

# Are parenting leaves available for LGBTQ parents? Examining policies in Canada, Croatia, France, Iceland, the Netherlands and the United Kingdom

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**Are parenting leaves available for LGBTQ parents? Examining policies in Canada, Croatia, France, Iceland, the Netherlands, and the United Kingdom**

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## **Abstract**

This chapter examines LGBTQ parents' access to parenting options and the availability of parenting leave for LGBTQ parents in Canada, Croatia, France, Iceland, the Netherlands, and the UK. The first part of the chapter provides a brief overview of the recognition and access to parenting rights of coupled LGBTQ parents in relation to same-sex marriage, adoption, assisted reproductive technology, and surrogacy. The second part of the chapter focuses on leave eligibility, (in)equality of female and male same-sex parents in access to leave, and recognition of transgender and non-binary parents as well as multi-parent families. While there have been efforts to make policies more inclusive of LGBTQ families, our case studies show that it is not only restrictions in parenting leave policies that limit leave access for LGBTQ parents but rather restrictions in policies based on gender (mothers get more leave than fathers), paths to parenthood (birth parents get more leave than adoptive parents), and views of family (multi-parent families are not recognized).

**Keywords:** LGBTQ parents, parenting leave, gender, paths to parenthood, multi-parent families

## Introduction

Approximately 6% of Europeans and 13% of Canadians identify as LGBTQ<sup>1</sup> (Deveaux, 2016; Jasmin Roy Foundation, 2017). LGBTQ rights and support have grown steadily in the 21<sup>st</sup> century. Almost all countries in Western Europe (WE), the Nordic countries, and the British Isles have legalized marriage for same-sex couples<sup>2</sup>, starting with the Netherlands in 2001. Outside WE, Canada was the first country to legalize marriage for same-sex couples in 2005 (Statistics Canada, 2017). Same-sex couples also have legal rights to joint adoption in most of WE and Canada. Marriage equality and adoption rights have contributed to an increase in the number of LGBTQ families, including same-sex married couples and couples with children (ONS, 2019; Statistics Canada, 2017). An array of new family forms includes multiple parents, often through surrogacy, and co-parenting of two or more parents (Golombok, 2015). Same-sex marriage and LGBTQ families are also favorably viewed by the public in WE and Canada (FRA, 2014; ILGA, 2016; Pew Research Center, 2018), although there are sometimes important distinctions between support for marriage versus parenting rights (Yerkes, Dotti Sani, & Solera, 2018). In Central and Eastern European (CEE) countries such as Croatia, however, LGBTQ families face greater societal disapproval (Takács, Szalma, & Bartus, 2016) and encounter many legal obstacles that obstruct their pathways to parenthood (e.g. Štambuk, Tadić Vujčić, Milković, & Maričić, 2019). For instance, in contrast to the status of marriage in the rest of the EU, seven CEE states are the only EU members that define marriage as a union between a woman and a man.

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<sup>1</sup> Whereas some LGBTQ individuals may form different-sex relationships, we are most interested in those in same-sex relationships and single parents.

<sup>2</sup> The exception is Liechtenstein. Western Europe includes Austria, Belgium, France, Germany, Liechtenstein, Luxembourg, Monaco, Netherlands, and Switzerland. The Nordic countries include Denmark, Finland, Iceland, Norway, and Sweden.

Even in WE and Canada, LGBTQ parents still face challenges becoming parents, whether through assisted reproductive technology (ART) or adopting children (Berkowitz, 2020; Evertsson, Jaspers, & Moberg, 2020; Messina & D'Amore, 2018). Once they become parents, it is not always clear how government policies apply to LGBTQ individuals and couples (Murphy, Thomas, Cobb, & Hartman, 2021). In particular, parenting leave policies have generally been developed for different-sex couples, whereas the rights of same-sex couples can also differ by gender (same-sex female versus same-sex male couples). For example, the emphasis on maternity leave evident in some countries often means that same-sex male couples receive less parenting leave than other couples (Wong, Jou, Raub, & Heymann, 2020).

This chapter examines LGBTQ parents' access to parenting options which it then connects to the availability of parenting leave for LGBTQ parents across six countries – Canada, Croatia, France, Iceland, the Netherlands, and the UK. We know little about how various parenting leave policies apply to LGBTQ parents. An exception is a recent study by Wong et al. (2020), who classify parenting leave policies as gender-inclusive, gender-neutral, or gender-restrictive. The current chapter builds on Wong et al.'s study by focusing more deeply on six countries that allow us to examine similarities and differences in the parenting leaves' duration and the parents' status across different-sex and male and female same-sex couples. In addition, our selected countries also provide a variability in wider socio-institutional contexts in which these similarities and differences in parental leaves are situated, with Iceland at one end of the continuum and Croatia at the other.

We first briefly overview the recognition and access to parenting rights of coupled LGBTQ parents in the six countries in relation to same-sex marriage/partnership, adoption, ART, and surrogacy. We then focus more specifically on leave eligibility for LGBTQ two-parent

families, highlighting differences related to pathways to parenthood (giving birth, adoption, surrogacy), and noting also the (lack of) recognition of transgender and non-binary parents as well as multi-parent families.

### **Recognition and Access to Parenting Rights of Coupled LGBTQ Parents**

*Same-Sex Marriage.* LGBTQ individuals can access parenting rights through same-sex marriage in the Netherlands, Canada, Iceland, France, and the UK, but cannot do so in Croatia, the only country in this study without marriage equality. The Netherlands and Canada were the first to legalize same-sex marriage, respectively in 2001 and 2005. They were followed by Iceland in 2010, and France and England and Wales in the UK in 2013, with Scotland joining in 2014 and Northern Ireland in 2020. In Croatia, in contrast, following a referendum in 2013, the Constitution was amended to protect heterosexual marriage. Still, Croatia's 2014 Life Partnership Act provides most marriage-like rights to same-sex couples, with the exception of adoption. Unlike most CEE countries that have either limited or no recognition of same-sex partnerships and no recognition of same-sex partners' parenting rights, Croatia's same-sex life partners can also access parenting rights through the legal instruments of "parental responsibility" (*roditeljska skrb*) and "partner-guardianship". Individuals can be granted "parental responsibility" (*partnerska skrb*) for the child of their life partner if agreed upon by both of the child's parents or by the parent with sole parental responsibility or "partner-guardianship" if the child's other parent is deceased or deprived of parental responsibility (e.g., due to child protection orders, or other factors).

*Adoption.* All countries in the study but Croatia offer joint adoption (when both parents do not legally parent a child prior to adoption) and second parent adoption (when one parent, perhaps

the person who delivered the child, legally parents a child prior to adoption and the other parent does not) in same-sex couples. The Netherlands legalized domestic adoption along with marriage for same-sex couples in 2001, and, until recent suspension due to investigation of structural problems such as child trafficking and fraud (Rijksoverheid, 2021a), same-sex couples could also access international adoption. Iceland, where second parent adoption had been legal since 2000, legalized same-sex joint adoption in 2006. However, Iceland has only one formal agreement with a country (Columbia) that allows international same-sex adoption, while domestic adoptions are very rare. Similar to the Netherlands, France legalized adoption (domestic and international) for same-sex couples at the same time as marriage in 2013. In the UK, same-sex couples were able to adopt beginning in 2002 in England and Wales, 2009 in Scotland, and 2013 in Northern Ireland. Same-sex couples are also allowed to adopt children from overseas. Beginning in 1996, provinces and territories across Canada provided varying access to same-sex adoption, but, as of 2011, it is now legal across Canada. Finally, in Croatia, the Administrative Court of Zagreb ruled in May 2021 that preventing same-sex couples from adopting was discriminatory, but the Ministry of Labour, Family and Social Policy immediately announced they would challenge the ruling (Vale, 2021). At the moment, therefore, the resolution is pending and same-sex couples still cannot access parenting rights through either domestic or international adoption.

*ART.* Iceland, the Netherlands, Canada, France, and the UK all have legal provisions for ART for couples and singles. Furthermore, the Netherlands and the UK also have automatic co-parent recognition for married or civil partners (ILGA Europe, 2021). Despite the legalization of same-sex marriage and adoption in 2013 in France, same-sex female couples and single women were prohibited from accessing ART until 2021; and many same-sex female couples seeking donor insemination also go abroad (Gross, 2014). In Croatia as well, same-sex life partners or single

women without prior history of unsuccessful treatment of infertility cannot access ART (Medically Assisted Reproduction et, 2012). This restriction, however, can be circumvented by getting an ART procedure abroad and by alternative means, such as at-home insemination. In such cases, the parent giving birth can declare that the other parent is unknown, which provides roundabout access to partner-guardianship for their same-sex life partners.

*Surrogacy.* Though some countries allow commercial surrogacy (which allows payment to the surrogate), only altruistic surrogacy (which allows expenses for the surrogate but no other payment) is legal in the Netherlands, Canada, and the UK. Surrogacy is illegal in Iceland, France, and Croatia. These regulations, however, do not prevent individuals from pursuing surrogacy in countries where it is legal (transnational surrogacy), and then attempting to regulate their parenting rights afterwards. This is, for example, the case for many French same-sex female and same-sex male couples who seek surrogacy abroad (Gross, 2014). Securing parental rights is nevertheless administratively complicated because certain French and Icelandic courts have attempted to prevent the legal recognition of the birth certificates of children born through surrogacy abroad. In Iceland, parental rights after surrogacy abroad where neither parent is biologically connected to the child are not recognised, and this decision by Icelandic authorities stands unchallenged by the European Court of Human Rights (März, 2021). In Croatia, as well, there are cases of transnational surrogacy currently under consideration, which may lead to new guidelines on parenting rights in such cases.

This short outline of how different legal frameworks and pathways to parenthood in six countries shape LGBTQ parents' access to parenting rights already suggests great variation in status and recognition of LGBTQ parents across countries. The differences, however, arise also in national contexts, where frequently, different-sex parents are privileged compared to same-sex



parents, and there are also differences between male and female same-sex couples. These differences arise in parenting leave policies, which we spotlight in the next section.

### **Parenting Leave Policies and (In)Equality of LGBTQ Parents**

LGBTQ parents' eligibility for parenting leave in each of the six countries is shaped by their parenting rights in general as well as different recognition and various available pathways to parenthood. Additionally, the gendered language of leave policies matters for the differences between different-sex, female same-sex, and male same-sex parents. According to Wong et al. (2020), gender-inclusive and gender-neutral policies rest on the existence of legally recognized same-sex partnerships. Gender-inclusive policies may use gendered language (e.g., maternity, paternity leave) but specify that partners, co-mothers, or co-fathers can take leave. Gender-neutral policies only use gender-neutral terms (e.g., parent). Thus, both gender-inclusive and gender-neutral policies may offer the same rights to same-sex female, same-sex male, and different-sex couples. On the other hand, gender-restrictive policies do not offer the same rights to same-sex female and/or same-sex male parents, either because of gendered terms (e.g., mother, father) or the absence of legal recognition of same-sex partnerships or partnerships that include transgender or non-binary individuals. In the text that follows we discuss these differences for each country, noting also specificities in regard to pathways to parenthood of same-sex couples (giving birth, adoption, surrogacy) and recognition of transgender and non-binary parents as well as multi-parent families.

#### ***Canada***

*Leave Eligibility.* In Canada, parenting leave policy is guided by both federal and provincial/territorial legislation (Mathieu, Doucet, & McKay, 2020). There are two parental

leave schemes, one in the province of Quebec (offering maternity, parental, paternity, and adoption leave) and the policy for the rest of Canada (offering maternity and parental leave and shared parenting benefit). Maternity leave across Canada is intended for recovery from physical delivery, and it is just for the parent who delivers the child (Quebec Government, 2020b; Government of Canada, 2019), including biological mothers, surrogate mothers, mothers of a stillborn child, and a transgender man or non-binary person who is the birthing parent. A maximum 61-week parental leave can be taken fully by either parent or shared between parents (Government of Canada, 2019). A shared parenting benefit, created in March 2019 outside Quebec, offers non-transferable 6 to 8-week leave for fathers or non-birthing parents who share parental leave with their partner (Department of Finance, 2018), but is only accessible to fathers or partners if the birthing parent qualifies for parental leave. Quebec's paternity leave is similarly available to fathers and non-birthing parents. The latter were included since 2006 (Mathieu, Doucet, & McKay, 2020), 13 years before the rest of Canada. Quebec is the only province in Canada to offer a shareable 12 to 13-week leave for adoptive parents (Quebec Government, 2020a).

*(In)Equality of Female and Male Same-Sex Parents.* Maternity leave is accessible to different-sex or same-sex female families where one partner carries and delivers the child, therefore excluding access to same-sex fathers (Quebec Government, 2017) and same-sex female and different-sex families where surrogacy or adoption is the path to parenthood. Across Canada, parental leave, shared parental benefit, and paternity leave (in Quebec) are available to fathers or non-birthing partners, as long as they are registered on the birth documentation as a parent (Wong et al., 2020, Quebec Government, 2020b), which means same-sex female and male couples have the same access to parental leave as different-sex couples, and it is accessible to all

parents whether the parenthood results from birth, surrogacy, or adoption. Therefore, the major discrepancy in access to leave in Canada is faced by same-sex fathers and adoptive parents, who have less leave available than the rest of families. Even though Quebec offers a 13-week adoption leave, this still does not match the 17-week maternity leave to which birthing parents have access.

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Due to gender diversity, the ability to carry and deliver a child does not always align with a female gender identity, meaning users of maternity policies may also include transgender men or non-binary parents. Both Canada and the province of Quebec now use inclusive language, devoid of gender assumptions, in their maternity and parental leave policies. For example, federal legislation states, “Maternity benefits are only available to the person who is away from work because they’re pregnant or have recently given birth” (Government of Canada, 2021); however, some provinces still use the gendered term “birth mother” in their legislation (Government of Alberta, 2021). Neither Canada’s or Quebec’s parenting policies explicitly address multi-parent families.

### ***Croatia***

*Leave Eligibility.* Croatia offers maternity leave (*rodiljni dopust*) and parental leave (*roditeljski dopust*) that can be used by one parent or shared between both parents. No statutory paternity leave exists, however, there is a two-month quota system within the parental leave policy design (Dobrotić, 2020). This quota system indicates that, after the initial period of the obligatory maternity leave for the birth and recovery, limited to the biological mother who delivered the child, the mother can transfer the rest of her maternity leave to the other parent. While the Maternity and Parental Benefits Act (2008) uses gender-restrictive language and specifies that

the transferable maternity leave is available to the "father of the child", another provision in the Act allows for equating this status with the status of a non-biological parent in a same-sex life partnership, but solely in the context of "parental responsibility" and "partner-guardianship" status. Therefore, through these two instruments, the transferable maternity leave and subsequent parental leave are available to both same-sex parents, which, in effect, provide non-birthing same-sex life partners with eligibility equal to fathers in (dual-earner) married and cohabiting different-sex couples.

*(In)Equality of Female and Male Same-Sex Parents.* The Croatian legal framework does not differentiate between male and female same-sex life partners. However, due to their different pathways to parenthood, differences necessarily arise; for example, same-sex female couples may more easily circumvent the lack of access to ART in Croatia than same-sex male couples can circumvent the illegality of surrogacy or the continued restricted access to adoption. Therefore, male same-sex couples remain unable to access maternity leave and in practice, are unable to utilize the parental leave that is, in theory, available to them.<sup>3</sup>

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Parenting leave policies have no provisions recognizing transgender or non-binary parents. Also, there is no possibility for parenting leave to be taken by more than two parents. For example, in the case of female same-sex life partners and a biological father, the father would have to be reported as "unknown" or give up his parenting rights for these to be granted to the life partner of the biological mother.

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<sup>3</sup> With the exception of parental leave for foster parents, which only recently became available to same-sex couples after a 2020 Constitutional ruling that confirmed same-sex couples have the right of access to foster care under the principle of non-discrimination (L.R., 2020).

## ***France***

*Leave Eligibility.* France offers three main types of paid leave: maternity leave, paternity and child welcoming leave, and adoption leave (Ministère du travail 2021). In addition, to prolong these periods, France offers a system of unpaid “child-care leave [*congé parental d’éducation*]”, available both in cases of birth and adoption. “Maternity leave [*congé de maternité*]” is available to mothers who give birth to the child. Paternity and child welcoming leave [*congé de paternité et d’accueil de l’enfant*]” are available to the legally recognized father of the child as well as to the man or woman who is married to, in a civil union with, or has a common law marriage with the mother of the child. For example, the spouse of the mother as well as the biological father of the child can both benefit from this leave. Adoption leave “[*congé d’adoption*]” is available for parents who adopt a child, and it can be allocated to one parent or shared between them. In addition to the explicitly gendered language of the French policy (“maternity” leave, “paternity” leave), this legal infrastructure is designed around the model of a two-person headed family and gives primacy to the mother who carries the child. It thus maintains inequality between men and women regardless of sexual orientation and also favors different-sex couples.

*(In)Equality of Female and Male Same-Sex Parents.* Since the mid-2000s, French parenting leave policies have become more inclusive of same-sex couples but continue to treat straight, same-sex female, and same-sex male parents in unequal ways. Same-sex female couples where one parent gives birth are similarly situated to different-sex couples. In both cases, the mother who carries the child will have the same amount of leave. Their partners will have the right to the same—much shorter—paid leave time. Further, in the case of joint adoption, same-sex and different sex couples have access to the same schemes. This situation is non-discriminatory in theory, since the 2021 legislation provides the same quantity of paid and unpaid leave to parents

based on their biological or adoptive relationship to the child or to the child's primary legal parent. However, because same-sex and different-sex couples generally do not become parents in the same ways, these families are not able to take advantage of leave policies equally in practice (Association des familles homoparentales, 2021). This situation specifically penalizes fathers in same-sex couples. Finally, surrogacy is banned in France, but in the case of transnational surrogacy, the biological father can take leave but his partner cannot. If a same-sex female couple seeks surrogacy, neither will have access to any leave since neither will have carried the child or be in a relationship with the surrogate.

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Because leave policies are based on birth and the legal or biological relationships of adults to the child or person who gave birth, gender identity is not an explicitly limiting factor. In theory, transgender men, transgender women, and non-binary people may benefit from parental leave as long as they fit into the eligibility criteria. Multi-parenting families face specific challenges. Due to various restrictions, many French same-sex couples enter into co-parenting arrangements in which, for example, a same-sex female and same-sex male couple will raise the child of which one member of each couple is the biological parent. These modes of having children impact access to paid leave. In the case of a co-parenting same-sex male and same-sex female couple, gender has a significant discriminatory impact. The mother who carried the child will have the right to full maternity leave. Her partner, the child's second mother, will have paternity leave. The biological father will also have paternity leave. However, his partner, the child's second father, will have no right to any form of leave.

### ***Iceland***

*Leave Eligibility.* The laws on parental leave in Iceland are gender neutral and allow for an equal number of weeks for each of two parents (*Lög um fæðingar- og foreldraorlof*, 2020), where part of this time can be transferred to the other parent. The laws allow parents to take leave in the cases of childbirth, adoption of a child younger than 8 years old, and permanent foster care of a child younger than 8 years old. Thus, the legal rights of parents, regardless of the gendered composition of the couple, are equal.

*(In)Equality of Female and Male Same-Sex Parents.* As the laws on parenting leave are gender neutral, female and male same-sex parents have equal rights to parenting leave. The equal rights of both parents and a non-transferrable paternal leave were first legalized in 2000. It was framed as a feminist policy that would allow different-sex couples to share child-rearing responsibilities and advance women's position in the labor market (Arnalds, Eydal, & Gíslason, 2013). This emphasis on the participation of fathers in childrearing may well have paved the way for same-sex male couples to gain social acceptance for parenthood.

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Since 2019, Iceland legally recognizes three gender options at the national registry: male, female, and gender neutral (*Act on Gender Autonomy*, 2019). Any person can self-identify and opt for any of these options; there is no medical gatekeeping for gender registry of adults in Iceland. When parenting leave laws were amended in 2020, they were made completely gender neutral, but before that time, two weeks of parenting leave following the birth of a child were allocated to the mother, and thus it was assumed that a woman had given birth. Under the new laws this has been changed to "a parent who gives birth" (*Lög um fæðingar- og foreldraorlof*, 2020), which importantly accommodates both transgender men and non-binary people as well as recognizes

that not all mothers give birth to their children. There is no legal recognition of multi-parent families.

### ***The Netherlands***

*Leave Eligibility.* Parents are eligible for four types of parenting leaves in the Netherlands: maternity leave (targeted at mothers), adoption leave, birth leave (targeted at fathers/partners), and parental leave (unpaid; both parents are eligible). Maternity leave (pregnancy and childbirth leave, *Zwangerschaps- en bevallingsverlof*), to be taken prior to birth and post-delivery, is targeted at female employees. As such, the policy is not gender neutral.<sup>4</sup> Adoption leave (*adoptieverlof*) is targeted at employees either adopting or fostering a child. Parental leave (*ouderschapsverlof*) is available to both parents and is written in a gender-neutral manner. The law stipulates that parental leave is available to an employee who, as a parent, has a family relationship with a child. Lastly, birth leave (*geboorteverlof*), introduced in 2019 and extended in 2020, replaced paternity leave, and it is intended for fathers or partners - the eligibility for birth leave is dependent upon the relationship with the birth mother and legal recognition of the child. This creates relatively broad eligibility in the Netherlands, where same-sex marriage has been legal since 2001, and includes spouses, registered partners, cohabitation partners, or the person who legally recognizes the child.

*(In)Equality of Female and Male Same-Sex Parents.* Parenting leave policies in the Netherlands, in particular parental leave and birth leave, are worded in an inclusive manner that, *prima facie*, does not distinguish between different-sex or same-sex couples. When same-sex female couples

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<sup>4</sup> Note that in the Netherlands, between 1985-2014, transgender persons were required to undergo sterilization in order to legally change their gender, which effectively took away a potential pathway to parenthood.



have a child through ART, both parents are eligible for leave: the mother giving birth (maternity leave) and the mother partnered to the birth mother (birth leave). Both mothers would also be eligible for parental leave. Likewise, different-sex couples and same-sex couples have the same right to adoption leave. If a same-sex male couple adopts a child, each partner is entitled to adoption leave. In practice, however, important distinctions arise in parenting leave policies that create inequalities. For example, when same-sex male couples have a child through surrogacy, which is legal in the Netherlands, the birth mother must transfer parental rights to the prospective parents (Rijksoverheid, 2021b). If the birth mother agrees that one of the fathers legally recognizes the child, he is entitled to birth leave and parental leave; his partner is not entitled. In sum, Dutch leave policies currently provide greater eligibility to different-sex and same-sex female couples than same-sex male couples. For same-sex male couples, eligibility is more restricted.

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Parenting-leave legislation is, in theory, gender-neutral in the Netherlands, targeting employees. As such, transgender and non-binary parents should have access to parenting leave if they or their partner give birth. However, Dutch law does not recognize multi-parent families (Tweede Kamer der Staten Generaal, 2020; see also Staatscommissie Herijking Ouderschap, 2016 for a detailed discussion). Legally a child can only have two parents, and leave eligibility is generally limited to the legal parents of a child. Given this distinction and the absence of recognition for multi-parent families, same-sex female couples have greater eligibility for parental leave than same-sex male couples. When same-sex female couples have a child with a single male who fathers the child, both mothers are entitled to leave. The birth mother is entitled to maternity leave and parental leave, and their partner is eligible for birth leave and parental leave. In addition, if the

biological father recognizes the child, then he is also entitled to six weeks of birth leave (though his partner would not). Thus, in the case of same-sex female couples, the newly implemented birth leave provides broad scope for leave eligibility.

### ***The UK***

*Leave Eligibility.* In the United Kingdom, employees can receive paid maternity (including the transferable maternity leave called shared parental leave), paid paternity leave, and unpaid parental leave. Maternity leave is for pregnant employees, to be taken before the expected childbirth and after delivery and can be shared between two parents. Paternity leave can be taken by any co-parent. It should be noted that only six weeks of maternity leave are well paid (at 90 percent of earnings). Couples do not have to be married or in a registered partnership to enjoy paternity leave or shared parental leave, though partners must gain parental responsibility before taking parental leave. In case of adoption, the adoptive parents can share the adoption leave among them as long as they are eligible for maternity leave or shared parental leave. It may be important to note that due to Brexit the UK is no longer obligated to follow European Union directives regarding parental leave (Atkinson, O'Brien, & Koslowski, 2021).

*(In)Equality of Female and Male Same-Sex Parents.* Both different-sex couples and same-sex female couples receive equal access to paid and unpaid parenting leaves and the amount is independent of the parental gender. This is because the United Kingdom's legislation uses gender-inclusive language with respect to same-sex female couples. For instance, maternity leave is available for "pregnant employees" and paternity leave is available for "the child's father or partner of the child's mother" (European Commission, 2016). But, in practice, same-sex male couples are eligible for fewer parenting leaves than different-sex and same-sex female couples.

Paternity leave is much shorter than maternity leave, and shared parental leave may be considered discriminatory against fathers (Atkinson, 2017). Furthermore, inequalities stem from surrogacy as a common pathway to parenthood for same-sex male couples in the UK. In this case, same-sex male parents may still be entitled to paid adoption leave if they have obtained the necessary approval under the Human Fertilisation and Embryology Act 2008 to become the child's legal parents (Government of the United Kingdom, 2019).

*Recognition of Transgender and Non-binary Parents and Multi-Parent Families.* Transgender parents are entitled to parenting leaves, although the duration depends on the specific situation of the couple. In general, the legislation indicates that a transgender woman remains her child's legal father and a transgender man remains his child's legal mother even after they change their legal gender. Although non-binary parents are not explicitly mentioned in the parental leave legislation, these parents are also entitled to parenting leaves as gender-inclusive language is generally used. Further, a child can legally have only two parents, and parental leave is limited to the legal parents of a child. Thus, parents other than the legal parents in multi-parent families are not eligible for parenting leaves.

## **Conclusion**

While parenting leave policies were generally first developed for different-sex couples, there have been efforts to make policies more inclusive of LGBTQ families. However, other policies may restrict LGBTQ individuals' access to parenthood in the first place. Also, parenting leave policies still frequently privilege biological parents and particularly birth mothers. This chapter has taken a closer look at LGBTQ parents' access to parenting options and how parenting leave policies apply to LGBTQ parents in six countries.

Similar to Wong et al. (2020), our case studies show that it is not only restrictions in parenting leave policies that limit leave access for LGBTQ parents but rather restrictions in policies based on gender, paths to parenthood, and views of family. First, there are often gender distinctions in parenting leave policies that differentiate between mothers (maternity leave) and fathers (paternity leave). All countries discussed in this chapter apart from Iceland provide longer parenting leaves to female parents than to male parents. As such, same-sex male couples will have shorter leaves than different-sex or same-sex female couples. As an exception, Iceland uses only gender-neutral language and provides equal access to parenting leaves.

There are also often differences in the amount of parenting leave provided to birth parents versus adoptive parents. In Canada, France, and the Netherlands, adoptive parents receive less leave than couples in which one parent delivers the child; this is also the case in Croatia, though less relevant in this context as same-sex couples cannot access adoption yet. Iceland (if the child is younger than 8 years old) and the UK (only for female same-sex couples) provide equal amounts of leave to birth and adoptive parents. Even if there is no direct difference in treatment of LGBTQ parents and different-sex parents in parenting leave policies, differences may still exist due to the fact that adoption is a much more common path to parenthood for same-sex couples than different-sex couples (Goldberg & Conron, 2018). Therefore, these policies mean that, on average, LGBTQ parents likely receive less leave than different-sex couples or couples in which one parent delivers the child.

Further, LGBTQ parents often take different pathways to parenthood, and these are often restricted by other (non-leave) policies, such as legalisation and access to ART and surrogacy. Same-sex parents face more difficulties in becoming parents, being legally recognized parents, and making use of policies such as parental leave (Evertsson, Jaspers, & Moberg, 2020). All of

the countries in this chapter have some limitations on adoption, ART, and/or surrogacy. Some limitations are specific to LGBTQ parents, but more often the restrictions are aimed at the general population. Nevertheless, the impact on LGBTQ individuals and couples is disproportionate as many rely on these methods to become parents. While this is not directly related to parenting leave policies, these restrictions ultimately hinder attempts at parenthood and may in turn impact access to parenting leaves.

Finally, parenting leave policies are often designed with heteronormative images of family in mind, assuming a two-person headed family with one mother (primary caregiver) and one father (secondary caregiver). LGBTQ families may turn to each other to form their own families with more than two parents and/or more equal divisions of parenting but then face limited recognition as multi-parent families. In all of the countries in this chapter, multi-parent families face substantial obstacles to obtaining leave for all parents.

Based on this comparative analysis, we provide four policy recommendations towards developing more inclusive parenting leave policies:

- 1) Remove gendered language from parenting leave policies so all policies refer only to parents rather than mothers or fathers.
- 2) Remove any distinctions between birth parents and adoptive parents in parenting leave policies.
- 3) Make adoption, ART, and surrogacy more accessible.<sup>5</sup>
- 4) Make parenting leave available to all parents who will be involved in raising the child.

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<sup>5</sup> Regardless of application to same-sex couples, different-sex couples, or singles, there may be ethical considerations or debates surrounding this topic in various countries.

These policy recommendations are based on our conclusion that LGBTQ parents face several limitations in accessing parenting leave, which is a broader issue connected to LGBTQ family rights. Recognizing unions is important, but the continued inequality faced by LGBTQ families in access to adoption, ART, and broader conceptions of multi-parent rights remains problematic in many countries. Broader conceptions of parents and families and more inclusive policies could be an important next step towards greater equality in parenting rights.

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