

## CHAPTER 614

### COHABITATION ACT

*AN ACT to repeal the Cohabitation Act, Cap. 571 of the Laws of Malta and to regulate cohabitations and to provide for other matters dealing with them or ancillary to them.*

5th June, 2020

[ACT XXVII of 2020.](#)

#### ARRANGEMENT OF THE ACT

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#### PART I

##### Preliminary

1. The short title of this Act is the Cohabitation Act. Short title.
2. In this Act, unless the context otherwise requires: Interpretation.

"cohabitant" means a person who is continually and habitually living with another person in the cohabitation home as a couple, and who enters into a public deed of cohabitation with the other person, provided that he is not already legally bound to another person;

"cohabitation home" means that home within which the cohabitants live together, belonging to either one of the cohabitants or to both of them, in whichever portion, and whether or not they possess it by title of lease or any other title, whether jointly or separately;

"community" shall have the meaning assigned to it in Part III;

"Court" means the Civil Court (Family Section) or any other Court which from time to time, shall have the competence to decide on family matters;

"dependent child" means the children of the cohabitants, or of any one of the cohabitants, or in regard to whom any one of

them is acting *in loco parentis*, and who still have the right to receive maintenance from the said cohabitants:

Cap. 16. Provided that *in loco parentis* refers to the cohabitant who acts *in loco parentis* with regard to another person's child, by reason of the cohabitation of such person with a parent of that child, where the other parent of that child shall have, at any time before or during the cohabitation, died or was declared as an absentee according to the provisions of Title VII of Book First of the [Civil Code](#), or is unknown:

Cap. 16. Provided also that this shall be without prejudice to the obligations of the natural parents of the child and shall in any case be without prejudice to the provisions of article 149 of the [Civil Code](#).

"Minister" means the Minister responsible for justice;

Cap. 55. "notary" means a public official vested with all the powers conferred to him by the [Notarial Profession and Notarial Archives Act](#);

"Regulation on registered partnerships" means Council Regulation (EU) 2016/1104 of the 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

## PART II

### Establishment of a cohabitation

Cohabitation by means of a public deed between the parties.

3. (1) Persons who have the intention of cohabiting, or persons who are already cohabiting, and who want to be governed by the provisions of this Act, shall regulate their cohabitation by means of a public deed of cohabitation in conformity with the provisions of this Act.

(2) The cohabitation shall have effect from the date of the publication of the public deed of cohabitation with regard to the cohabitants, and from when it is enrolled in the Public Registry with regard to third parties.

Nullity of the public deed.

4. (1) A public deed of cohabitation made between:

(a) persons, one of whom has not attained the age of eighteen (18) years, unless that person is so authorised by law in terms of sub-article (3);

(b) ascendants and descendants in the direct line;

(c) siblings, from the same parents, or from one of the parents;

(d) the person adopting and the adoptee;

(e) persons, one of whom is unable to give his consent for the public deed due to civil interdiction or incapacitation, or the lack of the use of reason;

(f) persons, one of whom, or both, who are married or are in a civil union, either between themselves or with third parties, whether in Malta, or in any other country;

(g) persons, one of whom, or both, who are bound by a previous public deed of cohabitation in accordance with this Act, together or with third parties;

(h) persons, or any one of them, who are bound by a registered or unilaterally declared cohabitation in accordance with the [Cohabitation Act](#), together or with third parties;

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(i) persons, or any one of them, who are in a relationship with third parties which is already regulated by a foreign law that provides for the rights and obligations between themselves, irrespective of its title,

shall be null and void.

(2) For the purposes of sub-article (1), the relationship of an adopted person shall be considered to exist both with reference to that person's biological family as well as with his adoptive family.

(3) For the purposes of sub-article (1), article 3 of the [Marriage Act](#) shall apply *mutatis mutandis* to minors between sixteen (16) and eighteen (18) years, who intend to enter into a public deed of cohabitation.

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(4) The Court of Voluntary Jurisdiction under which one of the parties intending to enter into a public deed of cohabitation falls may, if good cause is shown, refrain from applying the provisions of sub-article 4(1)(d), and the said decree shall be annexed to the act.

**5.** (1) Any clause of the public deed of cohabitation that in any way breaches any provision of this Act, or that in any way provides for the manner in which such cohabitation shall be dissolved, shall be considered as null and void.

Formalities of the public deed.

(2) The parties must declare before the notary that there is nothing precluding them from entering into a valid public deed of cohabitation in accordance with this Act, and the notary is obliged to record this declaration in the said deed.

(3) The parties shall provide the notary with a free status certificate issued in accordance with article 251(3) of the [Civil Code](#), or an equivalent document duly issued by the competent foreign authority,

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as the case may be, and such certificate or document shall be officially issued not more than ninety (90) days prior to the publication date of the public deed of cohabitation, and shall be attached to the said deed:

Provided that the document equivalent to a free status certificate shall be issued by the competent authority in that country which issued the said document.

(4) The parties must declare before the notary if they had already entered into any previous public deed of cohabitation together, which act was dissolved, and the notary is obliged to record this declaration in the said deed.

(5) The notary before whom the parties are signing the public deed of cohabitation is obliged to explain in detail to the parties the consequences of the said act, and the clauses by which the parties choose to be bound, and shall declare that he has explained the same in the said deed.

(6) The notary who publishes the public deed of cohabitation shall, within fifteen (15) working days from the date of the deed, enrol the said deed in the Public Registry, in the Register kept for such purpose by the Director of the Public Registry.

(7) The Director of the Public Registry shall issue a certificate of cohabitation as prescribed in the Schedule, within twenty (20) days from the enrolment date of the public deed of cohabitation in the Public Registry, and a copy of the note of enrolment shall be transmitted to the Director of the Public Registry.

Applicability of the Regulation on registered partnerships.

**6.** The provisions of the Regulation on registered partnerships shall apply to cohabitations enrolled by virtue of a public deed in terms of this Act.

Choice of applicable law.

**7.** (1) In the public deed of cohabitation, the parties may decide to declare the applicable law to their cohabitation from the following:

(a) the law of the State where the parties or one of them, habitually resides at the time that the public deed of cohabitation is concluded;

(b) the law of a State of citizenship of either one of the parties at the time the public deed of cohabitation is concluded;  
or

(c) the law of the State under whose law the public deed of cohabitation was constituted.

(2) If the parties fail to make such a declaration, it shall be presumed that the applicable law is Maltese Law.

8. In the public deed of cohabitation, the parties shall decide upon and declare, the applicability of Part III:

The inclusion or exclusion of Part III.

Provided that if the parties fail to make such a declaration, it shall be presumed that the parties intended to exclude the application of the said Part.

9. (1) Without prejudice to article 45A of the [Notarial Profession and Notarial Archives Act](#), the cohabitants may, at any time, amend or correct the public deed of cohabitation by means of a subsequent public deed with the authorisation of the competent Court:

Amendments to the public deed. Cap. 55.

Provided that in any case, the Court shall ensure that there is nothing in the amendments that runs contrary to the best interest of the dependent children, or that puts any one of the cohabitants in a vulnerable situation, as the case may be.

(2) In every instance where the Court is requested to give its authorisation for a deed of correction or amendment to the public deed, it shall, if it feels that it is appropriate to ensure that this is not being done abusively by one cohabitant against the other, hear the cohabitants *viva voce*.

### PART III

#### Community of assets between cohabitants

10. (1) In the public deed of cohabitation, the parties may establish the community of assets in accordance with this Part.

Community of assets between cohabitants.

(2) Saving any other provision of the law, the right of every cohabitant to the community of assets commences from the date of the publication of the public deed of cohabitation, and ceases upon the dissolution of the cohabitation.

11. (1) The community of assets between the cohabitants shall only comprise the following:

What constitutes the community of assets.

(a) the cohabitation home, when the acquisition is made after the public deed of cohabitation, even though the acquisition is made in the name of one cohabitant only, and even when the acquisition was made by moneys or other things which either of the cohabitants possessed prior to the cohabitation, or which, after the cohabitation, were transferred to him under any title of donation, succession, or other title, saving the right of such cohabitant to deduct the sum disbursed for the acquisition of such property:

Provided that the said cohabitation home shall not be included in the community of assets if it was transferred to either of the cohabitants under any title before the cohabitation, notwithstanding that such cohabitant may have been vested with the possession of the property only after the cohabitation:

Provided also that the said home shall not be included in the community of assets when it was transferred to either of the cohabitants by donation or succession, before or after the deed of cohabitation; and

(b) movables found in the cohabitation home, acquired after the public deed of cohabitation, even when such acquisition is made in the name of one cohabitant only, unless those movables were given to either of the cohabitants by a donation, personal gift or devolved upon them by succession from third parties:

Provided that in this article, "movables" shall include the ornamental and decorative movables kept at the cohabitation home, and shall exclude moneys, securities, vehicles, boats, and any movable which is purchased with the purpose of being used exclusively by one cohabitant.

(2) When the community of assets in accordance with the provisions of this article applies between cohabitants, all assets which do not fall under sub-article (1) of this article, shall be considered as assets belonging to the individual party.

Applicability.  
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**12.** Articles 1322, 1323 and 1325 to 1333 (both inclusive) of the [Civil Code](#) shall apply *mutatis mutandis*, limitedly to the community of assets between the cohabitants in terms of article 11.

#### PART IV

##### Basic rights and duties

Rights of  
cohabitants.

**13.** (1) A cohabitant shall enjoy from the rights listed under sub-article (2), and from other rights referred to in any other law as being applicable to cohabitants.

(2) The rights conferred to a cohabitant are the following, namely that the said cohabitant:

(a) shall have, without prejudice to the provisions of this Act, the right of habitation in the cohabitation home;

(b) shall be considered as a tenant for all intents and purposes of the law with regard to any lease of the cohabitation home constituted by contract by either of the cohabitants, after the drawing up of the public deed of cohabitation in accordance with this Act;

(c) shall be regarded as having the same rights granted to a person who is married or in a civil union in terms of rights related to labour and family, including various rights related to leave, whether rights found in primary and subsidiary laws or under codes and working practices, excluding however the right of leave to accompany one's partner to courses sponsored by the

government abroad;

(d) shall have the right to take all decisions relating to the medical care of the other cohabitant;

(e) without prejudice to the provisions of the [Civil Code](#) shall have, in the event that one of the cohabitants dies during the cohabitation, the right of habitation for twelve (12) months over the cohabitation home, where the said cohabitation home is held in full ownership or emphyteusis by the deceased cohabitant, either separately or jointly with the surviving cohabitant: Cap. 16.

Provided that, this right of habitation shall cease, if the survivor contracts a marriage, civil union or enters into cohabitation with another person:

Provided also that, the right conferred in this paragraph shall subsist even where such right has the effect of reducing during the said period, the reserved portion due to any other person;

(f) shall have the right to be entitled to non-contributory social assistance when the cohabitant is a person, who in the opinion of the Director of Social Services is living with the head of the family, as if they were spouses in marriage in accordance with article 30 of the [Social Security Act](#); Cap. 318.

(g) shall have the right to a widow's pension under articles 31 to 43 (both inclusive) of the [Social Security Act](#); Cap. 318.

(h) shall have the right upon the death of the other cohabitant, to apply for a retirement pension if he had been, or was entitled to be maintained by the deceased cohabitant under article 46 of the [Social Security Act](#); Cap. 318.

(i) shall have the right to payment of an age pension when both cohabitants qualify under article 66 of the [Social Security Act](#); Cap. 318.

(j) shall have the right to receive social benefits as a foster carer in accordance with article 76A of the [Social Security Act](#); Cap. 318.

(k) shall have the right to sickness assistance when the cohabitant is living with the head of the family during a period when such sickness assistance is being paid, or could be paid;

(l) shall have the right to unemployment benefit and to special unemployment benefit if the cohabitant is maintaining the other cohabitant in accordance with article 30 of the [Social Security Act](#); Cap. 318.

- Cap. 318. (m) shall have the right to maternity benefit and maternity leave benefit in accordance with articles 71 and 72 of the [Social Security Act](#);
- Cap. 318. (n) shall have the right to the supplementary allowance under article 73 of the [Social Security Act](#);
- Cap. 318. (o) shall have the right to children's allowance under articles 76, 80, 81 and 82 of the [Social Security Act](#);
- Cap. 318. (p) shall have the right to allowance in respect of children in care under articles 76A, 80, 81 and 82 of the [Social Security Act](#);
- Cap. 318. (q) shall have the right to an allowance for disabled children under articles 77, 80, 81 and 82 of the [Social Security Act](#);
- (r) shall have the right to have their dependent children live with the cohabitantes in the cohabitation home, as the case may be, unless otherwise provided by an order of the competent Court.
- Reciprocal rights and duties of cohabitants. **14.** (1) The cohabitants shall have equal rights and shall assume equal responsibilities during their cohabitation, and shall also have the duty to support each other morally and materially.
- (2) The cohabitants are bound, each in proportion to their means and their ability to work whether inside or outside the cohabitation home, as the interests of the family require, to maintain each other and to contribute towards the needs of the family:
- Provided that this duty of the cohabitants shall cease upon the dissolution of cohabitation.
- Duty of cohabitants towards children. **15.** (1) Cohabitation imposes on the cohabitants the obligation to look after, maintain, instruct and educate the dependent children taking into account the abilities, natural inclinations and aspirations of the children.
- (2) The obligation of the parents to provide maintenance according to sub-article (1), also includes the obligation to continue to provide adequate maintenance to the dependent children according to their means, and where it is not reasonably possible for the children, or any of them to maintain themselves adequately, due to the fact that:
- (a) they are students who are participating in full-time education, training or learning and are under the age of twenty-three (23); or
- Cap. 413. (b) they have a disability, as defined in the [Equal Opportunities \(Persons with Disability\) Act](#), whether such

disability is physical, mental or psychological.

16. (1) The cohabitation home shall be established where the cohabitants may by their common accord determine in accordance with their needs and the overriding interest of the family itself.

The cohabitation home.

(2) Where the cohabitation home is, wholly or in part, owned or otherwise held under any title separately by one of the cohabitants, such cohabitant may only assign by title *inter vivos* his right over the cohabitation home:

(a) with the consent of the other cohabitant; or

(b) where such consent is unreasonably withheld, with the authority of the competent Court; or

(c) in a judicial sale by auction at the instance of any creditor of the said cohabitant.

(3) The party who has not given his consent to a transfer, may file an action for the annulment of the said transfer which has not been effected in accordance with sub-article (2), within one (1) year from the registration of the transfer.

## PART V

### Dissolution of the Cohabitation

17. (1) The dissolution of the cohabitation may not take place except on the demand of one cohabitant against the other, or by mutual consent of the cohabitees, as provided in article 21.

Dissolution of the cohabitation.

(2) All requests for the dissolution of cohabitation shall be filed by means of an application before the Court, and without prejudice to the provisions of article 14, the provisions of article 37 of the [Civil Code](#) shall apply *mutatis mutandis*.

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(3) The Court shall, in the decree or judgement of the dissolution of cohabitation, order the Registrar of Courts to notify the dissolution of cohabitation to the Director of Public Registry within the period allowed for this purpose by the Court, so that the said decree or judgement shall be registered in the Public Registry.

18. (1) Where an application for the dissolution of the cohabitation is made by only one of the cohabitants, it shall not be necessary for the cohabitant making the demand to impute to the other party any fault leading to the making of such request.

Unilateral request for dissolution.

(2) The cohabitant making the request for the dissolution of cohabitation may, together with the same request, and without prejudice to the provisions of this article and of article 14, make all those requests that are permissible in a cause for separation in accordance with Sub-Title III of Title I of Book First of the [Civil Code](#).

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(3) The Court shall hear and determine these requests as provided in the said provisions *mutatis mutandis*:

Provided that, without prejudice to the provisions of this article and of article 14, the other cohabitant may put forward all those pleas which may be made in a cause for separation.

Cap. 16. (4) Without prejudice to the provisions of article 14, the Court shall have *mutatis mutandis* all the powers granted to it under Sub-Title III of Title I of Book First of the [Civil Code](#) with regard to orders which it is entitled to give *pendente lite*.

Cap. 16. (5) The provisions of articles 38, 40, 41, 44, 45, 48, 51, 52, 53, 58, 62, 63, 64 and 65 of the [Civil Code](#) shall not apply with regard to an action for the dissolution of cohabitation.

Cap. 16. (6) Without prejudice to the provisions of article 14, the provisions of articles 39, 46, 46A, 47, 54, 55, 55A, 56, 56A, 57 and 61 of the [Civil Code](#) shall apply *mutatis mutandis*.

Reconciliation *pendente lite*. 19. The action for dissolution of the cohabitation shall be extinguished by the reconciliation of the cohabitants.

Death of either of the cohabitants. 20. The death of either of the cohabitants shall extinguish the action for dissolution, even though said death takes place subsequent to the request.

Dissolution of cohabitation by mutual consent. 21. (1) Dissolution of cohabitation may, subject to the authority of the Court by means of a decree, be effected by mutual consent of the cohabitants by means of a public deed.

(2) The Court shall, before pronouncing such decree, admonish the parties as to the consequences of the dissolution, and shall endeavour to reconcile them, and may revoke, modify or add those conditions that it may deem fit in the circumstances.

(3) This decree shall have the same effects of a judgement given by the competent Court, and shall order the Registrar of Courts to notify the dissolution of cohabitation to the Director of Public Registry within the period allowed for this purpose by the Court, so that the said decree shall be registered in the Public Registry.

Order of the Court regarding the custody of children. 22. (1) The Court, on authorising the dissolution of cohabitation, shall in the said decree order in whose custody the children are to be placed.

(2) It shall be lawful for the Court to revoke or vary such orders at any time, in the best interest of the children.

Applicability of S.L. 12.20. 23. The provisions of the [Civil Court \(Family Section\), the First Hall of the Civil Court and the Court of Magistrates \(Gozo\) \(Superior Jurisdiction\) \(Family Section\) Regulations](#) applicable to cases of personal separation, shall apply *mutatis mutandis* to any action filed in

accordance to this Part.

24. The dissolution of the cohabitation shall only be operative with regard to third parties from the day on which the judgement or the public deed, as the case may be, shall have been enrolled in the Public Registry.

Effects on third parties.

## PART VI General Provisions

25. (1) When two cohabitants contract a marriage or civil union between them, the public deed of cohabitation shall be terminated *ipso facto* from the day on which the same marriage or civil union is contracted.

General provisions.

(2) The Director of Public Registry shall record an annotation of this on the Cohabitation Certificate.

26. None of the provisions of this Act shall prejudice the rights of third parties in relation to any cohabitant.

Rights of third parties.

27. (1) A person who immediately prior to the termination of the relationship as a couple, or the other party is deceased was continually and habitually living with another person as a couple, and who has been living with the same person for a period of not less than two (2) years, and whose relationship is not regulated under any law, may, within twelve (12) months, file an application before the Court, requesting the following rights, as the case may be:

Right of action for *de facto* cohabitations.

(a) the right of habitation in the common home, for a period that shall be determined by the Court, limitedly to be given time for the purposes of finding an alternative residence; or

(b) where the other person is deceased, the right of habitation in the common home, for a period that shall be determined by the Court, when the said common home is held in full ownership or emphyteusis by the deceased person, either separately or jointly with the surviving person, limitedly to be given time for the purposes of finding an alternative residence:

Provided that the right conferred in this paragraph shall subsist even where such right has the effect of reducing, during the said period, the reserved portion due to any other person;

(c) the right to be compensated for any patrimonial loss which that person may have suffered, where the other person has enriched himself to their detriment, in accordance with articles 1028A and 1028B of the [Civil Code](#).

Cap. 16.

(2) During the pendency of the action, the plaintiff may demand

that the Court shall determine who shall reside in the common home during the pendency of such action, whether the plaintiff has left the common home or not.

(3) The rights mentioned in paragraphs (1)(a) and (b) shall cease if the plaintiff contracts a marriage, civil union, or enters cohabitation with another person.

(4) For the purposes of this article "common home" means that home within which the two (2) persons are living together, belonging to either one of them or to both of them, in whichever portion between them, and whether or not they possess it by title of lease or any other title, whether jointly or separately.

(5) The Court shall, in its judgment, order the Registrar of Courts to notify its judgment to the Director of the Public Registry within the period allowed for this purpose by the Court, so that the said judgment shall be registered in the Public Registry.

Conflict of interest.

**28.** Wherever in the Laws of Malta it is considered that there is, or may be a conflict of interest due to affinity between two persons, in any circumstance, this shall be construed as applying also to the cohabitants.

Power of the Minister to make regulations.

**29.** The Minister may make regulations to implement and to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may provide for any consequential matter, incidental to or connected to the provisions of this Act.

#### PART VII Transitory Provisions

Applicability.  
Cap. 571.

**30.** Immediately after the entry into force of this Act, the provisions of the [Cohabitation Act](#), shall be revoked, provided that:

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(a) the provisions of the [Cohabitation Act](#) shall remain in effect for matters concerning rights acquired in a *de facto* cohabitation; and

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(b) the provisions of the [Cohabitation Act](#) providing for cohabitations constituted by means of a unilateral declaration shall remain in effect and shall be applicable limitedly to cohabitations which were constituted by virtue of a unilateral declaration registered prior to the entry into force of this Act.

Cohabitations constituted by virtue of a contract.

**31.** This Act shall have no effect on those cohabitations constituted by virtue of a contract which were registered prior to the entry into force of the said Act. Such cohabitations shall remain to be regulated by the dispositions which were in effect at the time when they were constituted and registered.

32. Without prejudice to the provisions of this Part, the Cohabitation Act is hereby being repealed, without prejudice to anything done or omitted to be done thereunder.

Deletion of Act  
XV of 2017.  
Cap. 571.

## SCHEDULE (Article 5)

PUBLIC REGISTRY  REGISTRU PUBBLIKU		
CERTIFICATE OF COHABITATION CERTIFIKAT TA' KOABITAZZJONI		
PARTICULARS OF THE COHABITANTS - TAGHRIF DWAR IL-KOABITANTI	COHABITANT (1) / KOABITANT (1)	COHABITANT (2) / KOABITANT (2)
Name and surname <i>Isem u kunjom</i>		
Date and place of birth <i>Data u lok tat-twelid</i>		
Identification document <i>Dokument ta' identifikazzjoni</i>		
Name and surname of parents, including their surname at birth <i>Isem u kunjom il-ġenituri, inkluż il-kunjom fit-twelid</i>	The parent (1a) <i>Il-ġenitur</i>	The parent (2a) <i>Il-ġenitur</i>
Cohabitation home <i>Dar tal-koabitazzjoni</i>	The parent (1b) <i>Il-ġenitur</i>	The parent (2b) <i>Il-ġenitur</i>
Start date of cohabitation <i>Data tal-bidu tal-koabitazzjoni</i>		
ANNOTATIONS ANNOTAZZJONIJIET		
Signature of the Director or other officer authorised to act in his stead. <i>Firma tad-Direttur jew ta' uffiċjal iehor li jagħmel floku.</i>	Registration date of public deed. <i>Data tar-registrazzjoni tal-att pubbliku.</i>	Progressive number of registration. <i>Numru progressiv ta' registrazzjoni.</i>