gay and Lesbian Organizations in Norway* stated:

"It is not reasonable that foreigners who are permanent residents of Norway but have retained their original nationality — which is something many choose to do, although they wish to remain in Norway for the rest of their lives — should be forced to give up their nationality in order to enter into a registered partnership."

*Legal Counselling for Women* stated that on this issue the needs of foreign nationals resident in Norway are more important than legislative uniformity with Denmark.

*The City Recorder of Oslo*, on the other hand, felt that both parties should be required to be resident in Norway, in addition to at least one of them being a Norwegian national:

"We already have a problem with pro-forma marriages for the purpose of obtaining a residence permit in Norway. We must be careful not to create opportunities for pro-forma partnerships. It is not unreasonable to demand that the parties be domiciled in Norway before they are allowed to enter into a registered partnership in this country."

In its public memorandum the Ministry has suggested that the authority to register partnerships should be assigned to the notary public. The homosexuals' organizations are satisfied with this



suggestion. *The Norwegian Gay and Lesbian Association* stated:

"It is of central importance that registration should be with a ceremony similar to that of civil marriage. For many couples, it is the ceremony in particular which symbolizes love between the parties and the obligations they wish to accept in relation to each other and society."

The majority of the *Norwegian Bar Association's standing committee for family rights and inheritance* stated:

"The registration of partnerships should as far as possible follow the same wording as is used today at civil marriage ceremonies between heterosexuals."

Certain courts of justice suggest that registration should be the responsibility of the Population Registers or of the Register of Mortgaged Moveable Property at Brønnøysund in the same way as marriage property contracts. This will emphasize the difference between heterosexual and homosexual partnerships. The Population Register could be authorized to verify that the conditions for partnership were fulfilled, and to carry out the ceremonial aspects of the registration. The low number of registrations expected each year is an argument in favour of a central registration authority.

A couple of the district judges felt that individual notary publics should be permitted to refuse to perform such registrations. On this the District Judge of Orkdal stated:

"Apart from summarily dismissing the problems encountered in Denmark, the Ministry does not raise the issue that the person who has authority to conduct the registration may not wish to do so for reasons of conscience. I see this personally as a potential problem, and know for certain that I am not alone in this matter. This could be a further reason for omitting the ceremony and establishing a central registration authority."

*The Ministry of Justice* agreed that it would be most natural to assign registration authority to the individual notary public.

#### **Comments from the Ministry of Children and Family Affairs:**

The Ministry fully appreciates the problems which may arise from the requirements that one of the parties must be both resident in Norway *and* a Norwegian national, but upholds its proposal. However, the Ministry assumes that this would only apply to a very few couples, and because registration for the time being will have no legal implications outside Norway and Denmark, it emphasizes the need for legislative uniformity with Denmark. The question may be reconsidered if other countries subsequently enact similar legislation.

The Ministry does not support the suggestion that registration of partnerships be assigned to the Population Register or to the Register of Mortgaged Moveable Property at Brønnøysund. Before registration can take place, it must be verified that all the conditions have been complied with. The registration itself can be assumed to be of such central importance to the couple concerned that the Ministry does not favour a centralized registration, which would involve written registration only. Registration should take the form of a ceremony. The additional work load for the individual notary public will be negligible.

Registration of partnerships is a public, administrative duty, and the Ministry does not consider it to be of such a nature that those with the authority to carry it out should be given the option of refusing to do so. The Ministry assumes that the majority of registrations will take place in the major cities, where a number of people will be authorized to carry out registration.

## 6.2 International legal questions

Apart from Denmark no other countries are likely to recognize registered partnerships. A registered partnership will therefore not represent a bar to marriage in other countries, and it will not be possible to prevent a person who is party to a registered partnership from being legally and validly able to marry abroad without first having dissolved the registered partnership.

Problems may also arise in cases where one of the registered partners is employed in the Foreign Service or otherwise works abroad. Other countries will not recognize registered partners as equivalent to married spouses in connection with residence permits. The problem will in practice apply to very few people.

A registered homosexual partner who marries abroad without first having dissolved the registered partnership in Norway will be liable to penalties in Norway. If the partner is domiciled abroad, however, the Norwegian authorities will not be able to demand extradition.

Other international questions may also arise, for example in connection with inheritance and the administration of an estate abroad. Conflicts may arise between the surviving partner and heirs of the deceased domiciled abroad. If the bequeather of the property lives in a country that does not recognize a registered partnership, the heirs of the bequeather will be given priority over the homosexual partner.

The *Ministry of Foreign Affairs* has considered personnel problems that may arise:

"In certain states to which Norwegian personnel are sent, homosexuality and homosexual practice are not accepted and may even be a criminal offence. An accompanying registered partner would

not be covered by the rules of international law concerning privileges and immunity (the same applies to an accompanying unregistered partner). This could lead to a situation in which it would not be possible to order a member of the service to serve in a post for which he or she would otherwise be qualified. If the Bill is passed, the Ministry and Directorate will need explicit authority in its internal regulations in order to take this into consideration when filling positions abroad."

### 6.3 Legal consequences

According to section 3 of the Act, registration of a partnership will have the same legal consequences as entering into marriage, with the exceptions listed in section 4. All provisions in Norwegian legislation dealing with marriage and spouses are to be applied correspondingly to registered partnerships and registered partners. It follows from this that the partners have a reciprocal duty to provide for each other, that the provisions governing division of property between spouses are applicable, and that the partners have a legal right to inherit from one another.

The partnership will also have consequences for legislation on social security, income tax, insurance, etc. In social security legislation, the provisions reflect whether or not a person receiving benefits has a duty to provide for another person during cohabitation, and whether that other person is in salaried work or receives a pension. In effect, the public sector steps in on behalf of the provider in the case of provider's supplements to old-age, disability and rehabilitation pensions. On the other hand, a person receiving benefits as a single provider (supplementary child benefit, transitional pension, etc.) will lose these benefits if they enter into a partnership. Old-age pensioners in a registered partnership will receive a smaller basic pension than cohabiting partners. Another consequence will be that the surviving partner will not be liable to inheritance tax.

The law may raise certain questions in connection with private insurance agreements and pension schemes. The question is whether a spouse's pension through an existing pension or life insurance agreement will be correspondingly applicable to the survivor of a registered partnership. In cases where the right to pension is directly provided for by law, the right will apply also to registered homosexual partners. Other insurance conditions will need to be adapted to take account of the Partnership Act, to give equality between registered homosexual partners and married couples.

If a registered partnership is dissolved during the lifetime of both parties, one party may be obliged to pay maintenance to the other. If the partnership is dissolved by death, the survivor will be able to retain the undivided estate, as married can spouses.

Those few legislative provisions that apply only to a spouse of a defined sex, and will not apply to registered partnerships. An example is section 4 of the Children's Act, which provides that the father of the child is the man to whom the mother is married at the time of the child's birth. The same applies to the rules on artificial insemination, section 9 of the Children's Act. The Ministry does not consider it necessary to alter the wording of these provisions. The problem can be solved by drawing analogous conclusions or by an interpretation of the purpose of the provisions.

#### 6.4 Children

According to section 4 of the Act two registered homosexual partners will not be permitted to adopt children together. The Adoption Act applies to the adoption of Norwegian and foreign children and stepchildren. As regards the adoption of foreign children, it would obviously create great problems in the country of the child's origin if registered homosexual partners were to be allowed to adopt a child together. The Ministry sees no reason to discuss in detail the question of the adoption of Norwegian children or stepchildren, since no form of adoption will be permitted for registered partnerships.

#### VIEWS OF THE CONSULTED ORGANIZATIONS:

The majority of consulted bodies agree that adoption should not be permitted. Some have stated that their support applies *at this point in time*. Thus the Equal Status Ombud stated:

"The *Equal Status Ombud* does not oppose the exceptions proposed by the Ministry. In my opinion, time should be taken to consider to what extent it may be appropriate at some later point in time to open the way for adoption under the same or similar provisions as apply to heterosexual couples, and/or to church weddings/blessings."

The homosexuals organizations are in favour of allowing adoption of children, and consider this to be particularly relevant when one of the partners brings a child into a partnership. For example, the *Forum for homofile og lesbiske i Arbeiderpartiet (the Labour Party's Gay and Lesbian Forum)* stated:

"We wish to point out here that the memorandum does not deal with the most important aspect of the adoption issue for homosexuals. This concerns homosexual cohabitants and the children they bring up together. In our opinion, it is extremely important that the rights of these parents and children are considered in order to safeguard the conditions for such children so that they may be brought up by those to whom they are closest. The Act should, in our opinion, reflect social reality, and thus, provide for adoption of homosexual cohabitants' children, for example when the child's other parent dies. Other forms of adoption are less relevant."

*The Forum for Homosexuality and the Church* stated:

"*The Forum for Homosexuality and the Church* reacts particularly to the fact that the issue of the adoption of stepchildren is not considered in more depth. An increasing number of children live in a 'homosexual family' situation. There may be a variety of reasons for this, but the responsibility for the children is a central aspect of daily life. Children form strong ties to their mother or father's partner in the same way as in a heterosexual relationship. We fail to see that the proposal provides for these children's situation and rights in a satisfactory manner. In the event of illness, death or the dissolution of the relationship, the child will also be involved. In most cases, the mother or father's partner in such a situation may well be the child's emotional 'next of kin', as they are in daily life. In our opinion, it is necessary to consider these aspects, primarily in the context of the legislation governing children's rights, and only thereafter incorporated in the Partnership Act, if necessary."

#### COMMENTS FROM THE MINISTRY OF CHILDREN AND FAMILY AFFAIRS:

The proposal does not apply directly to children who grow up with a homosexual couple as their closest adult carers. However, the Ministry considers that children who grow up in the care of homosexual partners are nevertheless provided with greater legal and economic security by the proposal, provided that the couple choose to be registered. The *Norwegian Gay and Lesbian Association* has expressed this as follows:

"Security for adults contributes to security for children."

The basis for a Partnership Act is the desire of homosexual couples for legislation concerning the economic and legal aspects of a relationship. Any discussion concerning adoption must be based upon *children's* needs. The Ministry fails to see that the provision of adoption should be an automatic consequence of the right to legislated cohabitation. The question of adoption should therefore be considered independently of the question of a Partnership Act. The Ministry is still of the opinion that it is not pertinent to discuss this matter. The proposal to exclude the issue of adoption is upheld.

#### 6.5 Dissolution

It follows from the Act that a registered partnership may be dissolved by means of immediate divorce or divorce following separation pursuant to the provisions in Chapter 4 of the Marriage Act. A registered partnership may also be dissolved, as mentioned above, pursuant to section 24 of the Marriage Act, for example on grounds of bigamy.

It has been proposed that a registered partnership entered into in Norway should always be

permitted to be dissolved in Norway. This means that the limitations in section 419a of the Civil Procedure Act do not apply to registered homosexual partners. The provision proposed in section 5 of the Bill is necessary because it would be impossible, or very difficult, to have a registered partnership dissolved in other countries. The provision will be applicable in cases where, for example, a couple enter into a registered partnership in Norway and then move to another country. If one of the parties then wishes to dissolve the relationship, it must be possible for them to do this in Norway, even if the plaintiff is not a Norwegian national.

The question has been raised whether one of the conditions for the exemption from the restrictions imposed by section 419a of the Civil Procedure Act should be that the partnership must have been registered in Norway, or whether, for example, a partnership registered in Denmark may also be dissolved in Norway. The Ministry does not consider that there is a need for this, since the partnership can be dissolved in Denmark.

The provisions governing the dissolution of a registered partnership are assumed to be of great importance to the partners. This applies especially to the provisions governing the division of the estate, as well as joint property, common property and separate property. The Marriage Act stipulates that a separate property agreement may be entered into in view of a prospective marriage. In the case of registered partnership, the provisions of the Marriage Act only apply as of the time of registration. Any agreements that deviate from the normal arrangements under the Marriage Act as regards the division of property must therefore be entered into during the partnership. The Act also implies that the parties have the right to inherit from each other and that they are exempted from inheritance tax. If the surviving partner was supported by the deceased partner, he or she will be entitled to a survivor's pension under the National Insurance Scheme.

## 6.6 Amendments to other acts

The Ministry proposes certain amendments to the provisions of the Marriage Act and the Penal Code.

The provision relating to prohibition against marriage if a previous marriage still exists (section 4) and that relating to verification of division of estate after a previous marriage (section 8) should contain a separate mention of parties to a registered partnership. The Ministry also proposes amendments to section 7, first paragraph, *litrae e* and *j*, concerning evidence of the fulfillment of the conditions for marriage.

The Ministry also proposes that the General Civil Penal Code, No. 10, of 22 May 1902 should be amended. Bigamy is a criminal offence (section 220). The proposed amendment assumes the

existence of rules concerning invalidity in the event of violation of the provisions for the procedure for registering a partnership. It must be made explicitly clear in the Penal Code that the same conditions apply to a registered partnership, through amendments of section 220, paragraph 1. Section 338 concerning violations of the provisions governing verification of the conditions for a valid marriage also requires amendment.

**DRAFT****BILL ON REGISTERED PARTNERSHIPS****Section 1**

Two persons of the same sex may register their partnership, with the legal consequences which follow from this Act.

**Section 2**

Chapter 1 of the Marriage Act, concerning the conditions for contracting a marriage, shall have corresponding application to the registration of partnerships. No person may contract a partnership if a previously registered partnership or marriage exists.

Chapter 2 of the Marriage Act, on verification of compliance with conditions for marriage, and Chapter 3 of the Marriage Act, on contraction of a marriage and solemnization of a marriage, do not apply to the registration of a partnership.

A partnership may only be registered if one or both of the parties is domiciled in the realm and at least one of them has Norwegian nationality.

Verification of compliance with the conditions and the procedure for the registration of partnerships shall take place according to rules laid down by the Ministry.

**Section 3**

Registration of partnerships has the same legal consequences as entering into marriage, with the exceptions mentioned in Section 4.

The provisions in Norwegian legislation dealing with marriage and spouses shall be applied correspondingly to registered partnerships and registered partners.

**Section 4**



The provisions of the Adoption Act concerning spouses shall not apply to registered partnerships.

## Section 5

Irrespective of the provision in Section 419a of the Civil Procedure Act, actions concerning the dissolution of registered partnerships that have been entered into in this country may always be brought before a Norwegian court.

## Section 6

The Act shall enter into force on a date to be decided by the King.

## Section 7

From the date on which the Act enters into force, the following amendments to other Acts shall come into force:

1. The Penal Code, No. 10, of 22 May 1902 is amended as follows:

Section 220 shall read:

*Any person who enters into a marriage that is invalid pursuant to §§ 3 or 4 of the Marriage Act, or who enters into a partnership that is invalid pursuant to § 2, first paragraph, of the Partnership Act, cf. § 3 of the Marriage Act, or § 2, first paragraph, second sentence of the Partnership Act, shall be liable to imprisonment for a term not exceeding 4 years. If the spouse or partner was not aware that the marriage or partnership had been entered into contrary to the above-mentioned provisions, he or she shall be liable to imprisonment for a term not exceeding 6 years. Complicity shall be penalized in the same way.*

Any person who causes or is accessory to causing a marriage or registered partnership that is invalid because of the forms used, to be entered into with any person who is not aware of its invalidity shall be liable to imprisonment for a term not exceeding 4 years.

Section 338 shall read:

Any person who enters into a marriage *or partnership pursuant to the Act relating to registered partnership* in such a way as to set aside the provisions in force concerning the requirements for a valid marriage *or the requirements concerning the registration of a valid partnership*, dispensation or other statutory conditions, or is accessory thereto, shall be liable to fines.

2. The Marriage Act, No. 47, of 4 July 1991 is amended as follows:

Section 4 shall read:

No person may contract a marriage if a previous marriage *or registered partnership* exists.

Section 7, first paragraph, litra e shall read:

e. Each of the parties to the marriage shall solemnly declare in writing whether he or she has previously contracted a marriage *or a registered partnership*. If so, proof shall be presented that the earlier marriage *or registered partnership* has been terminated by death or divorce, or has been dissolved pursuant to section 24.

Proof that the former spouse *or registered partner* is dead is, as a rule, presented in the form of a certificate issued by a domestic or foreign public authority. If such a certificate cannot be obtained, the parties may submit their information and evidence to the appropriate probate judge, cf. Section 8, second cf. first paragraph, of the Probate Act. If administration of the estate does not come under the jurisdiction of a Norwegian probate court, the issue may be brought before the probate judge at the place where the fulfilment of the conditions for marriage is verified. The probate court will by order decide whether the evidence shall be accepted. An interlocutory appeal against the order may be made by the party against whom the decision is made. If the evidence is accepted, the probate court shall notify the County Governor, who may make an interlocutory appeal against the order.

Proof that the marriage *or registered partnership* has ended in divorce or been dissolved pursuant to section 24 may be given by presenting the licence or judgement duly certified to be final. The question whether a marriage may be contracted in Norway on the basis of a foreign divorce shall be decided by the Ministry pursuant to the provisions of section 4 of Act No. 38 of 2 June 1978.

Section 7, first paragraph, litra j, first paragraph shall read:

j. Each of the parties to the marriage shall provide a sponsor who shall solemnly declare that he or she knows the said party, and shall state whether the said party has previously

contracted a marriage *or registered partnership* and whether the parties to the marriage are related to each other as mentioned in Section 3.

Section 8, first, second and third paragraphs shall read:

Any person who has previously been married *or has been a partner in a registered partnership* must produce proof that the estate of the parties to the previous marriage *or registered partnership* has been submitted to the probate court for administration, or produce a declaration from the former spouse *or former partner* or heirs stating that the estate is being divided out of court.

This does not apply if a declaration is presented from the previous spouse *or partner* stating that there were no assets in the marriage *or registered partnership* to be divided, or from the heirs of the deceased spouse *or partner* stating that they consent to the survivor remaining in possession of the undivided estate.

If the previous marriage *or registered partnership* was dissolved in a way other than by death, and if more than two years have elapsed since it was dissolved, it is sufficient that the person who wishes to contract a new marriage states that the estate was divided, or that there was nothing to divide between the spouses *or partners*.