

# Constitution of Malta

## Explanations

### Chapter I:

There is no change in Article 1 of the current text.

Article 1 of the new draft is a new addition to include a number of other aspects of Maltese life such as the sovereignty of the people, the obligation of the State towards the inviolability of the rights of man, the dignity and equality of all persons in the law, the right to work, responsibility of the cultural and historical heritage and the landscape, the status of foreign citizens and Malta's adherence to the norms of international law.

There were no changes in Articles 3 (the national flag).

Reference is made to the National Anthem in Article 4 where the lyrics appear to be inappropriate to the current way of life in Malta. The religious undertones in the lyrics may need to be reconsidered. Certainly the reference to 'Hakkiema' ought to be replaced by 'mexxejja' as minimum.

There were no changes either in Articles 5 (the national language) and Article 6 on the supremacy of the Constitution in the legal system. These Articles retained the same numbering in the suggested text.

Article 7 on religion has been simplified. It acknowledges the Roman Catholic religion as the primary religion of Malta but acknowledges the presence of other religions with the right of worship provided there is no conflict with Maltese law. It is currently in Article 2.

Article 8 on neutrality has been simplified to emphasise Malta's peaceful co-existence with all nations except in the face of threats to its sovereignty or territory. It is currently in Article 1(3).

### Chapter II

The suggested text introduces new elements for the new version and includes all the principles listed in the current text.

Article 9 deals with the foundations of democracy and the basis of its structure.

Article 10 deals with the origins and the exercise of power.

Article 11 introduces the institution of the President as an elected representative of the people with new executive powers.

Article 12 introduces Parliament.

Article 13 introduces the concept of government

Article 14 introduces the functions of the courts of justice in society.

Article 15 includes all the principles of democracy as in Articles 7 to 20 inclusive of the current text. The only change made refers to the duty of both the State and public institutions to ensure the respect due to the principles of democracy.

Article 16 refers to Malta's obligations as a result of its membership of the European Union, the United Nations and the Council of Europe among others.  
Article 21 of the current text has been removed.

### **Chapters III and IV**

There are no changes in Chapters III and IV dealing with citizenship and the fundamental rights and liberties of the individual. These are found in Articles 22 to 47 inclusive of the current text. In the suggested version these are included in Articles 17 to 35 inclusive.

### **Chapter V**

The Chapters 36-38 inclusive in the suggested text deals with the Presidency as an institution with the following changes:

- (i) The President is elected for four years with the right to seek re-election for another term; and
- (ii) The President takes his oath in his of office in the presence of his predecessor.

These correspond with Articles 48 to 50 inclusive of the current test.

### **Chapter VI**

There are no changes in Articles 39, 41, 43, 45 and 46 corresponding to Articles 51, 53, 55, 57 and 58 of the current text.

In Article 40(2) there is a major change in the way members of parliament are elected. The concept of the electorate being divided into thirteen districts each electing five members of parliament, will be changed into the electorate being divided equally into sixty-five (current number) of regions each electing one candidate in a system of first past the post. This also refers to Article 44(1). Current text in Article 52(2).

The other change in this article relates to (v) whereby the speaker of the House will be a member of parliament.

There are changes in Article 42(1)(f) and (2)(a) whereby the reference to the death penalty is removed. Current text in Article 52.

References to Parliamentary Secretary in Article 47 and in all subsequent Articles are being suggested to be removed. Current text: Article 59.

The appointment and removal of members of the Electoral Commission in Article 48 (6) will become the responsibility of the President after consulting the Prime Minister and the Leader of the Opposition. Current text: Article 60.

Articles 49 to 63 inclusive remain unchanged. Current text: Articles 61 to Article 74.

Article 64(2) has been changed to reflect the need for Parliament to meet regularly and to be closed on those days when it is established by law or during vacation times. Current Article: 75.

There are no changes to Articles 65. Current text: Article: 76.

Article 66 provides a new fixed date set for elections every five years. Current text: Article: 77.

Articles 67(3) appears to be contradictory and has been removed. Current text: Article 78.

Articles 68 to 73 inclusive: no changes are made to the current text found in Articles 79 to 84 inclusive.

Article 74 is changed to exclude the new executive powers of the President. Current text: Article: 85.

Articles 75, 76 and 78 are the same as in the current text Articles: 86, 87 and 90.

Article 88 of the current text relating to Parliamentary Secretaries has been deleted from the suggested text.

Reference to Parliamentary Secretaries in Article 77 of the suggested text is removed. Current text: Article 89.

The responsibilities of the Attorney General in the current text Article 91(3) have been removed from the suggested text under Article 79. The remainder of the text is unchanged.

Article 80 in the suggested text is new and refers to the powers to be delegated to the Prosecutor General.

Articles 92, 94 and 95 of the current text have been retained unchanged in the suggested text in Articles 81, 82 and 83.

Article 93 in the current text referring to the power of the President to absolve or change judicial judgements on persons found guilty in legal cases is removed. Everyone is equal under the law.

Significant and important changes were made to Article 84 of the suggested text. The President is still empowered to appoint judges in the Superior Courts on the advice of the Judiciary Appointments Committee following an evaluation process. The judicial appointee needs to have served a minimum of twenty-five years as a lawyer and/or fifteen years as a magistrate. Appointments to the Superior Court cannot be served on candidates who were affiliated or participated in any way in the functioning of political parties as an official, candidate or member. Current text: Article 96.

Important changes were also made to Article 85 of the suggested text. The revised version of the Committee is to be made up of nine persons, four of whom were listed in the current text in Article 96A with the exclusion of

the Auditor General. In the suggested text five new persons need to be appointed: the Prosecutor General and four other practising lawyers who must have served a minimum of twenty-five years in the law courts.

Another important change relates to the appointment of the Secretary to the Committee who will be appointed from officials working in the law courts or from the legal profession.

Articles 86, 87 and 88 of the suggested text are identical with Articles 97, 98 and 99 of the current text.

Several changes were also introduced in this suggested text Article 89 of the suggested text compared to Article 100 of the current text. The President appoints Magistrates following the advice from the Judicial Appointments Committee. The Magistrates need to have served as lawyers for a minimum of fifteen years in the courts. Article 100(6) of the current text has been removed

Article 90 of the suggested text is identical with Article 101 of the current text.

Article 91 contains some important changes as well from the current text Article 101A. The Commission for the Administration of Justice will be composed of nine persons including, the President, the Chief Justice, the Attorney General, and the President of the Chamber of Advocates together with the Prosecutor General, two judges and two magistrates.

The reference to Parliamentary Secretary in Article 91(4)(i) has been deleted but the reference to any ties with a political party has been inserted.

Article 92 of the suggested text is identical to Article 101B of the current text.

Article 93 of the current text includes changes in finance. The suggested text includes a clause requiring the current and capital expenditures combined to be balanced over a rolling period of three years. Current text: Article 102.

Articles 94, 95 and 96 of the suggested text are identical to Articles 103, 104, 105 of the current text.

A new indent to Article 97 in the suggested text has been included restricting the national debt not to exceed 60% of the gross domestic product of the previous year at any time. Current text: Article 106.

Articles 98 and 99 of the suggested text are equivalent to Articles 107 and 108 of the current text.

There are three changes contained in Article 100 of the suggested text relating to members of the Commission to be appointed by the President following advice from the Prime Minister after agreement with the Leader of the Opposition (2) and (7); reference to Parliamentary Secretary has been deleted whilst reference to any relationships to political parties are included (3); and their period of appointment has been extended to five years from three(4). Current text: Article 109.

Articles 101 to 108 inclusive of the suggested text are identical to Articles 110 to 117 inclusive of the current text with one exception. Article 115A dealing with Local Councils has been deleted.

Several changes were included in the suggested text. These refer to the need for the Prime Minister to advise the President on the members to form part of the Broadcasting Authority after reaching agreement with the Leader of the Opposition. Members cannot include Parliament Secretaries or Local Council Officials as both institutions will be abolished if the draft text is accepted. Members serve for a period of five years from appointment and can serve for a further term. Current text: Article 118.

Article 110 of the suggested text is identical to Article 119 of the current text.

Changes in Article 111 of the suggested text refer to the need of the Prime Minister to agree with the Leader of the Opposition before giving advice to the President for the appointment of all members of the Employment Commission (2); membership of the Commission could not include Parliamentary Secretaries, members of the Local Councils (3); the appointment for Commission members is for five years (4) and (5); members of the Commission could only be removed by the President on the advice of the Prime Minister and for specific ends; and the words 'justifiable in a democratic society' have been deleted. Current text: Article 120.

Articles 112, 113 and 114 of the suggested text are identical to the current text in Articles 121, 122 and 123 with the exception of the reference to Parliamentary Secretaries in 122(1) and 123(1) of the current text.