

## Malta - Constitution

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### Chapter I The Republic of Malta

#### Section 1 [State Principles]

- (1) Malta is a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual.
- (2) The territories of Malta consist of those territories comprised in Malta immediately before the appointed day, including the territorial waters thereof, or of such territories and waters as Parliament may from time to time by law determine.
- (3) Malta is a neutral state actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance. Such a status will, in particular, imply that:
  - (a) no foreign military base will be permitted on Maltese territory;
  - (b) no military facilities in Malta will be allowed to be used by any foreign forces except at the request of the Government of Malta, and only in the following cases:
    - (i) in the exercise of the inherent right of self-defence in the event of any armed violation of the area over which the Republic of Malta has sovereignty, or in pursuance of measures or actions decided by the Security Council of the United Nations; or
    - (ii) whenever there exists a threat to the sovereignty, independence, neutrality, unity or territorial integrity of the Republic of Malta;
  - (c) except as aforesaid, no other facilities in Malta will be allowed to be used in such manner or extent as will amount to the presence in Malta of a concentration of foreign forces;
  - (d) except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta;
  - (e) the shipyards of the Republic of Malta will be used for civil commercial purposes, but may also be used within reasonable limits of time and quantity, for the repair of military vessels which have been put in a state of non-combat or for the construction of vessels, and in accordance with the principles of non-alignment the said shipyards will be denied to the military vessels of the two superpowers.

### **Section 2 [State Religion]**

- (1) The religion of Malta is the Roman Catholic Apostolic Religion.
- (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
- (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

### **Section 3 [National Symbols]**

- (1) The National Flag of Malta consists of two equal vertical stripes, white in the hoist and red in the fly.
- (2) A representation of the George Cross awarded to Malta by His Majesty King George the Sixth on the 15th April, 1942 is carried, edged with red, in the canton of the white stripe.

### **Section 4 [National Anthem]**

The National Anthem of Malta is "L-Innu Malti" opening with the words "Lil din l-Art helwa l-Omm li tatna isimha".

### **Section 5 [National Language]**

- (1) The National language of Malta is the Maltese language.
- (2) The Maltese and the English languages and such other language as may be prescribed by Parliament (by a law passed by not less than two-thirds of all the members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages:  
Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language.
- (3) The language of the courts shall be the Maltese language:  
Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.
- (4) The House of Representatives may, in regulating its own procedure, determine the language or languages that shall be used in Parliamentary proceedings and records.

### **Section 6 [Supremacy of the Constitution]**

Subject to the provisions of subsections (7) and (9) of section 47 and of section 66 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

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## **Chapter II Declaration of Principles**

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**Section 7 [Work]**

The State recognises the right of all citizens to work and shall promote such conditions as will make this right effective.

**Section 8 [Culture, Science]**

The State shall promote the development of culture and scientific and technical research.

**Section 9 [Environment, History, Arts]**

The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.

**Section 10 [Primary Education]**

Primary education shall be compulsory and in State schools shall be free of charge.

**Section 11 [Education]**

(1) Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.

(2) The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive examinations.

**Section 12 [Work, Vocational Training]**

(1) The State shall protect work.

(2) It shall provide for the professional or vocational training and advancement of workers.

**Section 13 [Working Hours, Vacation]**

The maximum number of hours of work per day shall be fixed by law.

(2) The worker is entitled to a weekly day of rest and to annual holidays with pay; he cannot renounce this right.

**Section 14 [Gender Equality]**

The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men.

**Section 15 [Working Age]**

The minimum age for paid labour shall be prescribed by law.

**Section 16 [Working Children]**

The State shall provide for safeguarding the labour of minors and assure to them the right to equal pay for equal work.

### **Section 17 [Disability]**

- (1) Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.
- (2) Workers are entitled to reasonable insurance on a contributory basis for their requirements in case of accident, illness, disability, old-age and involuntary unemployment.
- (3) Disabled persons and persons incapable of work are entitled to education and vocational training.

### **Section 18 [Private Economy]**

The State shall encourage private economic enterprise.

### **Section 19 [Trade]**

The State shall provide for the protection and development of artisan trades.

### **Section 20 [Co-operatives]**

The State recognises the social functions of co-operatives and shall encourage their development.

### **Section 21 [Guiding Principles are no Rights]**

The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.

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## **Chapter III Citizenship**

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### **Section 22 [Citizenship]**

(1) Every person who, having been born in Malta, is on the day before the appointed day a citizen of the United Kingdom and Colonies shall become a citizen of Malta on the appointed day:

Provided that a person shall not become a citizen of Malta by virtue of this subsection if neither of his parents was born in Malta.

(2) Every person who, having been born outside Malta, is on the day before the appointed day a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Malta in accordance with the provisions of subsection (1) of this section, become a citizen of Malta on the appointed day.

### **Section 23 [Registration]**

(1) Any person who, but for the proviso to subsection (1) of section 22 of this Constitution,

would be a citizen of Malta by virtue of that subsection shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta:

Provided that a person who has not attained the age of eighteen years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

(2) Any person who on the day before the appointed day is or has been married to a person --

(a) who becomes a citizen of Malta by virtue of section 22 of this Constitution: or

(b) who having died before the appointed day would, but for his or her death, have become a citizen of Malta by virtue of that section, shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(3) Any person who on the day before the appointed day is or has been married to a person who, on or after the appointed day, becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(4) Any woman who on the day before the appointed day has been married to a person who becomes, or would, but for his death, have become entitled to be registered as a citizen of Malta under subsection (1) of this section, but whose marriage has been terminated by death or by such dissolution as is valid under the law of Malta shall be entitled, upon making application before the expiration of two years from the appointed day and in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Malta.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions section 22 of this Constitution.

(6) Any person who, in accordance with paragraph (a) or paragraph (b) of subsection (4) of section 44 of this Constitution is deemed to be a citizen of Malta for the purposes of that section, and who has returned to, and taken up permanent residence in, Malta, shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(7) Notwithstanding any other provisions of this Constitution, a person shall not be entitled to be registered as a citizen of Malta more than once under the same provision of this Constitution.

(8) No person shall after the 1st August, 1989, be entitled to be registered as a citizen of Malta in virtue of subsections (2) and (3) of this section, unless:

(a) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and

(b) on the date of the application such person was still married to a citizen of Malta, or is the widow or widower of a person who was a citizen of Malta or of a person who having died

before the appointed day would, but for his or her death, have become a citizen of Malta by virtue of section 22 of this Constitution.

#### **Section 24 [Commonwealth Citizens]**

(1) Any person who on the day before the appointed day was a citizen of the United Kingdom and or Colonies --

- (a) having become such a citizen under the British Nationality Act, 1948t by virtue of his having been naturalised in Malta as a British subject before that Act came into force; or
- (b) having become such a citizen by virtue of his having been naturalised or registered in Malta under that Act,

shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta: Provided that a person who has not attained the age of eighteen years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

(2) Any person who on the day before the appointed day --

- (a) was a Commonwealth citizen or a citizen of the Republic of Ireland; and
- (b) is descended in the male line from a person born in Malta,

and was on the day before the appointed day ordinarily resident in Malta and had been so resident throughout the period of five years immediately preceding that day shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta:

Provided that a person who has not attained the age of eighteen years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

#### **Section 25 [Citizenship by Birth]**

(1) Every person born in Malta on or after the appointed day shall become a citizen of Malta at the date of his birth:

Provided that in the case of a person born on or before the 31st July, 1989, such person shall not become a citizen of Malta by virtue of this subsection if at the time of his birth --

- (a) neither of his parents was a citizen of Malta and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Malta; or
- (b) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy:

Provided further that in the case of a person born on or after the 1st August, 1989 such person shall not become a citizen of Malta by virtue of this subsection unless at the time of his birth his father or his mother is:

(a) a citizen of Malta; or

(b) person referred to in paragraphs (a) or (b) of subsection (4) of section 44 of this Constitution.

(2) A person born outside Malta on or after the appointed day shall become a citizen of Malta at the date of his birth.

(a) in the case of a person born on or before the 31st July, 1989, if at the date of such person's birth, his father is a citizen of Malta otherwise than by virtue of this subsection or subsection (2) of section 22 of this Constitution; and

(b) in the case of a person born on or after the 1st August, 1989, if at the date of such person's birth his father or his mother is a citizen of Malta otherwise than by virtue of this subsection or subsection (2) of section 22 of this Constitution.

### **Section 26 [Citizenship by Marriage]**

(1) Any person who on or after the appointed day marries a person who is or becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

(2) With effect from the 1st August, 1989, no person shall be entitled to be registered as a citizen of Malta in virtue of this section unless:

(a) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and

(b) on the date of the application such person was still married to a citizen of Malta or is the widow or widower of a person who was a citizen of Malta at the time of his or her death.

### **Section 27 [No Double Citizenship]**

(1) Any person who, upon his attainment of the age of eighteen years, is a citizen of Malta and also a citizen of some country other than Malta shall cease to be a citizen of Malta upon his attainment of the age of nineteen years (or, in the case of a person of unsound mind, at such later date as may be prescribed) unless he has renounced his citizenship of that other country and, in the case of a person who is a citizen of Malta by virtue of subsection (2) of section 22 of this Constitution, has made and registered such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that in relation to a person --

(a) who attains the age of eighteen years on or before the 20th September, 1966 this subsection shall apply as if for the reference to his attainment of the age of nineteen years there were substituted a reference to the 20th September, 1967; and

(b) who is or was a citizen of Malta in virtue of subsection (2) of section 25 of this Constitution, in virtue of his father being deemed never to have lost his citizenship of Malta in accordance with the provisions of paragraph (b) of the proviso to subsection (3) of this section, and who attained the age of eighteen years prior to the 1st August, 1989, this subsection shall apply as if for the reference to his attainment of the age of nineteen years, there were substituted a reference to the 1st August, 1990:

Provided further that this subsection shall not apply in the case of a person who is a citizen of Malta in virtue of subsection (1) of section 25 of this Constitution and who after emigrating to another country prior to his nineteenth birthday acquires the citizenship of that other country.

So however that if such person returns to reside in Malta before the expiration of six years from the date of his emigration he shall cease to be a citizen of Malta unless he has renounced his citizenship of that other country either.

(a) after attaining the age of eighteen years and before attaining the age of nineteen years; or

(b) before the expiration of one year from his return to Malta;

whichever is the later. Provided that any stay in Malta for a period or periods not exceeding three months in any one year or of twelve months in the aggregate shall not be taken into account and shall not be considered as a return to Malta.

(2) A person who --

(a) has attained the age of eighteen years before the appointed day; and

(b) becomes a citizen of Malta on that day by virtue of the provisions of section 22 of this Constitution; and

(c) is immediately after that day also a citizen of some country other than Malta shall cease to be a citizen of Malta on the expiration of three years from the appointed day (or, in the case of a person of unsound mind, at such later date as may be prescribed) unless he has renounced his citizenship of that other country and, in the case of a person who is a citizen of Malta by virtue of subsection (2) of section 22 of this Constitution, has made and registered such declaration of his intentions concerning residence or employment as may be prescribed.

(3) A citizen of Malta shall cease to be such a citizen if --

(a) having attained the age of eighteen years, he acquires the citizenship of some country other than Malta by a voluntary act (other than marriage); or

(b) having attained the age of eighteen years, he otherwise acquires the citizenship of some country other than Malta and has not, before the expiration of one year after the date on which he acquired the citizenship of that other country, renounced his citizenship of that other country and made and registered such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that --

(a) this subsection shall not apply in the case of a person who is a citizen of Malta in virtue of subsection (1) of section 22 or subsection (1) of section 25 of this Constitution and who after emigrating to another country acquires on or after the 1st August, 1989, the citizenship of that other country; and

(b) a person who after emigrating to another country and who before the 1st August, 1989, has acquired the citizenship of that other country and who prior to acquiring such citizenship was a citizen of Malta in virtue of subsection (1) of section 22 or of subsection (1) of section 25 of this Constitution, and in accordance with the law of the country of which such person has become a citizen such person may retain dual citizenship, shall be deemed



not to have lost his citizenship of Malta on taking up the citizenship of the country to which he had emigrated, so however that this paragraph shall not apply if, not later than the 1st August, 1990, such person makes a declaration in such manner as may be prescribed wherein he shows his intention to confirm that he has ceased to be a citizen of Malta on his taking up the citizenship of such other country;

So however that if such person returns to reside in Malta before the expiration of six years from the date of his emigration he shall cease to be a citizen of Malta unless he has renounced his citizenship of that other country before the expiration of one year from his return to Malta. Any stay in Malta for a period or periods not exceeding three months in any one year or of twelve months in the aggregate, shall not be taken into account and shall not be considered as a return to Malta.

(4) A person who --

(a) becomes a citizen of Malta by registration under section 23, 24 or 26 of this Constitution; and

(b) is immediately after the day on which he becomes a citizen of Malta also a citizen of some other country,

shall cease to be a citizen of Malta on the expiration of six months after the date on which he acquired citizenship of Malta (or, in the case of a person of unsound mind, at such later date as may be prescribed) unless he has renounced his citizenship of that other country, and made and registered such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that, in relation to a person who becomes a citizen of Malta by registration as aforesaid on or before the 20th September, 1966, this subsection shall apply as if for the reference to the expiration of six months after the date on which he acquired the citizenship of Malta there were substituted a reference to the 20th March, 1967.

(5) For the purposes of this section and of any law relating to citizenship, where, under the law of a country other than Malta, a person cannot renounce his citizenship of that other country, he may instead make such declaration concerning such citizenship as may be prescribed:

Provided that where any person, having made a declaration under this subsection, can, if such declaration is made on or before 31st December, 1974, at any time after that date, and, if made after that date at any time after the declaration is made, renounce the citizenship of the other country, such person shall renounce such citizenship within six months after the date aforesaid or after the date on which he can renounce such citizenship, which ever is the later date, or within such further period as the competent authority may allow or as may be prescribed, and such person shall cease to be a citizen of Malta on the expiration of such period, or of such extended period, if he has not then made the requisite renunciation.

(6) Provision may be made by or under an Act of Parliament extending beyond the period specified in any provision of this section the period in which any person may make a renunciation of citizenship, or make or register a declaration for the purposes of that provision of this section, and if such provision is made that person shall not cease to be a

citizen of Malta upon the expiration of the period specified in this section but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, or made or registered the declaration, as the case may be.

### **Section 28 [Acknowledged Citizenship]**

(1) Every person who under this Constitution or any Act of Parliament is a citizen of Malta or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act, 1948 or who continues to be a British subject under section 2 of that Act shall by virtue of that status have the status of a Commonwealth citizen.

(3) The countries to which this section applies are those in the Fourth Schedule to this Constitution.

(4) The President may by Proclamation amend, add to, revoke or substitute the list of countries in the Fourth Schedule to Constitution.

### **Section 29 [Protection of Commonwealth Citizens]**

(1) A Commonwealth citizen who is not a citizen of Malta or a citizen of the Republic of Ireland who is not a citizen of Malta shall not be guilty of an offence against any law in force in Malta by reason of anything done or omitted in any part of the Commonwealth other than Malta or in the Republic of Ireland or in any foreign country unless.

(a) the act or omission would be an offence if he were an alien; and

(b) in the case of an act or omission in any part of the Commonwealth or in the Republic of Ireland, it would be an offence if the country in which the act was done or the omission made were a foreign country.

(2) In this section "foreign country" means country (other than the Republic of Ireland) that is not a part of the Commonwealth.

### **Section 30 [Citizenship by Law]**

(1) Parliament may make provision --

(a) for the acquisition of citizenship of Malta by persons who do not become citizens of Malta by virtue of the provisions of this Chapter;

(b) for depriving of his citizenship of Malta any person who is a citizen of Malta otherwise than by virtue of --

(i) section 22 or subsection (1) of section 25 of this Constitution; or

(ii) subsection (2) of section 25 of this Constitution in relation to a person born outside Malta whose father at the date of that person's birth is a citizen of Malta by virtue of subsection (1) of section 22 or subsection (1) of section 25 of this Constitution;

(c) for the renunciation by any person of his citizenship of Malta.

(2) Provision may be made by or under an Act of Parliament for extending the period in

which any person may make an application for registration as a citizen of Malta, make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of the provisions of this Chapter.

### **Section 31 [Definitions]**

(1) In this Chapter --

"alien" means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act, 1948.

"Minister" means the Minister for the time being responsible for matters relating to Maltese citizenship and, to the extent of the authority given, includes any person authorised by such Minister to act on his behalf;

"prescribed" means prescribed by or under any Act of Parliament.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) (a) In this Chapter:

(i) any reference to the father of a person shall, in relation to a person born out of wedlock and not legitimated? be construed as a reference to the mother of that person;

(ii) any reference to the father of a person who was lawfully adopted before the 1st January, 1977, shall be construed as a reference to the adopter and in the case of a joint adoption, the male adopter; and

(iii) any reference to the parents of a person who was lawfully adopted on or after the 1st August 1989, and who was on the effective date of his adoption under the age of ten years, shall be construed as a reference to the adopters;

(b) for the purposes of this chapter:

(i) an adoption of any person made on or after the 1st January, 1977, and before the 1st August, 1989, shall be without effect and shall be treated as if it had not been made;

(ii) an adoption of any person made on or after the 1st August, 1989, who on the effective date of his adoption was ten years or older, shall be without effect and shall be treated as if it had not been made; and

(c) The Minister shall not be required to assign any reason for the grant or refusal of any application under sections 23 and 26 of this Constitution and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before the appointed day and the birth occurred on or after

the appointed day, the national status that the father would have had if he had died on the appointed day shall be deemed to be his national status at the time of his death.

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## **Chapter IV Fundamental Rights and Freedoms of the Individual**

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### **Section 32 [General Provision]**

Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely --

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

### **Section 33 [Life]**

(1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case --

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

### **Section 34 [Personal Liberty]**

(1) No person shall be deprived of his personal liberty save as may be authorised by law in the following cases, that is to say.

- (a) in consequence of his unfitness to plead to a criminal charge;

- (b) in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;
  - (c) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;
  - (d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by Law;
  - (e) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;
  - (f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
  - (g) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
  - (h) for the purpose of preventing the spread of an infectious or contagious disease;
  - (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
  - (j) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.
- (2) Any person who is arrested or detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention: Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable.
- (3) Any person who is arrested or detained --
- (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought not later than forty-eight hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.
- (4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question

authorises the taking during such a period of public emergency as is referred to in paragraph (a) or (e) of subsection (2) of section 47 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

(7) On any review by a tribunal in pursuance of the last foregoing subsection of the ease of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

### **Section 35 [No Forced Labour]**

(1) No person shall be required to perform forced labour.

(2) For the purposes of this section, the expression "forced labour" does not include --

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

### **Section 36 [No Inhuman or Degrading Treatment]**

(1) No person shall be subjected to inhuman or degrading punishment or treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.

(3) (a) No law shall provide for the imposition of collective punishments.

(b) Nothing in this subsection shall preclude the imposition of collective punishments upon

the members of a disciplined force in accordance with the law regulating the discipline of that force.

### **Section 37 [Property]**

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition.

(a) for the payment of adequate compensation;

(b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

(c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property --

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;

(c) upon the attempted removal of the property out of or into Malta in contravention of any law;

(d) by way of the taking of a sample for the purposes of any law;

(e) where the property consists of an animal upon its being found trespassing or straying;

(f) as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;

(g) by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up or liquidated;

(h) in the execution of judgements or orders of courts:

(i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(j) in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain or the rights of succession competent to the Government of Malta; or

(k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon --

(i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.

(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by any legislature in Malta.

### **Section 38 [Search, Seizure]**

(1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision --

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any property in such a manner as to promote the public benefit;

(b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) that authorises a department of the Government of Malta or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property or installation which is lawfully on those premises and which belongs to that Government, that authority, or that body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing a judgment or order of a court, the search of any person or property by order of a court or entry upon any premises by such order or that is necessary for the purpose of preventing or detecting criminal offence, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.



### **Section 39 [Arrest]**

(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and, where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(3) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives --

(a) in proceedings before a court of voluntary jurisdiction and other proceedings which, in the practice of the Courts in Malta are, or are of the same nature as those which are, disposed of in chambers;

(b) in proceedings under any law relating to income tax; or

(c) to such extent as the court or other authority.

(i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality or decency, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(6) Every person who is charged with a criminal offence --

(a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;

(b) shall be given adequate time and facilities for the preparation of his defence;

(c) shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense;

(d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of

witnesses subject to the payment of their reasonable expenses, and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(7) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so however that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

(11) In this section "legal representative" means a person entitled to practice in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator.

#### **Section 40 [Religion, Belief]**

(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

(2) No person shall be required to receive instruction in religion or to show knowledge or

proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto: Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

#### **Section 41 [Expression]**

(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinion without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision --

(a) that is reasonably required --

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the reputations rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:

Provided that provision may be made by law --

(a) prohibiting or restricting the editing or printing of any such newspaper or journal by

persons under twenty-one years of age; and

(b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.

(5) No person shall be deprived of his citizenship under any provisions made under section 301(1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions.

#### **Section 42 [Assembly, Association]**

(1) Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision --

(a) that is reasonably required --

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(b) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) For the purposes of this section, any provision in any law prohibiting the holding of public meetings or demonstrations in any one or more particular cities, towns, suburbs or villages shall be held to be a provision which is not reasonably justifiable in a democratic society.

#### **Section 43 [Extradition]**

(1) Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law.

(2) No person shall be extradited for an offence of a political character.

(3) No citizen of Malta shall be removed from Malta except as a result of extradition proceedings or under any such law as is referred to in section 44(3) (b) of this Constitution.

(4) The provisions made by or under the Extradition Act, 1978, as for the time being in force, for the removal of persons from Malta to another Commonwealth country to undergo trial or

punishment in that country in respect of an offence committed in that country and any general arrangements for the extradition of persons between Commonwealth countries to which Malta for the time being adheres shall be deemed, for the purposes of subsection (1) of this section, to be arrangements made by treaty, and subsection (2) shall not apply in relation to the removal or extradition of a person under such provisions or arrangements.

#### **Section 44 [Movement]**

(1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

(2) Any restriction on a citizen's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision --

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(b) for the imposition of restrictions on the freedom of movement of any citizen of Malta who is not a citizen by virtue of section 22(1) or 25(1) of this Constitution;

(c) for the imposition of restrictions upon the movement or residence, within Malta of public officers; or

(d) for the imposition of restrictions on the right of any person to leave Malta that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) For the purposes of this section any person --

(a) who has emigrated from Malta (whether before on or after the appointed day) and, having been a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution, has ceased to be such a citizen; or

(b) who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 22(1) of this Constitution; or

(c) who is the wife of a person mentioned in paragraph (a) or (b) of this subsection or of a person who is a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution and is living with that person or is the child under twenty-one years of age of such a person, shall be deemed to be a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution.

(5) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (34(a)) of this section so requests at any time during

the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Civil Court, First Hall.

(6) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

#### **Section 45 [Discrimination]**

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision

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(a) for the appropriation of public revenues or other public funds; or

(b) with respect to persons who are not citizens of Malta; or

(c) with respect to adoption, marriage, dissolution of marriage, burial, devolution of property on death or any matters of personal law not herein before specified; or

(d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description and to any other provision of this Constitution, is reasonably justifiable in a democratic society; or

(e) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency;

Provided that paragraph (c) of this subsection shall not apply to any law which makes any provision that is discriminatory, either of itself or in its effect by affording different treatment to different persons attributable wholly or mainly to their respective description by sex.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision:

(a) with respect to qualifications for service or conditions of service in any disciplined force; or

(b) with respect to qualifications (not being qualifications specifically relating to sex) for service as a public officer or for service of a local government authority or a body corporate established for public purposes by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision (not being provisions specifically relating to sex), whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 38, 40, 41, 42 and 44 of this Constitution, being such a restriction as is authorised by section 38(2), 40(2), 41(2), 42(2) or 44(3).

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of this section.

(10) Until the expiration of a period of two years commencing on the 1st July, 1991, nothing contained in any law made before the 1st July, 1991, shall be held to be inconsistent with the provisions of this section, in so far as that law provides for different treatment to different persons attributable wholly or mainly to their respective description by sex.

(11) Nothing in the provisions of this section shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, in so far as such law, thing done, procedure or arrangement provides for the taking of special measures aimed at accelerating de facto equality between men and women, and in so far only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society.

#### **Section 46 [Recourse to the Courts]**

(1) Subject to the provisions of subsections (6) and (7) of this section, any person who alleges that any of the provisions of sections 33 to 45 (inclusive) of this Constitution has been, is

being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 33 to 45 (inclusive) to the protection of which the person concerned is entitled: Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection (4) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.

(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

(6) Provision may be made by or under an Act of Parliament for conferring upon the Civil Court, First Hall, such powers in addition to those conferred by this section as are necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of Court making provision with respect to the practice and procedure of the Courts of Malta for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of those Courts, and shall be designed to secure that the procedure shall be by application and that the hearing shall be as expeditious as possible.

#### **Section 47 [Definitions]**

(1) In this Chapter, save where the context otherwise requires, the following expressions shall have the following meanings respectively, that is to say -

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Malta other than a court constituted by or under a disciplinary law and in sections 33 and 35 of this Constitution includes, in relation to an



offence against a disciplinary law, a court so constituted;

"disciplinary law" means a law regulating the discipline --

- (a) of any disciplined force; or
- (b) of persons serving prison sentences;

"disciplined force" means --

- (a) a naval, military or air force of the Government of Malta;
- (b) the Malta Police Force;
- (c) any other police force established by law in Malta.
- (d) the Malta prison service;

"member", in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter "period of public emergency" means any period during which --

- (a) Malta is engaged in any war; or
- (b) there is in force a proclamation by the President declaring that a state of public emergency exists; or
- (c) there is in force a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the Members of the House declaring that democratic institutions in Malta are threatened by subversion.

(3) (a) Where any proclamation of emergency has been made, the occasion therefor shall forthwith be communicated to the House of Representatives and, if the House is then separated by such adjournment or prorogation as will not expire within ten days the President shall by proclamation summon it to meet within five days and it shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if it had stood adjourned or prorogued to that day.

(b) A proclamation of emergency shall, unless it is sooner revoked by the President, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under the next following paragraph, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(c) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this paragraph) a resolution is passed by the House of Representatives approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(4) A resolution such as is referred to in paragraph (c) of subsection (2) of this section shall, unless it is sooner revoked by the House of Representatives, cease to be in force at the expiration of twelve months beginning on the date on which it was passed or such shorter period as may be specified therein, but without prejudice to the passing of another resolution by the House of Representatives in the manner prescribed by that paragraph at or before the end of that period.

(5) In relation to any person who is a member of a disciplined force raised under any law in

force in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 33, 35 and 36.

(6) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(7) Until the expiration of a period ending on the 30th June, 1993, nothing contained in any such law as is specified in the First Schedule to this Constitution and, until the expiration of a period of three years commencing with the appointed day, nothing contained in any other law made before the appointed day shall be held to be inconsistent with the provisions of sections 33 to 45 (inclusive) of this Chapter and, subject as aforesaid, nothing done under the authority of any such law shall be held to be done in contravention of those sections.

(8) Where any provision of law enacted before the appointed day is held to be inconsistent with any of the provisions of sections 33 to 45 (inclusive) of this Chapter, no person shall be entitled to compensation in respect of anything done under the authority of that provision before it was so held to be inconsistent.

(9) Nothing in section 37 of this Constitution shall affect the operation of any law in force immediately before 3rd March 1962 or any law made on or after that date that amends or replaces any law in force immediately before that date (or such a law as from time to time amended or replaced in the manner described in this subsection) and that does not --

(a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;

(b) add to the purposes for which or circumstances in which such property may be taken possession of or acquired;

(c) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or interested in the property; or

(d) deprive any person of any right such as is mentioned in paragraph (b) or paragraph (c) of section 37(1) of this Constitution.

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## **Chapter V The President**

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### **Section 48 [Appointment]**

(1) There shall be a President of Malta who shall be appointed by Resolution of the House of Representatives.

(2) A person shall not be qualified to be appointed to the office of President if --

(a) he is not a citizen of Malta; or

(b) he holds or has held the office of Chief Justice or other judge of the Superior Courts; or  
(c) he is not eligible for appointment to or to act in any public office in accordance with sections 109, 118 and 120 of this Constitution.

(3) The office of President shall become vacant --

(a) on the expiration of five years from the date of the appointment to that office; or

(b) if the holder of the office is removed from office by Resolution of the House of Representatives on the ground of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or misbehaviour.

### **Section 49 [Vacancy]**

Whenever the office of President is temporarily vacant, and until a new President is appointed, and whenever the holder of the office is absent from Malta or on vacation or is for any reason unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by such person as the Prime Minister, after consultation with the Leader of the Opposition, may appoint or, if there is no person in Malta so appointed and able to perform those functions, by the Chief Justice.

### **Section 50 [Oath]**

A person appointed to or assuming the functions of the office of President shall, before entering upon that office, take and subscribe the oath of office set out in the Second Schedule to this Constitution. Any person appointed to the office of President under subsection (1) of section 48 of this Constitution shall take the oath of office before the House.

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## **Chapter VI Parliament**

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### **Part I Composition of Parliament**

#### **Section 51 [Composition]**

There shall be a Parliament of Malta which shall consist of the President and a House of Representatives.

#### **Section 52 [House of Representatives]**

(1) Subject to the provisions of this Chapter, the House of Representatives shall consist of such number of members, being an odd number and divisible by the number of electoral divisions, as Parliament shall from time to time by law determine. Such members shall be elected in the manner provided by or under any law for the time being in force in Malta in equal proportions from the electoral divisions referred to in section 56 of this Constitution,

each division returning such number of members, being not less than five and not more than seven as Parliament shall from time to time by law determine; and such members shall be known as "Members of Parliament".

Provided that where.

(i) at any general election, a political party obtains in the aggregate more than fifty per centum of all the valid votes cast at that election, as credited to its candidates by the Electoral Commission at the first count of all the votes, but the number of its candidates elected at such election is less than the total of all the other candidates so elected; or

(ii) at a general election which is contested by more than two political parties and in which only candidates of two of such parties are elected, a political party obtains a percentage of all the valid votes cast at such election, as credited to its candidates by the Electoral Commission at the first count of all the votes, which is greater than that obtained by any one other party, but the number of its candidates elected at such election is less than the number of the other candidates so elected, the number of members of the House of Representatives shall be increased by as many members as may be necessary in order that the party obtaining more than fifty per centum, or the larger percentage, of all the valid votes, as the case may be, shall have one member more than the total of the other candidates elected at that election; and, in any such case, such persons shall be declared by the Electoral Commission to be elected to fill the additional seats created by this proviso who, being candidates of the party last mentioned at such elections, were credited by the Electoral Commission at the last count, with the highest or next higher number of votes without being elected, irrespective of the division in which such highest or higher number of votes occurs.

(2) If any person who is not a member of the House of Representatives is elected to be Speaker of the House he shall, by virtue of holding the office of Speaker, be a member of the House in addition to the other members:

Provided that in any such case the Speaker shall not be treated as a member of the House for the purpose of establishing the number of votes required to support a bill for any of the purposes of section 66 of this Constitution.

### **Section 53 [Qualification]**

Subject to the provisions of section 54 of this Constitution, a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he has the qualifications for registration as a voter for the election of members of the House of Representatives mentioned in section 57 of this Constitution.

### **Section 54 [Incompatibility]**

(1) No person shall be qualified to be elected as a member of the House of Representatives --

(a) if he is a citizen of a country other than Malta having become such a citizen voluntarily or is under a declaration of allegiance to such a country;

(b) save as otherwise provided by Parliament, if he holds or is acting in any public office or is a member of the armed forces of the Government of Malta;

(c) if he is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, a contract with the Government of Malta being a contract of works or a contract for the supply of merchandise to be used in the service of the public and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract and his interest, or the interest of any such partnership or company, therein;

(d) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malta;

(e) if he is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined in Malta to be of unsound mind;

(f) if he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called), exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(g) if he holds or is acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election of members of the House of Representatives or the compilation or revision of any electoral register;

(h) if he is disqualified for membership of the House of Representatives by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

(2) For the purposes of paragraph (f) of subsection (1) of this section --

(a) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them exceeds twelve months, but if any one of them exceeds that term they shall be regarded as one sentence; and

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

(3) A person shall not be treated as holding, or acting in a public office for the purpose of paragraph (b) of subsection (1) of this section --

(a) if he is on leave of absence pending relinquishment of a public office;

(b) if he is a teacher at the University of Malta who is not by the terms of his employment prevented from the private practice of his profession or called upon to place his whole time at the disposal of the Government of Malta.

## **Section 55 [Vacancy]**

(1) The seat of a member of Parliament shall become vacant --

(a) upon the next dissolution of Parliament after his election;

(b) if he resigns his seat by writing under his hand addressed to the Speaker or, if the office of Speaker is vacant or the Speaker is absent from Malta, to the Deputy Speaker;

(c) if he becomes a party to a contract with the Government of Malta being a contract of works or a contract for the supply of merchandise to be used in the service of the public, or if

any partnership in which he is a partner with unlimited liability or a company of which he is a director or manager becomes a party to any such contract or if he becomes a partner with unlimited liability in a partnership or a director or manager of a company that is a party to any such contract:

Provided that he shall not vacate his seat under the provisions of this paragraph if before becoming a party to the contract or before, or as soon as practicable after becoming otherwise interested in the contract (whether as a partner with unlimited liability in a partnership or as a director or manager of a company) he discloses to the Speaker the nature of the contract and his interest or the interest of the partnership or company therein and the House of Representatives by resolution exempts him from the provisions of this paragraph;

(d) if he is absent from the sittings of the House of Representatives for such period and in such circumstances as may be prescribed by the Standing Orders of the House;

(e) if he ceases to be a citizen of Malta;

(f) if he ceases to be qualified for registration as a voter for the election of members of the House of Representatives;

(g) subject to the provisions of subsection (2) of this section, if any circumstances arise that if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto.

(2) (a) If circumstances such as are referred to in paragraph (g) of subsection (1) of this section arise because any member of the House of Representatives is under sentence of death or imprisonment, interdicted or incapacitated or adjudged to be of unsound mind, adjudged or otherwise declared bankrupt or convicted of an offence connected with elections and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the House but, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Provided that the Speaker may from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so however that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(b) If on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member of the House of Representatives.

(d) For the purposes of this subsection "appeal" means, in the case of an order by a court of voluntary jurisdiction for the interdiction or incapacitation of a member of the House of

Representatives, the taking of any action for the review of that order before the Civil Court, First Hall.

### **Section 56 [Election]**

(1) The members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote from such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine.

(2) The election of members of the House of Representatives shall be free of illegal or corrupt practices and foreign interference.

(3) It shall be the duty of the Electoral Commission to suspend the election, either in all electoral divisions or in any one or more of such divisions, if it has reasonable ground to believe that illegal or corrupt practices or other offences connected with the elections have been committed or there has been foreign interference and such practices, offences or interference have so extensively prevailed or have been of such nature that they may reasonably be expected to affect the result of the election, in all or in any one or more of the electoral divisions.

(4) In any case in which an election is suspended under subsection (3) of this section, the Chief Electoral Commissioner shall forthwith refer the matter to the constitutional court for its decision.

(5) Where any of the grounds on which an election may be suspended under subsection (3) of this section exist and the election has not been suspended, or where illegal or corrupt practices or other offences or foreign interference as are referred to in that subsection may reasonably be supposed to have affected the result of an election, in all or in any one or more of the electoral divisions, any person entitled to vote at that election may, not later than three days after the publication of the official result of the election, refer the matter to the Constitutional Court for its decision.

(6) Any reference to the Constitutional Court under either subsection (4) or subsection (5) of this section shall be made and shall be determined by that Court in accordance with any law for the time being in force in Malta. On any such reference the Court shall, without prejudice to any other powers, have power to annul the election, in all or in any one or more of the electoral divisions, on any of the grounds mentioned in the said subsections, and to give such directions and orders and to provide such redress and other remedies as it may deem appropriate in the circumstances and in particular to ensure that a free election, in place of any one that may have been annulled, be held at the earliest possible opportunity.

(7) Where an election has been annulled under subsection (6) of this section, the result of the election shall not be complete before the publication of the official result of a valid election in all electoral divisions.

(8) Except by a bill for an Act of Parliament passed in the manner specified in subsection (2) of section 66 of this Constitution, no alteration in any law shall be made --

(a) whereby any act or omission shall cease to be an illegal or corrupt practice or other

offence relating to the election of members of the House of Representatives or foreign interference or

(b) which alters or adds to the circumstances or conditions in which or under which an act or omission is such a practice or other offence or foreign interference or

(c) reduces the punishment to which from time to time any such practice or other offence or interference renders the offender liable;

and for the purposes of this subsection the provisions of subsection (7) of section 66 of this Constitution shall apply as if references to the alteration to any of the provisions of this Constitution were references to the alteration of any law.

(9) No person shall vote at the election of members of the House of Representatives for any electoral division who is not registered under any law for the time being in force in Malta as a voter in that division.

(10) At the election of members of the House of Representatives --

(a) voting shall be by ballot and shall be carried out in such a manner as not to disclose the way in which the vote of any particular voter is given; and

(b) no person shall be permitted to vote on behalf of another:

Provided that provision may be made by law whereby, if a person is unable, by reason of blindness, other physical cause or illiteracy to mark on his ballot paper, his ballot paper may be marked on his behalf and on his directions by some other person officially supervising the poll at the place of voting.

(11) Ballot papers shall be drawn up in such a manner as to enable illiterates to distinguish between the political parties to which candidates belong.

(12) Candidates and their agents shall be given facilities to watch the transportation of ballot boxes and the sealing and unsealing thereof.

(13) The expressions "corrupt practice", "offences connected with the election of members of the House of Representatives" and "foreign interference" have the meaning assigned to them by a law for the time being in force regulating the conduct of elections or foreign interference with respect to elections, and any such law shall be deemed for the purposes of this section and of sections 32 to 47 (inclusive) of this Constitution to be reasonably required in the interests of public order and reasonably justifiable in a democratic society.

### **Section 57 [Electoral Rights]**

Subject to the provisions of section 58 of this Constitution, a person shall be qualified to be registered as a voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless.

(a) he is a citizen of Malta;

(b) he has attained the age of eighteen years; and

(c) he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months:

Provided that this paragraph shall not apply to a person who is ordinarily resident in Malta



but has not been resident in Malta as required by this paragraph by reason of service abroad in the public service, including service in the offices referred to in subsection (3) of section 124 of this Constitution, or by reason of service abroad in, or as a member of, a disciplined force as defined in section 47 of this Constitution.

### **Section 58 [Disqualification from Voting]**

No person shall be qualified to be registered as a voter for the election of members of the House of Representatives if --

- (a) he is interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind;
- (b) he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or
- (c) he is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

### **Section 59 [Speaker]**

(1) When the House of Representatives first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the house shall, as soon as practicable, elect another person to that office.

(2) The Speaker may be elected either --

- (a) from among persons who are members of the House of Representatives, but are not Ministers or Parliamentary Secretaries, or
- (b) from among persons who are not members of the House of Representatives and are qualified for election as members thereof.

(3) When the House of Representatives first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, the House shall elect a member of the House, who is not a Minister or a Parliamentary Secretary, to be Deputy Speaker of the House; and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as convenient, elect another such member to that office.

(4) A person shall vacate the office of Speaker or Deputy Speaker --

- (a) in the case of a Speaker elected from among the members of the House of Representatives or in the case of the Deputy Speaker --
  - (i) if he ceases to be a member of the House:

Provided that the Speaker shall not vacate his office by reason only that he has ceased to be a

member of the House on a dissolution of Parliament, until the House first meets after that dissolution;

(ii) if he is appointed to be a Minister or a Parliamentary Secretary;

(b) in the case of a Speaker elected from among persons who are not members of the House of Representatives --

(i) when the House first meets after any dissolution of Parliament;

(ii) if any circumstances arise that would cause him to be disqualified for election as a member of the House of Representatives;

(c) if he announces his resignation of his office to the House of Representatives or if by writing under his hand addressed, in the case of the Speaker to the Clerk of the House and in the case of the Deputy Speaker to the Speaker (or, if the office of Speaker is vacant or the Speaker is absent from Malta, to the Clerk of the House) he resigns that office; or

(d) in the case of the Deputy Speaker, if he is elected to be Speaker.

(5) (a) If, by virtue of subsection (2) of section 51; of this Constitution, the Speaker or Deputy Speaker is required to cease to perform his functions as a member of the House of Representatives he shall also cease to perform his functions as Speaker or Deputy Speaker. as the case may be, and those functions shall until he vacates his seat in the House or resumes the performance of the functions of his office, be performed --

(i) in the case of the Speaker, by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is required to cease to perform his functions as a member of the House of Representatives by virtue of subsection (2) of section 55 of this Constitution, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose;

(ii) in the case of the Deputy Speaker, by such member of the House (not being a Minister or Parliamentary Secretary) as the House may elect for the purpose.

(b) if the Speaker or Deputy Speaker resumes the performance of his functions as a member of the House, in accordance with the provisions of subsection (2) of section 55 of this Constitution, he shall also resume the performance of his functions of Speaker or Deputy Speaker, as the case may be.

## **Section 60 [Electoral Commission]**

(1) There shall be an Electoral Commission for Malta.

(2) The Electoral Commission shall consist of a Chairman, who shall be the person for the time being holding the office of Chief Electoral Commissioner and who shall be appointed to that office from the public service, and such number of members not being less than four as may be prescribed by any law for the time being in force in Malta.

(3) The members of the Electoral Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.

(4) A person shall not be qualified to hold office as a member of the Electoral Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the

House of Representatives or a public officer.

(5) Subject to the provisions of this section, a member of the Electoral Commission shall vacate his office --

(a) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) Subject to the provisions of subsection (7) of this section, a member of the Electoral Commission may be removed from office by the President acting in accordance with the advice of the Prime Minister.

(7) A member of the Electoral Commission shall not be removed from office except for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(8) If the office of a member of the Electoral Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of subsections (5), (6) and (7) of this section, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(9) In the exercise of its functions under this Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority.

### **Section 61 [Electoral Divisions]**

(1) The Electoral Commission shall review the boundaries of the electoral divisions referred to in section 56(1) of this Constitution at intervals of not less than two nor more than five years and may, in accordance with the provisions of this section, alter such boundaries to such extent as it considers desirable in the light of the review:

Provided that the Commission shall carry out such a review and, in accordance with the provisions of this section, alter the said boundaries whenever Parliament has made provision altering the number of electoral divisions; and in addition the Commission may at any time carry out such a review and, in accordance with the provisions of this section, alter the said boundaries to such extent as it considers desirable in consequence of the holding of a census of the population in pursuance of any law.

(2) Any provision by Parliament altering the number of electoral divisions shall come into effect when the alteration of the boundaries of the electoral divisions that, in accordance with the provisions of subsection (1) of this section, is consequential thereon comes into effect.

(3) Whenever an alteration of boundaries is made by the Commission under this section the following provisions shall have effect:

(a) the Chief Electoral Commissioner shall, as soon as practicable after it is made, communicate the alteration to the Prime Minister and to the Leader of the Opposition;

(b) not later than two months from the receipt of such communication, the Prime Minister shall cause the alteration to be placed before the House of Representatives for consideration by it;

(c) not later than five months from the receipt of the said communication by the Prime Minister, the House may, by resolution, either approve the alteration or refer it back to the Commission for reconsideration;

(d) upon the expiration of six months from the date on which the alteration was communicated to the Prime Minister, or, if the alteration is approved by the House, upon such approval, or, if the alteration is referred back to the Commission, upon the expiration of two months from such reference, the Chief Electoral Commissioner shall cause the alteration to be published in the gazette either in its original form or, if it has been modified by the Commission, as so modified; and

(e) any such alteration shall come into effect upon the next dissolution of Parliament after the alteration is published in the Gazette under paragraph (d) of this subsection:  
Provided that nothing in this paragraph shall be construed as preventing the publication of any electoral register or any other requirement connected with the registration of voters from being carried out in accordance with the alteration, under any law for the time being in force in Malta, before that dissolution.

(4) An alteration of the boundaries of any electoral division under this section shall be made in such manner as secures that, at the time when the Commission carries out its review, the number obtained by dividing the total electorate in the division (as ascertained by reference to the electoral register in force at that time) by the number of members to be returned to the House of Representatives from that division is as nearly equal to the electoral quota as is reasonably practicable:

Provided that any such alteration may be made in such manner that the number of voters in that division is, at the time when the Commission carries out its review, greater or less than the electoral quota multiplied by the number of members to be so returned, but in no case by more than five per centum, in order to take account of geographical vicinity, differences in density of population and other relevant factors.

(5) For the purposes of any review carried out under this section, "electoral quota" means the number obtained by dividing the total electorate of Malta (as ascertained from the electoral register in force at the time when the Commission carries out that review) by the total number of members to be returned to the House of Representatives at the general election following the next dissolution of Parliament.

(6) The conduct of elections in every electoral division and of any vote taken under the provisions of section 66(3) of this Constitution shall be subject to the direction and supervision of the Electoral Commission.

### **Section 62 [Re-Election]**

Whenever the seat of any member of the House of Representatives becomes vacant the vacancy shall be filled in the manner provided by or under any law for the time being in force in Malta.

### **Section 63 [Election Control by Constitutional Court]**

Any question whether --

- (a) any person has been validly elected as a member of the House of Representatives;
  - (b) any member of the House has vacated his seat therein or is required, under the provisions of subsection (2) of section 55 of this Constitution, to cease to perform his functions as a member; or
  - (c) any person has been validly elected as Speaker from among persons who are not members of the House or, having been so elected, has vacated the office of Speaker,
- shall be referred to and determined by the Constitutional Court in accordance with the provisions of any law for the time being in force in Malta.

### **Section 64 [Clerk]**

- (1) There shall be a Clerk to the House of Representatives.
- (2) The office of the Clerk to the House of Representatives and the offices of the members of his staff shall be public offices.

## **Part 2 Powers and Procedure of Parliament**

### **Section 65 [Legislation]**

- (1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta.
- (2) Without prejudice to the generality of subsection (1) and subject to the provisions of subsections (3), (4) and (5) of this section, Parliament may by law determine the privileges, immunities and powers of the House of Representatives and the members thereof.
- (3) No civil or criminal proceedings may be instituted against any member of the House of Representatives for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.
- (4) For the duration of any session members of the House of Representatives shall enjoy freedom from arrest for any civil debt except a debt the contraction of which constitutes a criminal offence.
- (5) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the House of Representatives while the House is sitting or through the Speaker, the Clerk or any officer of the House.

## **Section 66 [Qualified Majority]**

(1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution and (in so far as it forms part of the law of Malta) any of the provisions of the Malta Independence Act, 1964.

(2) In so far as it alters --

(a) this section; or

(b) Section 1, subsection (2) of section 2, subsection (1) of section 3, subsection (1) of section 5, section 6, sections 32 to 48 (inclusive), sections 51, 52, 56? 57, 60 and 61, subsection (3) of section 65, subsection (2) of section 75, section 76 (other than subsection (2) thereof), sections 77 and 78, section 80, section 91 sections 95 to 100 (inclusive), sections 102 to 110 (inclusive), sections 113, 114, 118, 119 or 120 of this Constitution: or

(c) section 124 of this Constitution in its application to any of the provisions specified in paragraph (a) or (b) of this subsection,

a bill for an Act of Parliament under this section shall not be passed in the House of Representatives unless at the final voting thereon in that House it is supported by the votes of not less than two-thirds of all the members of the House.

(3) In so far as it alters --

(a) this subsection or subsection (4) of this section; or

(b) subsection (2) of section 76 of this Constitution, a bill for an Act of Parliament under this section shall not be presented to the President for his assent unless not less than three nor more than six months after its passage through the House in the manner specified in subsection (2) of this section it has been submitted to the electors qualified to vote for the election of members of the House of Representatives and the majority of the electors voting have approved the bill.

(4) The provisions of subsection (10) of section 56 of this Constitution shall apply to the voting on a bill submitted to the electors under subsection (3) of this section as they apply to voting at the election of members of the House of Representatives, and subject as aforesaid the vote on such bill shall be taken in such manner as Parliament may prescribe.

(5) In so far as it alters any of the provisions of this Constitution other than those specified in subsections (2) and (3) of this section, a bill for an Act of Parliament under this section shall not be passed in the House of Representatives unless at the final voting thereon in that House it is supported by the votes of a majority of all the members of the House.

(6) An Act of Parliament altering the number of members of the House of Representatives shall not affect the membership of the House before the dissolution of Parliament next following its enactment.

(7) In this section --

(a) references to any of the provisions of this Constitution or of the Malta Independence Act, 1964 include references to any law that amends or replaces that provision; and

(b) references to the alteration of any of the provisions of this Constitution or of the Malta Independence Act, 1964 include references to the amendment, modification or re-

enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision.

### **Section 67 [Regulation of Procedure]**

(1) Subject to the provisions of this Constitution, the House of Representatives may regulate its own procedure.

(2) The House of Representatives may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets on or after the appointed day or after any dissolution of Parliament) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

(3) Any provision made in pursuance of subsection (1) of this section for setting up Committees of the House to enquire into matters of general public importance shall be designed to secure that, so far as it appears practicable to the House, any such Committee is so composed as fairly to represent the House.

### **Section 68 [Oath of Members of Parliament]**

No member of the House of Representatives shall be permitted to take part in the proceedings of the House other than proceedings necessary for the purposes of this section until he has taken and subscribed before the House the oath of allegiance:

Provided that the election of the Speaker and Deputy Speaker may take place before the members of the House have taken and subscribed such oath

### **Section 69 [Presidency of Parliament]**

(1) There shall preside at any sitting of the House of Representatives --

(a) the Speaker; or

(b) in the absence of the Speaker, the Deputy Speaker; or

(c) in the absence of the Speaker and the Deputy Speaker, such member of the House (not being a Minister or a Parliamentary Secretary) as the House may elect for that purpose.

(2) References in this section to circumstances in which the Speaker or the Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

### **Section 70 [Quorum]**

(1) If at any sitting of the House of Representatives any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the House, the person presiding at the sitting ascertains that a quorum of the House is still not present, the House shall be adjourned.

(2) For the purposes of this section --

(a) a quorum of the House of Representatives shall consist of fifteen members; and

(b) the person presiding at the sitting of the House shall not be included in reckoning whether there is a quorum present.

### **Section 71 [Majority]**

(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the House of Representatives shall be determined by a majority of the votes of the members thereof present and voting.

(2) The Speaker shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

(3) Any other person shall, when presiding in the House of Representatives, retain his original vote as a member and, if upon any question, the votes are equally divided, shall also have and exercise a casting vote.

### **Section 72 [Bills]**

(1) The power of Parliament to make laws shall be exercised by bills passed by the House of Representatives and assented to by the President.

(2) When a bill is presented to the President for assent, he shall without delay signify that he assents.

(3) A bill shall not become law unless it has been duly passed and assented to in accordance with this constitution.

(4) When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

### **Section 73 [Finance Bills]**

Except upon the recommendation of the President signified by a Minister, the House of Representatives shall not --

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes, that is to say, for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Malta or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Malta;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes aforesaid; or

(c) receive any petition which, in the opinion of the person presiding, requests that provision be made for any of the purposes aforesaid.

### **Section 74 [Legal Languages]**

Save as otherwise provided by Parliament, every law shall be enacted in both the Maltese



and English languages and, if there is any conflict between the Maltese and the English texts of any law, the Maltese text shall prevail.

### **Part 3 Summoning, prorogation and dissolution**

#### **Section 75 [Sessions]**

(1) Each session of Parliament shall commence at such time as the President may by proclamation appoint and shall be held at such place or places as the President by proclamation, or as the House of Representatives in any manner it may deem appropriate, may from time to time appoint.

(2) There shall be a session of Parliament once at least in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

(3) The House of Representatives shall meet not later than two months after the publication of the official result of any general election by the Electoral Commission on a day appointed by the President

#### **Section 76 [Dissolution]**

(1) The President may at any time by proclamation prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(3) At any time when Malta is at war, Parliament may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) If between a dissolution of Parliament and the next ensuing general election of members of the House of Representatives an emergency arises of such a nature that, in the opinion of the Prime Minister it is necessary to recall Parliament, the President may by proclamation summon the Parliament that has been dissolved to meet, and that Parliament shall thereupon be deemed (except for the purpose of section 77 and, in relation to the next ensuing general election, section 61(3) and 66(6) of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the polls are concluded in the next ensuing general election.

(5) In the exercise of his powers under this section the President shall act in accordance with the advice of the Prime Minister:

Provided that --

(a) if the House of Representatives passes a resolution, supported by the votes of a majority of all the members thereof, that it has no confidence in the Government, and the Prime Minister does not within three days either resign from his office or advise a dissolution, the

President may dissolve Parliament;

(b) if the office of Prime Minister is vacant and the President considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, the President may dissolve Parliament; and

(c) if the Prime Minister recommends a dissolution and the President considers that the Government of Malta can be earned on without a dissolution and that a dissolution would not be in the interests of Malta, the President may refuse to dissolve Parliament.

### **Section 77 [Re-Election]**

A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the President acting in accordance with the advice of the Prime Minister, shall by proclamation appoint.

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## **Chapter VII The Executive**

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### **Section 78 [President]**

(1) The executive authority of Malta is vested in the President.

(2) The executive authority of Malta shall be exercised by the President, either directly or through officers subordinate to him, in accordance with the provisions of this Constitution.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

### **Section 79 [Cabinet]**

(1) There shall be a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as may be appointed in accordance with section 80 of this Constitution.

(2) The Cabinet shall have the general direction and control of the Government of Malta and shall be collectively responsible therefor to Parliament.

### **Section 80 [Appointment of Prime Minister]**

Whenever there shall be occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of a majority of the members of that House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the House of Representatives:

Provided that if occasion arises for making an appointment to the office of Prime Minister or

any other Minister while Parliament is dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister as if, in each case, such person were still a member of the House of Representatives, but any person so appointed shall vacate office at the beginning of the next session of Parliament if he is not then a member thereof.

### **Section 81 [Vote of No Confidence]**

(1) If the House of Representatives passes a resolution, supported by the votes of a majority of all the members thereof, that it has no confidence in the Government, the President may remove the Prime Minister from office:

Provided that the President shall not do so unless three days have elapsed and he has decided not to dissolve Parliament under section 76 of this Constitution.

(2) The office of Prime Minister shall also become vacant --

(a) when, after any dissolution of parliament, the Prime Minister is informed by the President that the President is about to re-appoint him as Prime Minister or to appoint another person as Prime Minister:

(b) if he ceases to be a member of the House of Representatives otherwise than by a dissolution of Parliament: or

(c) if, under the provisions of subsection (2) of section 55 of this Constitution, he is required to cease to perform his functions as a member of the House of Representatives.

(3) The office of a Minister, other than the office of Prime Minister, shall become vacant --

(a) upon the appointment or re-appointment of any person to the office of Prime Minister;

(b) if his appointment to his office is revoked by the President, acting in accordance with the advice of the Prime Minister;

(c) if he ceases to be a member of the House of Representatives otherwise than by a dissolution of Parliament or

(d) if, under the provisions of subsection (2) of section 55 of this Constitution, he is required to cease to perform his functions as a member of the House of Representatives.

### **Section 82 [Empowering Ministers]**

(1) Subject to the provisions of this Constitution, the President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Malta including the administration of any department of government.

(2) Nothing in this section shall empower the President to confer on any Minister authority to exercise any power or to discharge any duty that is conferred or imposed by this Constitution or any other law on any person or authority other than that Minister.

### **Section 83 [Absence of Prime Minister]**

(1) Whenever the Prime Minister is absent from Malta or on vacation, or is unable by reason of illness to perform the functions of his office, the President may authorise any other

member of the Cabinet to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his authority is revoked by the President.

(2) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the President considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.

#### **Section 84 [Inability of Ministers]**

(1) Whenever a Minister other than the Prime Minister is unable, by reason of his illness or absence from Malta, to perform the functions of his office, the President may appoint another member of the House of Representatives to be a temporary Minister:

Provided that if occasion arises for making an appointment while Parliament is dissolved, a person who, immediately before the dissolution, was a member of the House of Representatives may be appointed as a temporary Minister as if he were still a member of that House, but any person so appointed shall vacate office at the beginning of the next session of Parliament if he is not then a member thereof.

(2) Subject to the provisions of section 81 of this Constitution, a temporary Minister shall hold office until he is notified by the President that the Minister on account of whose inability to perform the functions of his office he was appointed is again able to perform those functions or until that Minister vacates his office.

(3) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister.

#### **Section 85 [Advice of Cabinet]**

(1) In the exercise of his functions the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet:

Provided that the President shall act in accordance with his own deliberate judgment in the performance of the following functions --

(a) in the exercise of the powers relating to the dissolution of Parliament conferred upon him by the proviso to subsection (5) of section 76 of this Constitution;

(b) in the exercise of the power to appoint the Prime Minister or remove the Prime Minister from office conferred upon him by section 80 and subsection (1) of section 81 of this Constitution;

(c) in the exercise of the powers conferred upon him by section 83 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence, vacation or illness) in the circumstances described in the proviso to subsection (2) of that section;

(d) in the exercise of the power to appoint the Leader of the Opposition and to revoke any such appointment conferred upon him by section 90 of this Constitution; and

(e) in signifying his approval for the purposes of subsection (4) of section 110 of this Constitution of an appointment to an office on his personal staff.

(2) Where by this Constitution the President is required to act in accordance with the advice of any person or authority, the question whether he has in any case received, or acted in accordance with, such advice shall not be enquired into in any court.

(3) The reference in subsection (1) of this section to the functions of the President shall be construed as a reference to his powers and duties in the exercise of the executive authority of Malta and to any other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.

### **Section 86 [Government by Recommendation]**

(1) Where by this Constitution the Prime Minister is required to exercise any function on the recommendation of any person or authority he shall exercise that function in accordance with such recommendation.

Provided that --

(a) before he acts in accordance therewith he may once refer that recommendation back for reconsideration by the person or authority concerned; and

(b) if that person or authority, having reconsidered the original recommendation under the preceding paragraph, substitutes thereof a different recommendation, the provisions of this subsection shall apply to that different recommendation as they apply to the original recommendation.

(2) Where by this Constitution the Prime Minister is required to perform any function after consultation with any person or authority, he shall not be obliged to perform that function in accordance with the advice of that person or authority.

(3) Where by this Constitution the Prime Minister is required to perform any function in accordance with the recommendation of, or after consultation with, any person or authority, the question whether he has in any case received, or acted in accordance with such recommendation or whether he has consulted with such person or authority shall not be enquired into in any court.

### **Section 87 [Information of President]**

The Prime Minister shall keep the President fully informed concerning the general conduct of the Government of Malta and shall furnish the President with such information as he may request with respect to any particular matter relating to the Government of Malta.

### **Section 88 [Parliamentary Secretaries]**

(1) The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House of Representatives to assist Ministers in the performance of their duties;

Provided that if occasion arises for making an appointment while Parliament is dissolved, a person who immediately before the dissolution was a member of the House of Representatives may be appointed as a Parliamentary Secretary as if he were still a member of that House, but any person so appointed shall vacate office at the beginning of the next session of Parliament if he is not then a member thereof.

(2) The provisions of subsection (3) of section 81 of this Constitution shall apply to Parliamentary Secretaries as they apply to Ministers.

### **Section 89 [Oath of Ministers]**

A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath of office set out in the Third and in the Second Schedule to this Constitution.

### **Section 90 [Leader of the Opposition]**

(1) There shall be a Leader of the Opposition who shall be appointed by the President.

(2) Whenever there shall be occasion for the appointment of a Leader of the Opposition, the President shall appoint --

(a) if there is one opposition party whose numerical strength in the House of Representatives is greater than the strength of any other opposition party, the member of the House of Representatives who is the Leader of that party; or

(b) if, by reason of an equality in the numerical strength of the opposition parties in the House or by reason that there is no opposition party, no person is qualified for appointment under paragraph (a) of this subsection, the member of the House who, in the judgement of the President, commands the support of the largest single group of members of the House in opposition to the Government who are prepared to support one leader.

(3) The office of Leader of the Opposition shall become vacant --

(a) if after any dissolution of Parliament, he is informed by the President that the President is about to appoint another person as Leader of the Opposition;

(b) if he ceases to be a member of the House of Representatives otherwise than by a dissolution of Parliament;

(c) if, under the provisions of subsection (2) of section 55 of this Constitution, he is required to cease to perform his functions as a member of the House of Representatives; or

(d) if his appointment is revoked under the provisions of subsection (4) of this section.

(4) If, in the judgment of the President, a member of the House of Representatives other than the Leader of the Opposition, has become the Leader in the House of the opposition party having the greatest numerical strength in the House or, as the case may be, the Leader of the Opposition has ceased to command the support of the largest single group of members in opposition to the Government, the President shall revoke the appointment of the Leader of the Opposition.

(5) Subsection (4) of this section shall not have effect while Parliament is dissolved.

### **Section 91 [Attorney General]**

- (1) There shall be an Attorney General whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.
- (2) A person shall not be qualified to hold office as Attorney General unless he is qualified for appointment as a judge of the Superior Courts.
- (3) In the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment the Attorney General shall not be subject to the direction or control of any other person or authority.
- (4) Subject to the provisions of subsection (5) of this section, the Attorney General shall vacate his office when he attains the age of sixty years.
- (5) Subsections (2) and (3) of section 97 of this Constitution shall apply to the Attorney General.

### **Section 92 [Departmental Control]**

- (1) Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department may be under the supervision of a Permanent Secretary:  
Provided that two or more departments of government may be placed under the supervision of one Permanent Secretary.
- (2) The Prime Minister shall be responsible for assigning departments of government to Permanent Secretary.
- (3) Power to appoint public officers to hold or act in the office of Permanent Secretary and to remove from office persons holding or acting in such office shall vest in the President acting in accordance with the advice of the Prime Minister given after the Prime Minister has consulted with the Public Service Commission.
- (4) Heads of departments of government other than those whose manner of appointment is specifically provided for in this Constitution shall be appointed from amongst senior public officers by the Prime Minister acting after consultation with the Public Service Commission.

### **Section 93 [Presidential Powers]**

- (1) The President shall have power to --
  - (a) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;
  - (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person for any offence;
  - (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
  - (d) remit the whole or part of any sentence passed on any person for an offence or for any penalty or forfeiture otherwise due to the State on account of any offence.

(2) (a) Where any person has been sentenced to death by any court in Malta, the President shall cause a written report of the case from the trial judge, or, in the case of a court-martial the person presiding, and such other information derived from the record of the case or elsewhere as the President may require, to be sent to the Minister responsible for justice.

(b) The said Minister shall send such written report and information (if any) to the Cabinet, and the Cabinet shall advise the President whether he should grant the offender a pardon or respite in the exercise of the powers conferred on him by this section.

#### **Section 94 [Secretary of Cabinet]**

(1) There shall be a Secretary to the cabinet who shall be a public officer designated in that behalf by the Prime Minister.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct.

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### **Chapter VIII The Judiciary**

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#### **Section 95 [Courts, Constitutional Court]**

(1) There shall be in and for Malta such Superior Courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.

(2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine --

(a) such questions as are referred to in section 63 of the Constitution;

(b) any reference made to it in accordance with section 56 of this Constitution and any matter referred to it in accordance with any law relating to the election of members of the House of Representatives;

(c) appeals from decisions of the Civil Court, First Hall, under section 46 of this Constitution;

(d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under section 46 of this Constitution;

(e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under section 46 of this Constitution; and

(f) any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this subsection on which an appeal has



been made to the Constitutional Court:

Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.

(3) Notwithstanding the provisions of subsection (2) of this section, if any such question as is referred to in paragraph (d) or (e) of that subsection arises for the first time in proceedings in a court of appellate jurisdiction, that court shall refer the question to the court which gave the original decision, unless in its opinion the raising of the question is merely frivolous or vexatious, and that court shall give its decision on any such question and, subject to any appeal in accordance with the provisions of subsection (2) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) The provisions of subsections (6) and (7) of section 46 of this Constitution shall apply to the Constitutional Court and for that purpose references to that section in the said subsections shall be construed as references to this section.

(5) If at any time during an election of members of the House of Representatives and the period of thirty days following any such election, the Constitutional Court is not constituted as provided in this section, the said Court shall, thereupon and until otherwise constituted according to law, be constituted by virtue of this subsection and shall be composed of the three more senior of the judges then in office, including, if any is in office, the Chief Justice or other judge performing the functions of Chief Justice; and if at any other time the said Court is not constituted as provided in this section for a period exceeding fifteen days, such Court shall, upon the expiration of the said period of fifteen days and until otherwise constituted according to law, be constituted by virtue of this subsection and shall be composed of the three more senior judges as aforesaid.

(6) The judges of the Superior Courts shall be a Chief Justice and such number of other judges as may be prescribed by any law for the time being in force in Malta:

Provided that the office of a judge of the Superior Courts shall not, without his consent, be abolished during his continuance in office.

### **Section 96 [Appointment of Judges]**

(1) The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practiced as an advocate in Malta or served as a magistrate in Malta, or has partly so practiced and partly so served.

### **Section 97 [Conclusion of Office]**

(1) Subject to the provisions of this section, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years.

(2) A judge of the Superior Courts shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less

than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(3) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour of a judge of the Superior Courts under the provisions of the last preceding subsection.

### **Section 98 [Chief Justice]**

(1) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall (except to such extent, if any, as other provision is made by law) be performed by such one of the other Judges of the Superior Courts as may be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

(2) If the office of any judge of the Superior Courts (other than the Chief Justice) is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person qualified for appointment as a judge of the Superior Courts to act as a judge of those Courts:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-five years.

(3) Any person appointed under subsection (2) of this section to act as a judge of the Superior Courts shall continue so to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President acting in accordance with the advice of the Prime Minister.

### **Section 99 [Inferior Courts]**

There shall be in and for Malta such inferior courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.

### **Section 100 [Magistrates]**

(1) Magistrates of the inferior courts shall be Magistrates. appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practiced as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) Subject to the provisions of subsection (4) of this section, a magistrate of the inferior courts shall vacate his office when he attains the age of sixty years.

(4) The provisions of subsections (2) and (3) of section 97 of this Constitution shall apply to magistrates of the inferior courts.

### **Section 101 [Oath of Allegiance]**

A judge of the Superior Courts or a magistrate of the inferior courts shall not enter upon the duties of his office taken by judges unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.

### **Section 101A [Remuneration]**

(1) There shall be a Commission for the Administration of Justice which shall consist of the President, who shall be the Chairman, and nine other members as follows:

(a) The Chief Justice who shall be Deputy Chairman and shall preside over the Commission in the absence of the Chairman;

(b) the Attorney General, ex officio;

(c) two members elected for a period of four years by the Judges of the Superior Court from among themselves;

(d) two members elected for a period of four years by the Magistrates of the Inferior Courts from among themselves;

(e) two members appointed for a period of four years as to one by the Prime Minister and as to the other by the Leader of the Opposition, being in each case, a person of at least forty five years of age, and who enjoys the general respect of the public and a reputation of integrity and honesty;

(f) the President of the Chamber of Advocates, ex officio.

(2) The President shall only have a casting vote; when the Deputy Chairman presides over a meeting of the Commission he shall retain his original vote together with the casting vote.

(3) The members elected to the Commission for the Administration of Justice shall be elected in accordance with such Rules as may be prescribed by the person or Authority referred to in subsection (7) of section 46 of this Constitution.

(4) (a) A person shall not be qualified to be appointed or continue to hold office as a member of the Commission for the Administration of Justice:

(i) if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives or a member of a local government authority; or

(ii) if he has been convicted of any crime punishable by imprisonment for any term; or

(iii) if he is disqualified to be elected as a member of the House of Representatives for any of the reasons stated in paragraphs (a), (c), (d), (e), (f), (g) or (h) of subsection (1) of section 54 of this Constitution;

(b) The office of a member of the Commission for the Administration of Justice shall become vacant if any circumstances arise that if he were not a member of the Commission he would not qualify for membership thereof, and a member of the Commission may abstain or be challenged in the same circumstances as a judge of the superior courts.

(5) (a) Where a person fills a vacancy caused by a member of the Commission for the Administration of Justice ceasing to be such a member for any reason, other than the expiration of the period of office, such person shall hold office for the unexpired period of

office of the member he replaces.

(b) Where a member of the Commission has been challenged or has abstained, the President acting in accordance with his own deliberate judgement shall appoint as a substitute member to sit on the Commission, a person who in his opinion has as far as may be the same qualities and qualifications as the member substituted.

(c) Where the members who, are to be elected under paragraph (c) and (d) of subsection (1) of this section, or who are to be appointed under paragraph (e) of the same subsection, are not so elected or appointed within two weeks from a call for the purpose by the President, the President who in making such appointment shall act in accordance with his own deliberate judgement shall himself appoint members in their stead who where possible in his opinion shall have the same qualities and qualifications as such members.

(6) (a) The Commission for the Administration of Justice shall at all times have a committee for Advocates and Legal Procurators which shall have such composition, functions, powers and duties as may be assigned to it by law. The Commission shall in the exercise of any of its functions in relation to the professions of Advocates and Legal Procurators act through the said committee in such manner and subject to such review as may by the said law be provided.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the Commission shall refer to the Committee for Advocates and Legal Procurators (hereinafter in this section referred to as "the Committee") any matter concerning the misconduct of an advocate or legal procurator in the exercise of their profession, and, saving in the case of an appeal, the Commission shall not act otherwise than on receipt of, and in accordance with, the findings of the Committee in any such matter. So however that, where a report of findings by the Committee has not been submitted to the Commission within two months from the day on which the matter was brought before the Committee, or within such further period or periods as the Commission may allow, which shall in no case, except for very exceptional reasons, exceed a further four months, the Commission shall thereupon itself investigate and determine the matter.

(c) Without prejudice to the provisions of the foregoing paragraph the Commission may appoint such other committees to assist it on any matter falling within its functions as it may deem fit.

(7) In the exercise of their functions the members of the Commission and of any of its committees shall act on their individual judgement and shall not be subject to the direction or control of any person or authority.

(8) Subsections (2) and (3) of section 121 of this Constitution shall apply to any committee of the Commission.

(9) There shall be a secretary of the Commission for the Administration of Justice who shall also act as secretary of any committee of the Commission. The Secretary of the Commission shall be appointed by the Commission-from among public officers assigned to the Courts or from. among members of the legal professions. The Secretary shall hold office until such time as his appointment is terminated by the Commission.

(10) A person appointed as a member of the Commission for the Administration of Justice or any of its committees may be removed from office by the President, acting in accordance with the advice of the body or the holder of the office appointing such member, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(11) The functions of the Commission for the Administration of Justice shall be:

(a) to supervise the workings of all the superior and inferior courts and to make such recommendations to the minister responsible for justice as to the remedies, which appear to it, conducive to a more efficient functioning of such courts;

(b) to advise the minister responsible for justice on any matter relating to the organisation of the administration of justice;

(c) when so requested by the Prime Minister, to advise on any appointment to be made in terms of sections 96, 98 or 100 of this Constitution;

(d) to draw up a code or codes of ethics regulating the conduct of members of the judiciary;

(e) on the advice of the Committee for Advocates and Legal Procurators to draw up a code or codes of ethics regulating the professional conduct of members of; those professions:

Provided that where such advice is not given within such time as the Commission may establish, the Commission may draw up such code or codes without the necessity of such advice.

(f) to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court, and to draw the attention of any judge or magistrate to any conduct which could effect the trust conferred by their appointment, or to any failure on his part to abide by any code or codes of ethics relating to him;

(g) to exercise, in accordance with any law, discipline over advocates and legal procurators practicing their profession; and

(h) such other function as may be assigned to it by law.

(12) The Commission for the Administration of Justice shall each year make a report to the Minister responsible for justice on its activities during the previous calendar year, and shall at any time, when it deems fit or as may be required by the said minister, make a report on any particular matter to the said minister.

(13) The powers of the President under any law with regard to the subrogation of Judges and Magistrates and to the assignment of duties of Judges and Magistrates shall be exercised on the advice of the minister responsible for justice, so however that, the minister shall, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice:

Provided that where the Chief Justice fails to make a recommendation to the minister, and in any case where the minister deems it so appropriate, the minister may advise the President on the matter, in any manner which, in the circumstances, he considers appropriate:

Provided further than in any such case he shall immediately publish in the Gazette, a notice of that fact together with the reasons therefor, and he shall make a statement of such fact in

the House of Representatives not later than the second sitting immediately after he has so advised the President.

(14) The question whether the Commission for the Administration of Justice has validly performed any function vested in it by or under this Constitution shall not be enquired into in any court.

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## **Chapter IX Finance**

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### **Section 102 [Revenues]**

(1) All revenues and other moneys raised or received by Malta (not being revenues or other moneys payable into some other fund, being a fund established by or under any law for the time being in force in Malta for a specific purpose) shall, unless Parliament otherwise provides, be paid into and form one Consolidated Fund.

(2) No moneys shall be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon the Fund by this Constitution or any other law for the time being in force in Malta or where the issue of those moneys has been authorised by an Appropriation Act or under section 104 of this Constitution.

(3) No moneys shall be withdrawn from any public Fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law for the time being in force in Malta.

(4) No moneys shall be withdrawn from the Consolidated Fund or any other public fund except in the manner prescribed by or under any law.

(5) The costs, charges and expenses incidental to the collection and management- of the Consolidated Fund shall be a charge on the Fund.

### **Section 103 [Estimates of Revenues]**

(1) The Minister responsible for finance shall cause to be prepared and laid before the House of Representatives before, or not later than thirty days after, the commencement of each financial year estimates of the revenues and expenditure of Malta for that year.

(2) The heads of expenditure contained in the estimates (other than the expenditure charged upon the Consolidated Fund by this Constitution or any other law for the time being in force in Malta) shall be included in a bill, to be known as an appropriation bill, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found --

(a) that the amount appropriated by the Appropriation Act for any purpose is insufficient, or that a need has arisen for expenditure for a purpose for which no amount has been

appropriated by that Act; or

(b) that any moneys have been expended for any purpose in excess of the amount (if any) appropriated for the purpose by that Act,

a supplementary estimate showing the sums required or spent shall be laid before the House of Representatives and the heads of any such expenditure shall be included in a supplementary appropriation bill.

#### **Section 104 [Emergency Budget]**

Parliament may make provision under which, if the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting such expenditure as he may consider necessary to carry on the government of Malta until the expiration of four months from the beginning of that financial year or the coming into operation of the Act, whichever is the earlier.

#### **Section 105 [Contingencies Fund]**

(1) Parliament may provide for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made in accordance with subsection (1) of this section a supplementary estimate shall be presented and a supplementary appropriation bill shall be introduced as soon as practicable for the purpose of replacing the amount so advanced.

#### **Section 106 [Debt]**

(1) The public debt of Malta shall be a charge upon the Consolidated Fund and other public funds of Malta.

(2) In this section references to the public debt of Malta include references to the interest on that debt, sinking fund payments and redemption moneys in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

#### **Section 107 [Salaries of Officers]**

(1) There shall be paid to the holders of the offices to which this section applies such salaries as may be prescribed by or under any law.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment, and, for the purposes of this subsection, in so far as the salary or the terms of service of any person depend upon the option of that person, the salary or terms for which

he opts shall be deemed to be more advantageous to him than any others for which he might have opted.

(4) This section applies to the offices referred to in sections 48, 91, 95(6), 100, 108, 109, 118 and 120 of this Constitution.

### **Section 108 [Director of Audit]**

(1) There shall be a Director of Audit for Malta, whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) Subject to the provisions of subsection (3) of this section, the Director of Audit shall vacate his office when he attains the age of sixty years.

(3) Subsections (2) and (3) of section 97 of this Constitution shall apply to the Director of Audit.

(4) The accounts of all departments and offices of the Government of Malta, including the office of the Public Service Commission, and the office of the Clerk to the House of Representatives, and of all Superior and Inferior Courts in Malta shall be audited and reported on annually by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

(5) The Director of Audit shall submit his reports made under subsection (4) of this section to the Minister responsible for finance, who shall cause them to be laid before the House of Representatives within thirty days of the receipt thereof by him, or, if the House of Representatives is not sitting, within thirty days of the commencement of the next sitting of the House of Representatives.

(6) If the Minister fails to lay any reports before the House of Representatives in accordance with subsection (5) of this section, the Director of Audit shall, forthwith on the expiration of the period mentioned in the said subsection, transmit copies of such reports to the Speaker of the House of Representatives (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall, as soon as practicable, lay them before the House of Representatives.

(7) In the exercise of his functions under the provisions of subsections (4) and (5) of this section the Director of Audit shall not be subject to the direction or control of any other person or authority.

(8) Nothing in this section shall prevent the performance by the Director of Audit of --

(a) such other functions in relation to the accounts of the Government of Malta and the accounts of other public authorities and other bodies administering public funds in Malta as may be prescribed by or under any law for the time being in force in Malta; or

(b) such other functions in relation to the supervision and control of expenditure from public funds in Malta as may be so prescribed.

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## Chapter X The Public Service

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### Section 109 [Public Service Commission]

(1) There shall be a Public Service Commission for Malta which shall consist of a chairman, a deputy chairman and from one to three other members.

(2) The members of the Public Service Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.

(3) A person shall not be qualified to hold office as a member of the Public Service Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives, a member of a local government authority or if he is a public officer.

(4) A member of the Public Service Commission shall not, within a period of three years commencing with the day on which he last held office as a member, be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of this section, the office of a member of the Public Service Commission shall become vacant --

(a) at the expiration of five years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) A member of the Public Service Commission may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(7) If the office of a member of the Public Service Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of subsections (5) and (6) of this section, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

### Section 110 [Prime Ministers Power to Appoint Officials]

(1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices shall vest in the Prime Minister acting on the recommendation of the Public Service Commission:

Provided that the Prime Minister may, acting on the recommendation of the Public Service Commission, delegate in writing, subject to such conditions as may be specified in the instrument of delegation, any of the powers referred to in this subsection to such public officer or other authority as may be specified in that instrument.

(2) A delegation of a power under this section --

(a) shall be without prejudice to the exercise of that power by the Prime Minister acting on the recommendation of the Public Service Commission;

(b) may authorise the public officer or other authority concerned to exercise that power either with or without reference to the Public Service Commission; and

(c) in respect of recruitment to public offices from outside the public service, shall unless such recruitment is made after a public examination advertised in the Gazette, be exercised only through an employment service provided out of public funds which ensures that no distinction, exclusion or preference is made or given in favour or against any person by reason of his political opinion and which provides opportunity for employment solely in the best interests of the public service and of the nation generally.

(3) (a) An appeal shall lie to the Prime Minister acting in accordance with the recommendation of the Public Service Commission, from any decision of a public officer or authority to remove any person from a public office in exercise of power delegated under subsection (1) of this section:

Provided that such right of appeal shall be without prejudice to any such other right of appeal as may be provided under section 121(1) of this Constitution in respect of the exercise of any other power delegated under subsection (1) of this section.

(b) A right of appeal under this section shall be exercised in accordance with such provision relating to procedure as may be prescribed by the Public Service Commission under section 121(1) of this Constitution:

Provided that any procedure so prescribed shall be the same for all classes of public officers.

(c) Where an appeal is brought under paragraph (b) of this subsection by any public officer he shall, upon the consideration of the appeal by the Public Service Commission, have the right to be heard by the Commission in person and to be assisted by a representative of any trade union to which he belongs.

(4) No person shall be appointed under this section to or to act in any office on the personal staff of the President except with the approval of the President.

(5) The provisions of this section shall not apply in relation to --

(a) the offices referred to in sections 91, 92 (other than subsection (4) thereof), 94, 95(6), 100, 108 and 111 of this Constitution; or

(b) appointments to act in any public office for two months or less in so far as the recommendation of the Public Service Commission is required for any such appointment; or

(c) appointments to the offices referred to in section 92(4) and appointments on transfer to and from the offices referred to in section 112 of this Constitution.

(6) Recruitment for employment with any body established by the Constitution or by or under any other law or with any partnership or other body in which the Government of

Malta, or any such body as aforesaid, have a controlling interest or over which they have effective control shall, unless such recruitment is made after a public examination duly advertised, be made through an employment service as provided in subsection (2) of this section.

### **Section 111 [Presidents Power to Appoint Officials]**

(1) Power to appoint persons to hold or act in the offices to which this section applies and to remove persons so representatives appointed from any such office shall vest in the President, of Malta abroad acting in accordance with the advice of the Prime Minister:

Provided that in respect of any person selected for appointment from the public service the Prime Minister shall before giving his advice under the provisions of this section consult with the Public Service Commission and, on being removed from the office to which he has been appointed under the provisions of this section, the person so appointed shall revert to the rank which he held in the public service immediately before such appointment.

(2) The offices to which this section applies are the offices of any Ambassador, High Commissioner or other principal representative of Malta in any other country.

### **Section 112 [Other Power to Appoint Officials]**

(1) Power to make appointments on transfer to and from the offices to which this section applies shall vest in on transfer the Prime Minister acting after consultation with the Public Service Commission:

Provided that the person appointed to any such office under the provisions of this section shall on being transferred from that office, revert to the rank which he held in the public service immediately before his appointment to that office.

(2) The offices to which this section applies are --

(a) offices the holders of which are required to reside outside Malta for the proper discharge of their functions; and

(b) such offices in the Ministry responsible for the external affairs of Malta as may, from time to time, be designated by the Prime Minister.

### **Section 113 [Benefits Law]**

(1) Subject to the provisions of section 114 of this Constitution, the law applicable to any benefits to which this section applies shall, in relation to any person who has been granted, or who is eligible for the grant of such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) In this section, "the relevant date" means --

(a) in relation to any benefits granted before the appointed day, the date on which those benefits were granted;

(b) in relation to any benefits granted or to be granted on or after the appointed day to or in respect of any person who was a public officer before that date, the day before the appointed day; and

(c) in relation to any benefits granted or to be granted to or in respect of any person who becomes a public officer on or after the appointed day, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case,- the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) Any benefit to which this section applies (not being a benefit that is a charge upon some other public fund of Malta) shall be a charge upon the Consolidated Fund.

(5) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependents or personal representatives of such persons in respect of such service.

(6) References to the law applicable to any benefits to which this section applies include (without prejudice to their generality) references to any law relating to the time at which and the manner in which any person may retire in order to become eligible for those benefits.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby any benefits to which this section applies are or may be reduced or withheld --

(a) until the person eligible therefor reaches the age of sixty years, or such lower age as may be determined by or under a law, if such person is in receipt of any income to which this subsection applies and such provision is made in order that any such income together with any uncommuted benefits aforesaid do not in the aggregate exceed such amount as may be determined by, under or in accordance with any law, being an amount not less than the salary from time to time payable in respect of the post held by such person on retirement, taking account only, if such salary is incremental, of the corresponding increments earned prior to retirement; or

(b) in order to ensure compliance with any legal requirements relating to any of the purposes of paragraph (a) of this subsection; or

(c) if the person eligible therefor ceases to be a citizen of Malta.

(8) The income to which subsection (7) of this section applies is any remuneration in respect of, or other income deriving from, any employment, work, service, office, trade, business, profession or vocation, or from any pension, allowance, gratuity or similar payment in respect of any such employment or other source of income.

#### **Section 114 [Reduction by Public Service Commission]**

(1) Where any benefits to which this section applies can be withheld, reduced in amount or suspended by any person or authority under any law those benefits shall not be so withheld, reduced in amount or suspended without the concurrence of the Public Service Commission, unless such benefits are reduced or withheld in accordance with any law referred to in

subsection (7) of section 113 of this Constitution.

(2) The Public Service Commission shall not concur under subsection (1) of this section in action taken on the ground that any person who holds or has held any of the offices referred to in sections 91, 95(6), 100 and 108 of this Constitution has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(3) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependents or personal representatives of such persons in respect of such service.

### **Section 115 [No Liability of Public Service Commission]**

The question whether --

- (a) the Public Service Commission has validly performed any function vested in it by or under this Constitution;
  - (b) any member of the Public Service Commission or any public officer or other authority has validly performed any function delegated to such member, public officer or authority in pursuance of the provisions of subsection (1) of section 110 of this Constitution; or
  - (c) any member of the Public Service Commission or any public officer or other authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding paragraph,
- shall not be enquired into in any court.

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## **Chapter XI Miscellaneous**

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### **Section 116 [Individual Complaint Against Invalid Laws]**

A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of sections 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action.

### **Section 117 [Unlawful Associations]**

- (1) It shall be unlawful to establish, maintain or belong to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object.
- (2) The provisions of this section shall be enforced in such manner as may be provided by Parliament.

### **Section 118 [Broadcasting Authority]**

(1) There shall be a Broadcasting Authority for Malta which shall consist of a chairman and such number of other members not being less than four as may be prescribed by any law for the time being in force in Malta.

(2) The members of the Broadcasting Authority shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.

(3) A person shall not be qualified to hold office as a member of the Broadcasting Authority if he is a Minister, a Parliamentary Secretary, a member of, or candidate for election to, the House of Representatives, a member of a local government authority or if he is a public officer.

(4) A member of the Broadcasting Authority shall not, within a period of three years commencing with the day on which he last held office or acted as a member, be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of this section, the office of a member of the Broadcasting Authority shall become vacant --

(a) at the expiration of five years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or

(b) if any circumstances arise that, if he were not a member of the Authority, would cause him to be disqualified for appointment as such.

(6) A member of the Broadcasting Authority may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(7) If the office of a member of the Broadcasting Authority is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of subsections (5) and (6) of this section, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(8) In the exercise of its functions under section 119(1) of this Constitution the Broadcasting Authority shall not be subject to the direction or control of any other person or authority.

### **Section 119 [Functions of Broadcasting Authority]**

(1) It shall be the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.

(2) The function of the Broadcasting Authority referred to in subsection (1) of this section shall be without prejudice to such other functions and duties as may be conferred upon it by any law for the time being in force in Malta.

### **Section 120 [Employment Commission]**

(1) There shall be an Employment Commission for Malta which shall consist of a chairman and four other members.

(2) The members of the Employment Commission shall be appointed by the President who, in appointing the chairman shall act in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition, in appointing two of the four other members shall act in accordance with the advice of the Prime Minister, and in appointing the other two members shall act in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to hold office as a member of the Employment Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives, a member of a local government authority, or if he is a public officer.

(4) A member of the Employment Commission shall not, within a period of three years commencing with the day on which he last held office or acted as a member, be eligible for appointment to or to act in any public office.

(5) Subject to the provisions of this section, the office of a member of the Employment Commission shall become vacant --

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(6) A member of the Employment Commission may be removed from office by the President, acting in accordance with the advice of the holder of the office on whose advice such member was appointed, given, where applicable, as provided in subsection (2) of this section, but such member may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(7) If the office of a member of the Employment Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the holder of the office on whose advice such member was appointed, given, where applicable, as provided in subsection (2) of this section, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of subsections (5) and (6) of this section, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(8) It shall be the function of the Employment Commission to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic

society is made or given in favour or against any person by reason of his political opinions.

(9) Any person who alleges that any distinction, exclusion or preference as aforesaid has been made or given to his prejudice may apply to the Employment Commission, in such manner and within such time as may be prescribed, for redress.

(10) Parliament shall make provision conferring upon the Employment Commission such powers as are necessary or desirable for the purpose of enabling the Commission ;effectively to afford adequate redress and generally to carry out its function under this Constitution.

### **Section 121 [Other Commissions]**

(1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister by regulation or otherwise regulate its own procedure and confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of its functions.

(2) Any Commission established by this Constitution may act notwithstanding any vacancy in its membership or the absence of any member and any proceedings thereof shall be valid notwithstanding that some person who was not entitled so to do took part therein.

(3) Any question proposed for decision at any meeting of any Commission established by this Constitution shall be determined by a majority of the votes of all the members thereof, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.

(4) For the purposes of subsection (3) of this section, the references to a member of the Electoral Commission shall be construed as including a reference to the Chairman of that Commission.

(5) The provisions of this section shall apply to the Broadcasting Authority established by this Constitution.

### **Section 122 [Right to Resignation]**

(1) Any person who is appointed, elected or otherwise selected to any office established by this Constitution (including the office of the Prime Minister or other Minister or Parliamentary Secretary) may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected.

(2) The resignation of any person from any such office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

### **Section 123 [Re-Appointment]**

(1) Where any person has vacated any office established by this Constitution including the office of Prime Minister or other Minister or Parliamentary Secretary, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.



(2) Subsection (1) of this section shall not apply to the office of President, but shall apply to a person appointed to perform the functions of President in accordance with section 49 of the Constitution.

(3) Where by this Constitution a power is conferred upon any person or authority to make any appointment to any public office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of the office; and where two or more persons are holding- the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred upon the holder of that office the person last appointed shall be deemed to be the sole holder of the office.

### **Section 124 [Definitions]**

(1) In this Constitution, unless the context otherwise requires --

"Act of Parliament" means any law made by Parliament;

"the appointed day" means 21st September 1964;

"the Cabinet" means the Cabinet established by section 79 of this Constitution;

"the Commonwealth" means Malta, any country to which section 28 of this Constitution applies and any dependency of any such country;

"the Consolidated Fund" means the Consolidated Fund established by section 102 of this Constitution;

"Constitutional Court" means the Constitutional Court established by section 95 of this Constitution;

"financial year" means the period of twelve months ending on the thirty-first day of December in any year or on such other date as may be prescribed by Parliament;

"Gazette" means the Malta Government Gazette or any other official journal substituted therefor published by order of the Government of Malta;

"House" means the House of Representatives established by section 51 of this Constitution;

"law" includes any instrument having the force of law and any unwritten rule of law and

"lawful" and "lawfully" shall be construed accordingly;

"Malta" means the Island of Malta, the Island of Gozo and the other island of the Maltese Archipelago, including the territorial waters thereof;

"oath of allegiance" means the oath of allegiance set out in the Third Schedule to this Constitution or such other oath as may be prescribed by Parliament;

"Parliament" means the Parliament of Malta;

"public office" means an office of emolument in the public service;

"public officer" means the holder of any public office or a person appointed to act in any such office;

"the public service" means, subject to the provisions of subsections (2) and (3) of this section, the service of the Government of Malta in a civil capacity;

"session" means the sittings of the House of Representatives beginning when it first meets after the commencement of this Constitution or after the prorogation or dissolution of

Parliament at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the House of Representatives is sitting continuously without adjournment and includes any period during which the House is in committee;

"the Speaker" and "Deputy Speaker" mean respectively the Speaker and the Deputy Speaker elected under section 59 of this Constitution.

(2) In this Constitution, unless the context otherwise requires, "the public service" includes service in the office of judge of the Superior Courts, service in the office of magistrate of the Inferior Courts and service in the office of a member of the Malta Police Force.

(3) In this Constitution "the public service" does not include service in the office of --

(i) Prime Minister or other Minister, a Parliamentary Secretary, Speaker, Deputy Speaker, a member of the House of Representatives, a member of a Commission established by this Constitution;

(ii) save where the holder of the office is selected from the public service, an Ambassador, High Commissioner or other principal representative of Malta in any other country; or

(iii) save in so far as may be prescribed by Parliament, a member of any council, board, panel, committee or other similar body established by or under any law.

(4) For the purposes of this Constitution a person shall not be regarded as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of public service.

(5) In this Constitution, unless the context otherwise requires --

(a) a reference to an appointment to any office shall be construed as including a reference to an appointment on promotion or transfer to that office and to the appointment of a person to perform the functions of that office during any period during which it is vacant or during which the holder thereof is on vacation or unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions; and

(b) a reference to the holder of an office by the term designating his office or by reference to the provision of this Constitution establishing that office shall be construed as including a reference to any person for the time being lawfully performing the functions of that office.

(6) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that --

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any person holding any of the offices referred to in sections 91, 95(6), 100 or 108 of this Constitution to retire from the public service; and

(b) the provisions of this subsection shall not apply to any power conferred by any law to

permit a person to retire from the public service where that person has requested permission to retire from the public service on proved medical grounds.

(8) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified therein.

(9) Where any power is conferred by this Constitution to make any proclamation, order, rules or regulations or to give any directions or to make any designation, the power shall be construed as including a power, exercisable in like manner, to amend or revoke any such proclamation, order, rules, regulations, directions or designation.

(10) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(11) Where a person is required by this Constitution to make an oath he shall be permitted, if he so desires, to comply with that requirement by making an affirmation.

(12) Any reference in this Constitution to a law made before the commencement of this Constitution shall, unless the context otherwise requires, be construed as a reference to that law as in force immediately before the appointed day.

(13) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-enacts with or without amendment or modification, or makes different provisions in lieu of that other law.

(14) Where Parliament has by law provided for the interpretation of Acts of Parliament, the provisions of any such law, even if expressed to apply to laws passed after the commencement thereof, shall apply for the purposes of interpreting this Constitution, and otherwise in relation thereto, as they apply for the purpose of interpreting and otherwise in relation to Acts of Parliament as if this Constitution were an Act of Parliament passed after the commencement of any such law as aforesaid:

Provided that, until such time as Parliament has made provision as aforesaid, the law applicable for the interpretation of this Constitution and otherwise in relation thereto shall be the law which was applicable for that purpose on the appointed day.

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