

Text of Dutch law on adoption by persons of the same sex (plus explanatory memorandum)

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

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version of 2 May 2001

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

See also: [Text of Dutch law on the opening up of marriage for same-sex partners. Summary-translation by Kees Waaldijk](#) (October 2000)

Staatsblad van het Koninkrijk der Nederlanden
2001, nr. 10 (11 January) (Official Journal of the Kingdom of the Netherlands)

Act of 21 December 2000 amending of Book 1 of the Civil Code (adoption by persons of the same sex)

[This Act results from proposal nr. 26 673, introduced by the Government on 8 July 1999, amended by the Government on 3 May 2000 and 4 August 2000, amended and adopted by the Lower House of the States-General on 12 September 2000, adopted by the Upper House of the States-General on 19 December 2000, and signed into law on 21 December 2000. This Act entered into force on 1 April 2001, as a result of the Royal Decree of 20 March 2001, *Staatsblad* 2001, nr. 145.]

We Beatrix [...];

[*preamble:*]

considering that it is desirable to amend the rules on adoption and related provisions in Book 1 of the Civil Code as regards the introduction of the possibility of adoption by persons of the same sex;

Article I

Book 1 of the Civil Code shall be amended as follows:

A, B and C

[consequential amendments to articles 5, 204 and 207]

D

Article 227 shall be amended as follows:

a. The first paragraph shall read as follows:

1. Adoption is effected by a decision of the district court at the joint request of two persons or at the request of one person alone. Two persons cannot make a joint adoption request if according to article 41 they are not allowed to marry each other.

[i.e. the words 'of different sex' after 'two persons' are deleted]

b. A second sentence shall be added to the second paragraph

['2. The joint request by two persons can only be done, if they have been living together during at least three continuous years immediately before the submission of the request.']

reading as follows:

The request by an adopter who is the spouse, registered partner or other life partner of the parent, can only be done, if he has been living together with that parent during at least three continuous years immediately before the submission

of the request.

c. The third paragraph shall read as follows:

3. The request can only be granted if:

- the adoption is in the evident interest of the child,
- at the time of the adoption request it is established, and for the future it is reasonably foreseeable, that the child has nothing to expect anymore from its parent or parents in his/her/their capacity of parent(s), and
- the conditions specified in article 228 are fulfilled as well.

E

Article 228, first paragraph, shall be amended as follows:

a. Sub-paragraph (f) shall read as follows:

- a. [the condition] that for at least three continuous years the adopter has been caring for the child and bringing it up, or, in the case of joint adoption by two persons, that for at least one year they have been caring for the child and bringing it up; if the spouse, registered partner or other life partner of the parent of the child is adopting, the condition is that the adopter and that parent have been caring for the child and bringing it up for at least one year, unless the child is born of the relationship of the mother with a life partner of the same sex;

b. [consequential amendments to sub-paragraph (g)]

F, G and H

[consequential amendments to articles 229, 253b and 327]

Article II

1. [transitional provision]

2. [amendment to article 5, paragraph 3, which will now read:

3. If through adoption a child becomes a descendant of two married adopters of different sexes, the child shall have the family name of the father, unless the adopters jointly declare that it shall have the family name of the mother. If the adopters are unmarried or married and of the same sex, the child shall keep its original family name, unless the adopters jointly declare that it shall have the family name of one of its adopters. (...)]

3. [...]

Article III

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

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

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

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

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

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

Parliamentary paper 26673, nr. 3 (8 July 1999)

Amendment of Book 1 of the Civil Code (adoption by persons of the same sex)

EXPLANATORY MEMORANDUM

[The explanatory memorandum is a lengthy text. Therefore only some brief passages have been translated.]

General

1. *Introduction*

[...] A child being cared for and brought up in a lasting relationship of two women or two men, has a right to protection in that relationship, including legal protection. Both women or both men have taken on the responsibility for the care and upbringing of the child and readily want to have that responsibility. In the interest of the child this relationship with these adults deserves protection.

In stead of through changing the law of descent, such protection shall be offered in the form of the adoption possibilities provided for in this bill, in accordance with the advice of the Kortmann-Committee [advising the government about the opening up of marriage and adoption in 1997], as well as in the forms of joint authority for a parent and his partner and of joint custody (both introduced by legislation taking effect on 1 January 1998). An important difference between descent and adoption is that adoption always is an abstraction from descent. [...] Because parenting by two persons of the same sex always involves a form of non-biological parenting, we have opted for a change of the law of adoption and not of the law of descent. [...]

2. *Scope of the legislative proposal*

The bill relates to adoption of children in the Netherlands. The last years not more than 60 to 100 Dutch children have been adopted under the Dutch law of adoption [not counting stepparent adoptions], for in the Netherlands only rarely a mother does not bring up her own child.

The bill primarily aims to make adoption by persons of the same sex possible. Probably this will mostly take the form of adoption by the female partner of the mother of the child, or of adoption by the male partner of the father of a child. This form is similar to the

existing form of stepparent adoptions.

The reason why we do not propose to extend the possibilities for intercountry adoption, is that in that context other facts need to be taken into account. In 1997 the Ministry of Justice studied the legislation on intercountry adoption, and its application in practice, in six countries from where children come to the Netherlands, and in six other countries where such children are adopted. The study showed that in practice there is a strong preference for intercountry adoption by a married couple. [...]

3. *The new condition for adoption*

It is being proposed that adoption – apart from the already existing conditions – will only be possible if the child has nothing to expect anymore from its original parent or parents. This criterion is being proposed irrespective of whether it is adoption by persons of the same sex or adoption by persons of different sexes. [...]

The words ‘parent or parents’ refer to legal parents as well as to biological parents. [...]

The criterion that the child has nothing to expect anymore from its original parent or parents, relates to the parent-child relationship. Therefore the question is not whether the child has not or will not have any de facto contact with its original parents. The relevant issue is whether the child can expect that its parents are capable of giving substance to their parenthood. Only if it is certain that the child has nothing to expect from its original parents as parents, the new condition for adoption will be fulfilled. [...]

There will be cases in which this question can easily be answered, as in the case of duo-mothers where a child has been conceived through artificial insemination with semen of an anonymous donor. Since the ties with the legal mother, who has given birth to the child, will not be severed by the adoption, and because no other -- biological – parent can be indicated, the new criterion shall be fulfilled.

The balancing may be different if the child is conceived with the semen of an acquaintance of the mother and/or of her partner. [...]

4. *The relation to the existing conditions for adoption*

[...]

5. *The relation to joint authority*

[...] Since in the Netherlands joint authority is available as an adequate alternative for adoption, aimed at protecting the family life of a child with its de facto carers/upbringers, it may be stated that adoption in many cases is not really necessary anymore. [...]

6. *Strong and weak adoption*

[a brief discussion of why no weak form of adoption is proposed to exist alongside the existing, strong form]

7. *Consequences for private international law*

The bill, intending to allow adoption by persons of the same sex, only relates to adoptions of children with their ordinary residence in the Netherlands. To these, as to adoptions in the Netherlands by persons of different sexes, Dutch law is applicable. So problems relating to the applicability of foreign substantive laws that do not know adoption by same-sex partners, will hardly arise. [...]

The question whether adoptions by persons of the same sex, decided upon in the Netherlands, will be recognised in other countries is of a different nature. Since the legal developments abroad with respect to this form of adoption, have not progressed as far as in the Netherlands, it may be expected that, for the time being, the family ties created by such adoptions will not be recognised abroad. [...] Possibly, the parental authority linked to these adoptions could be recognised in some countries. [...]

Explanation per article

[...]

Article III

[...] This article will make it possible to let the Act enter into force on the same day as the separate Act [of 8 March 2001, *Staatsblad* 2001, nr. 128] adjusting various other laws to the possibility of adoption by persons of the same sex. [...]