

THE EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002

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I assent.

(L.S.)

GUIDO DE MARCO
President

25th October, 2002

ACT No. XXII of 2002

AN ACT to consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap. 135) and the Industrial Relations Act (Cap. 266).

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

GENERAL

1. (1) The short title of this Act is the Employment and Industrial Relations Act, 2002.

Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for Employment and Industrial Relations may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

2. (1) In this Act, unless the context otherwise requires -

Definitions.

"act" and "action" each includes omission and references to doing an act or taking action shall be construed accordingly;

"apprentice" has the same meaning as is assigned to it by article 29 of the Employment and Training Services Act, Cap. 343.

"class" when used in the context of a group or a category of employees shall refer to the groups or categories listed in a collective agreement:

Provided that where there is no collective agreement or where a collective agreement does not stipulate groups or categories of employees, it shall refer to the work performed or expected to be performed independently of the title or name given to the post;

"collective agreement" means an agreement entered into between an employer, or one or more organisations of employers, and one or more organisations of employees regarding conditions of employment in accordance with the provisions of any law in force in Malta;

"comparable whole-time employee" means a whole-time employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualification and skills:

Provided that where there is no comparable whole-time employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable whole-time employees in other establishments:

Provided further that where there is no applicable collective agreement, reference shall be made to law or in default of provision by law to the prevailing practice as may be established by the Employment Relations Board;

"conciliator" means a person appointed as such under article 68;

"conditions of employment" means wages, the period of employment, the hours of work and leave and includes any conditions related to the employment of any employee under a contract of service including any benefits arising therefrom, terms of engagement, terms of work participation, manner of termination of any employment agreement and the mode of settling any differences which may arise between the parties to the agreement, but it does not include professional ethics arising from any professional relationship between an employer and an employee;

"confinement" means the birth of a living child or the birth of a child whether living or dead after seven months of pregnancy;

"contract of service" and "contract of employment" means an agreement, (other than service as a member of a disciplined force)

whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship;

"Council" means the Joint Negotiating Council established by article 72;

"court of inquiry" means a person or persons appointed as a court of inquiry under article 69;

"Director" means the Director responsible for Employment and Industrial Relations

"disciplined force" has the same meaning as is assigned to it by article 47 of the Constitution of Malta;

"discriminatory treatment" means any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association;

"employee" means any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service;

"employer" includes a partnership, company, association or other body of persons, whether vested with legal personality or not;

"employees' representative" for the purposes of articles 35, 36(14), 37 and 38 means the recognized union representative;

Provided that, where there exists no recognised union, the terms shall mean such representative of the union representing the employees, notwithstanding that in the case of non-unionised employees, the terms shall mean such representative duly elected from amongst the non-unionised employees, by means of a secret ballot called for such purpose by the Director;

"employers' association" means an organisation consisting wholly or mainly of employers and of which the principal purpose is by its rules the regulation of relations between employers and

workers or trade unions;

"employment", in relation to a trade dispute, includes any relationship whereby one person does work or performs services for another (other than a service as a member of a disciplined force);

"hours of work" means the time on any day during which employees are available for service to the employer, exclusive of the intervals allowed for meals and rest;

"Industrial Tribunal" means the Industrial Tribunal set up under Title II of this Act;

"Minister" means the Minister from time to time responsible for Employment and Industrial Relations;

"national standard order" means an order made under this Act regulating the conditions of employment of employees in general;

"outworker" means a person to whom articles, materials or services of any nature are given out by an employer for the performance of any type of work or service where such work or service is to be carried out either in the home of the outworker or in some other premises not being premises under the control and management of that other person;

"overtime" means any hours of work in excess of the normal hours of work;

"parent" includes an adoptive parent or any person who has the legal custody of a child;

"part-time employee" means an employee whose normal hours of work, calculated on a weekly basis or on an average over a period of employment of up to one year, are less than the normal hours of work of a comparable whole-time employee and who is not a whole-time employee with reduced hours;

"period of employment" means the time in any day during which employees are available for service to the employer, but inclusive of the intervals allowed for meals and rest;

"personal injury" includes any disease and any impairment of a person's physical or mental condition;

"prescribed" means prescribed by this Act or by or under rules or regulations made under this Act;

"pro rata" means the proportion that the weekly number of hours for which the employee is engaged bears to the number of weekly hours, excluding overtime, of a comparable whole-time employee;

"public office", "public officer" and "public service" have the same meaning as is assigned to them by article 124 of the Constitution of Malta;

"recognised conditions of employment" are those conditions of employment recognised in terms of Part II of Title I of this Act;

"recognition" for the purposes of this Act, shall mean the express recognition of a registered trade union by an employer or by an employers' association for the purposes of collective bargaining;

"registered", in relation to a trade union or an employers' association and to the rules thereof, means registered under this Act;

"Registrar" means the Registrar of Trade Unions appointed or designated under article 52;

"registration" means registration under this Act of a trade union or of an employers' association and of the rules thereof;

"sectoral regulation order" means an order made under this Act regulating the conditions of employment of a sector or class of employees;

"trade dispute" means a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for officials of trade unions;

(f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;

(g) the membership or non-membership of a worker in a particular trade union;

"trade union" means an organisation consisting wholly or mainly of workers and of which the principal purpose is by its rules the regulation of relations between workers and employers or employers' associations;

"Tribunal" means the Industrial Tribunal established by article 73;

"unfair dismissal", in relation to a worker, means:-

(a) the termination by the employer in respect of that worker of a contract of employment for an indefinite time (other than probationary employment as defined in this Act) being a termination which is not made solely on the grounds of redundancy or for a good and sufficient cause in accordance with the relevant provisions of this Act or any regulations prescribed hereunder, or

(b) which is made in contravention of the provisions of article 64(4), or

(c) which, though made on grounds of redundancy or for a good and sufficient cause, is discriminatory as defined in this Act or any regulations prescribed hereunder;

and includes any failure by the employer to re-employ such person or to re-employ him as provided in article 36(3);

"wages" means remuneration or earnings, payable by an employer to an employee and includes any bonus payable under article 23 other than any bonus or allowance related to performance or production;

"weekly day of rest" means a period of twenty four consecutive hours starting from the time when the employee normally commences his term of duty;

"whole-time employee" means an employee who is deemed to be a whole-time employee in terms of any recognised conditions of employment:

Provided that where a person is employed in more than one whole-time employment, that employment in respect of which social security contributions are payable shall be deemed to be the whole-time employment of the employee, and any other employment shall be deemed to be part-time employment;

"whole-time employee with reduced hours" means a whole-time employee who in agreement with the employer works for less than the number of hours of work applicable in terms of the recognised conditions of employment to a whole-time employee, provided that such employment is the principal employment of the employee, in respect of which social security contributions are payable;

"worker" has the same meaning as "employee" but for the purposes of Title II of this Act, "worker" means an employee who works or normally works or seeks to work -

- (a) under a contract of employment; or
- (b) under any contract (whether express or implied and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or
- (c) in employment under or for the purposes of a department of Government, otherwise than as a member of a disciplined force, in so far as any such employment does not fall within paragraph (a) or (b) of this definition,

and in relation to a trade dispute to which an employer is a party, "worker" includes any worker even if not employed by that employer.

(2) For the purposes of this Act, a dispute to which a trade union or an employers' association is a party shall be treated as a dispute to which workers or, as the case may be, employers are parties.

(3) Any provision of this Act requiring compliance with or observance of any provision of this Act (however such requirement is worded), or making provision with respect to any contravention thereof, shall be construed as requiring compliance with and observance of, or as equally applicable to, any provision of any regulation or rule made under this Act.

(4) The masculine gender includes the feminine and the singular includes the plural, unless the context otherwise requires.

TITLE I

EMPLOYMENT RELATIONS

PART I

EMPLOYMENT RELATIONS BOARD

Employment
Relations
Board.

3. (1) A Board to be designated Employment Relations Board and hereinafter referred to as the "Board", shall be appointed by the Minister.

(2) The Board shall be composed as follows:

- (a) an independent chairperson;
- (b) the Director responsible for Employment and Industrial Relations who shall act as Deputy Chairperson;
- (c) four representatives of employees nominated by the Malta Council for Economic and Social Development from amongst the representative national workers' organisations sitting on the said Council;
- (d) four representatives of employers nominated by the Malta Council for Economic and Social Development from amongst the representative national employers' organisations sitting on the said Council; and
- (e) three other persons to be appointed by the Minister.

(3) The functions of the Board shall be -

- (a) to make recommendations to the Minister as to any national minimum standard conditions of employment, hereinafter referred to as a national standard recommendation, for eventual inclusion in a national standard order;
- (b) to make recommendations to the Minister as to any sectoral conditions of employment, hereinafter referred to as a sectoral regulation recommendation, for eventual inclusion in a sectoral regulation order;
- (c) To advise the Minister on any matter relating to conditions of employment, or on any matter referred to the

Board by the Minister.

(4) The Minister shall appoint a public officer to act as secretary to the Board.

(5) Subject to the provisions of this Act and to any regulations made thereunder the Board shall regulate its own procedure:

Provided that the Chairperson of the Board shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote.

(6) The Board shall have the power to co-opt non voting members and to appoint sub-committees.

PART II

RECOGNISED CONDITIONS OF EMPLOYMENT

4. (1) Where the Minister receives any national standard recommendation or any sectoral regulation recommendation he may, subject as hereinafter provided, make a national standard order or a sectoral regulation order, as the case may be, to be published in the Gazette, giving effect to the national standard recommendation or the sectoral regulation recommendation as from such date as may be specified in the order:

National
Standard Orders
and Sectoral
Regulation
Orders.

Provided that the Minister may, if he thinks fit, before making an order as aforesaid, refer the national standard recommendation or the sectoral regulation recommendation received by him back to the Board and the Board shall thereupon reconsider it having regard to any observations made by the Minister and may, if it thinks fit, re-submit the national standard recommendation or the sectoral regulation recommendation to the Minister either without amendment or with such amendments as it thinks fit having regard to those observations:

(2) Any national standard recommendation and any sectoral regulation recommendation as well as any national standard order or sectoral regulation order for giving effect thereto, may make different provisions for different cases and may contain provisions for the amendment or revocation of previous national standard orders or sectoral regulation orders and may contain any incidental, supplemental or consequential provisions which may appear necessary for carrying out the provisions of any national standard order and any sectoral regulation order.

(3) No national standard order or sectoral regulation order shall have effect so as to prejudice any rights as to conditions of employment conferred on any employee by or under any law other than this Act or by or under any existing contract.

(4) Without prejudice to what is provided in the proviso to article 42, if a contract between an employee to whom a national standard order or a sectoral regulation order applies and the employer or any collective agreement provides for conditions of employment less favourable to the employee than those specified in the order, it shall have effect as if for those conditions there were substituted the conditions specified in the order.

Recognised
conditions of
employment

5. (1) The conditions of employment prescribed in a national standard order, or in a sectoral regulation order, or a collective agreement or determined by voluntary settlement or award under the Title II of this Act, or required to be observed by or under this Act, shall be the recognised conditions of employment for the employees concerned.

(2) Where the conditions of employment are prescribed in a collective agreement, the employer or employers being a party thereto shall, within fifteen days of the signing of such agreement, send to the Director a copy thereof duly authenticated.

(3) Non observance by an employer of conditions of employment established by a national standard order or by a sectoral regulation order shall be deemed to be an offence under this Act;

(4) Nothing in this article shall prejudice any rights the parties may have arising out of any contract of service or any collective agreement under the provisions of the Title II of this Act or any other law, including the Civil Code.

Cap. 16.

Working hours
and overtime.

6. The Minister may, after consultation with the Board, prescribe the maximum weekly working hours, including overtime, for employees, minimum periods of daily rest, weekly rest and annual leave, and may make different provisions for different classes of employees including any incidental, supplemental or consequential provisions as may be deemed necessary.

Conditions of
employment to
be brought to
notice.

7. On engagement of any employee, the employer shall explain to the employee the provisions of any recognised conditions of employment as may be applicable and shall deliver to the employee a written statement about such conditions as may be prescribed.

8. (1) Where a general increase in wages is granted by the Government to all its whole-time employees and such increase is declared by the Minister by notice in the Gazette to be of general application to all whole-time employees, every employer shall increase the wages of every whole-time employee in his employment by an amount equivalent or corresponding to the increase granted by the Government to its employees with effect from the date on which the increase granted by the Government in respect of its employees takes effect:

Cost of living increases.

Provided that, in the case of an employee who is entitled to pro rata benefits in accordance with this Act or any regulations issued hereunder, such employee shall be entitled to a portion of such cost of living increase on a pro rata basis.

(2) For the purpose of sub-article (1) of this article, "whole-time employees" means any employee who is deemed to be a whole-time employee in accordance with any recognised condition of employment as defined in this Act and includes any other employee who is in employment with any particular employer for not less than thirty-five hours per week averaged in a twelve month period or part thereof.

9. In so far as conditions of employment are concerned, the provisions of the Occupational Health and Safety Authority Act and any regulations issued thereunder shall be deemed to form part of the recognised conditions of employment of employees to whom such provisions or regulations may apply and shall, on coming into force, have the same effect as if they were national standard orders or sectoral regulation orders.

Occupational health and safety, Cap. 424.

10. The Minister may, after consultation with the Board, make regulations establishing minimum periods of maternity leave, parental leave and leave for urgent family reasons to which an employee shall be entitled and the conditions regulating such entitlement

Maternity leave, parental leave and leave for urgent family reasons.

PART III

PROTECTION OF WAGES

11. (1) Except where otherwise expressly permitted by the provisions of this Act, the entire amount of the wages earned by, or payable to, any employee shall be paid to him in money being legal tender in Malta, and every payment of, or on account of, any such wages made in any other form and any covenant in any contract providing for other form of payment shall be null and void:

Wages to be paid entirely in legal tender to the employee.

Provided that payment of wages by cheque on a bank in Malta or payable to the Bank account of an employee shall be deemed to be payment in legal tender in cases in which payment in this manner is customary or necessary or is consented to by the employee concerned.

(2) Wages shall be paid directly to the employees to whom they are due except as may otherwise be provided by any law or in virtue of an order made by a competent court or where the employee or employees concerned agree to the contrary.

Terms as to
spending of
wages.

12. No employer shall impose in any contract of service any terms as to the place in which, or the manner in which, or the person or persons with whom, any wages paid to the employee, or any part thereof, are to be spent or otherwise employed, and any such term contained in any such contract shall be null and void.

Attachment or
assignment of
wages.

13. (1) Wages payable by an employer to an employee may not be assigned.

(2) Wages payable by an employer to an employee may not be attached save according to the provisions of articles 381, 382 and 849 of the Code of Organisation and Civil Procedure.

Cap. 12.

(3) The provisions of sub-articles (1) and (2) shall not apply where the assignment or attachment is intended to ensure the payment of maintenance due to the spouse, or to a minor child or to a person with disability or to an ascendant of the employee.

Interest on
advances
prohibited.

14. No employer shall make any deduction from wages by way of discount, interest or any charge of a similar nature in view of any advance of wages made to any employee in anticipation of the covenanted date of payment thereof.

Deduction from
wages.

15. (1) Except where expressly permitted by the provisions of this Act or required by any other law, or where ordered by or in virtue of an order of a competent court, or permitted in an agreement entered into between an employer or employers or an organisation of employers on the one hand and a trade union or trade unions representative of the employees concerned on the other, an employer shall not make any deductions nor enter into any contract with an employee authorising any deductions to be made from the wages to be paid by the employer to the employee.

(2) Unless expressly provided by or under this Act or any other law, an employer shall not compute as part of the wages of an employee any other benefit or income, even though granted or paid by the employer, which is payable on account of any cause other than

the contract of service.

(3) Notwithstanding the provisions of this article, at the request in writing of an employee, the employer may make deductions from the wages of such employee for the purpose of a superannuation or thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest, direct or indirect.

(4) Deductions in the form of direct or indirect payments for the purpose of obtaining or retaining employment shall not be made from the wages of an employee by an employer, or by any intermediary or labour contractor or recruiter.

16. Where any contract of service contains conditions as to holidays better than the minimum established by law, no employer may enter into a subordinate contract of service providing for the payment to the employee in respect of any of such holidays of a daily rate lower than the normal daily rate applicable to such employee.

Subordinate
contracts of
service.

17. Where, in the case of whole-time employees, a public holiday other than a Sunday, falls on a weekly day of rest to which such employee is entitled, such employee shall be entitled to an additional day of vacation leave during the calendar year when such public holiday so falls on a weekly day of rest or on a Sunday in respect of each such public holiday.

Public holidays
falling on
weekly day of
rest.

18. Nothing in this Act shall prevent the making of any contract by an employer with an employee for giving to him food, a dwelling place or other allowances or privileges other than in the form of intoxicating liquor or noxious drugs, in addition to the minimum wages prescribed by a national standard order or a sectoral regulation order, or to a higher stipulated wage, for normal time and overtime, as a remuneration for the employee's services.

Remuneration
other than
wages.

19. (1) Unless otherwise prescribed in a collective agreement, where -

Fines.

(a) the terms of any written contract of service signed by the employees or the terms of a written statement signed by an employer in accordance with article 7 specify in detail the fine or fines to which the employee may become liable in respect of an act or omission; and

(b) the terms of any such contract or the terms of any such statement have been previously approved by the Director,

it shall be lawful for the employer to make such deductions as may be

authorised by such contract or such written statement.

(2) Notwithstanding the provision of sub-article (1), where an employee fails without just cause to give to his employer the total number of hours of work as bound by the terms of any contract of service applicable to him, the employer shall not inflict on the employee any fine for such loss of work but may deduct from the total wages due to the employee that part thereof which corresponds to the work so lost.

(3) Where any fine or fines are imposed by a person or by a group of persons, however named, authorised to perform such function by the employer, such person or persons shall be liable for their acts, without prejudice to the liability of the employer, as if they were the employer.

(4) Unless otherwise prescribed in a collective agreement, when an employer suspends an employee from work and during the period of suspension does not pay him wages or pays him less than the wage to which the employee is entitled, the employer shall be deemed to have made a deduction from the wages of the employee by way of a fine equivalent to the amount underpaid to him in wages.

Wages to be
privileged debts

20. Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary.

Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

Guarantee fund.

21. (1) There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.

(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -

(a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;

(b) the level of proof required in order to prove insolvency of the employer;

(c) the rate of contribution which the State, employers and employees shall contribute towards the continued funding of the Fund;

(d) the manner in which such Fund shall be administered;

(e) any class of employment that is precluded from making a claim under the Fund;

(f) the manner and the circumstances in which a claim may be made by an employee for payment from the Fund and the manner and the circumstances in which a claim shall be paid to an employee out of the Fund;

(g) the maximum amount which can be paid out of the Fund to any single claimant;

(h) the right of the Fund to be subrogated into the rights of the employee to whom an amount is paid from the said Fund; as well as the right of the Fund to claim refund of any amounts so paid, from the employer of the employee;

(i) the measures and procedures that may be required in order to prevent abuse.

(3) The Fund shall have a distinct legal personality and shall be capable of entering into contracts, of suing and being sued, and doing all such things and entering into such transactions as are incidental or conducive for the fulfilment of its objectives as may be prescribed by the Minister.

(4) The Fund shall be empowered to collect, recover and institute proceedings for the payment of sums due to it, in terms of the provisions of this Act.

(5) The legal and judicial representation of the Fund shall vest in the chairperson or in any other person as the Fund may authorise for this purpose.

Wages to be
paid at regular
intervals

22. (1) Every employer shall pay or cause to be paid wages to his employees at regular intervals which shall not exceed four weeks in arrears:

Provided that the provisions of this sub-article shall not apply where an agreement is entered into between an employer or employers or organisations of employers on the one hand and trade union representatives of the employees concerned on the other, fixing other intervals for the payment of wages.

(2) On termination of a contract of service all wages outstanding and any compensation payable to the employee for leave entitlement unavailed of, shall be paid by the date of the next pay day determined under sub-article (1) as if the contract had not been terminated.

(3) A settlement of accounts shall be made at least once a year by the employer in respect of employees whose wages consist of a share of profits or of a commission on sales or payments made or received by the employer.

Payment of
bonus.

23. (1) Every employer shall pay, or cause to be paid, to each of his whole-time employees, such statutory bonuses and income supplements in the amount and at the times as may be established by legal notice issued by the Minister of Finance by virtue of this article; provided that such statutory bonus shall be in the form of a sum of money which, in either case, shall not be less than one-half of that which the Government shall have announced in the general estimates of any particular year as payable by the Government to each of its employees during that year:

Provided that, where any person has been in whole-time employment with any particular employer for a period of not less than thirty days but less than twelve months between the 1st January and the 31st December of any year, such employee shall be entitled to receive from his employer, or from any of his employers, a proportionate amount of the bonus payable under this article, calculated on the number of days in any such employment:

Provided further that any unqualifying period of employment during the first six months of any year shall be added to any period of employment with the same employer during the second six months of that year for the purposes of the qualifying period of employment and the total amount of bonus due to that employee with respect to the total period of such employment shall be paid between the 15th and the 23rd day of December of that year, notwithstanding that the total amount of bonus so payable shall exceed the normal

amount of bonus payable in respect of the second six months of that year.

(2) In this article -

"employee" includes a person under agreement of apprenticeship;

"his whole-time employees" includes any whole-time employee who has been in employment with any particular employer for a period of not less than thirty days during any time as from or after the 1st January of any year but is no longer in such employment on the 30th June and/or the 31st December of that year;

"whole-time employee" means any employee who is deemed to be a whole-time employee in accordance with any recognised condition of employment as defined in this Act and includes any other employee who is in employment with any particular employer for not less than thirty-five hours per week averaged in a twelve month period or part thereof.

24. Whole-time employees with reduced hours shall be paid not less *pro rata* than the wage applicable to a whole-time employee in similar employment, and they shall be also entitled to a share *pro rata* of -

Whole-time employees with reduced hours.

(a) the entitlement of public holidays with pay and annual vacation leave;

(b) the benefits contemplated in article 10;

(c) any entitlement of injury leave;

(d) any entitlement to statutory bonus.

to which whole-time employees in similar employment with the same employer are entitled in terms of the recognised conditions of employment applicable to them.

25. (1) Part-time employees shall not be treated in a less favourable manner than comparable whole-time employees solely because they work part-time unless different treatment is justified on objective grounds.

Part-time employees.

(2) The Minister may, after consultation with the Board, prescribe regulations establishing:

(a) the conditions for qualification for pro rata entitlement to specific conditions of work, including the minimum number of hours which a part-time employee must work in order to qualify as well as the minimum period of service that may be required prior to qualification;

(b) the provision of timely information on the availability of part-time and whole-time positions in the place of work as well as access to vocational training or career advancement opportunities;

(c) any other matter which is deemed necessary in order to regulate the conditions of work of part-time employees as prescribed in sub-article (1).

PART IV

PROTECTION AGAINST DISCRIMINATION RELATED TO EMPLOYMENT

Discrimination
and gender
equality

26. (1) It shall not be lawful for any person -

(a) when advertising or offering employment or when advertising opportunities for employment or when selecting applicants for employment, to subject any applicants for employment or any class of applicants for employment to discriminatory treatment;

(b) in regard to employees already in the employment of the employer, to subject any such employees or any class of employees to discriminatory treatment, in regard to conditions of employment.

(2) For the purposes of this article, discriminatory treatment shall include:

(a) the engaging or selection of a person who is less qualified than a person of the opposite sex, unless the employer can prove that the action was based on acceptable grounds related to the nature of the work or on grounds related to previous work performance and experience;

(b) actions which apply to an employee, terms of payment or employment conditions that are less favourable than those applied to an employee in the same work or work of equal value, on the basis of discriminatory treatment;

(c) actions whereby the employer knowingly manages

respect of that person is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidating to such person.

(2) It shall not be lawful for an employer or an employee to sexually harass another employee or the employer (hereinafter in this article referred to as "the victim") by:

(a) subjecting the victim to an act of physical intimacy;
or

(b) requesting sexual favours from the victim; or

(c) subjecting the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material where -

(i) the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to the victim;

(ii) the victim is treated differently, or it could reasonably be anticipated that the victim could be so treated, by reason of the victim's rejection of or submission to the act, request or conduct.

Reference to
Industrial
Tribunal.

30. (1) A person who alleges that the employer is in breach of, or that the conditions of employment are in breach of articles 26, 27, 28 or 29, may within three months of the alleged breach, lodge a complaint to the Industrial Tribunal and the Industrial Tribunal shall hear such complaint and carry out any investigations as it shall deem fit.

(2) If the Industrial Tribunal is satisfied that the complaint is justified, it may take such measures as it may deem fit including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory and may order the payment of reasonable sums of money as compensation to the aggrieved party.

(3) For the purposes of hearing and deciding cases of alleged discrimination, breaches of the principle of work of equal value, victimisation or harassment, the Industrial Tribunal shall be composed of a chairperson alone in the manner set out in article 73(4).

(4) Any action taken by a complainant in accordance with the

provisions of this article shall be without prejudice to any further action that such complainant may be entitled to take under any other applicable law and shall also be without prejudice to any other action to which the respondent may be subject in accordance with any other applicable law.

31. Subject to the foregoing, the Minister may, after consultation with the Board, prescribe regulations to give better effect to the provisions of articles 26, 27, 28 and 29 and in particular for the elimination of any discriminatory practices in the employment or in the conditions of employment of any person or class of persons, for providing equal opportunities of employment for classes of persons who are at a disadvantage and to regulate access to the Industrial Tribunal and investigation and hearing by the Industrial Tribunal of complaints of alleged discrimination, breaches of the principle of work of equal value, victimisation or harassment.

Power of
Minister to
make
regulations.

32. Any person contravening the provisions of articles 28 and 29 shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one thousand liri (Lm 1000) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Offence.

PART V

TERMINATION OF CONTRACTS OF SERVICE

33. A person may bind himself to give his services for a fixed term or for an indefinite term, or in respect of a specified task, undertaking, work or service:

Duration of
contracts of
service.

Provided that where the employee has been retained in employment after the date of termination of a contract of service for a specified time or has been re-employed by the employer for a fixed or indefinite term within one year from the date of termination of a contract of service for a specified time, the conditions of employment shall not be less favourable than those which would have been applicable had the contract of service been for an indefinite time and the aggregate probationary period shall in no case be longer than that provided for under this Act.

34. (1) Saving as otherwise prescribed by this Act, the conditions of employment in a fixed term contract shall not be less favourable than those which would have been applicable had the same contract of employment at the same place of work been for an indefinite time, unless different treatment is justified on objective grounds:

Fixed-term
contracts

Provided that this article shall not apply to contracts of employees on initial vocational training and, or, on apprenticeship schemes.

(2) Any employee on a fixed term contract of service whose contract has expired and is retained by his employer shall be deemed to be retained on an indefinite period contract if the said employee is not given a new contract of service within the first twelve working days following the expiry of the previous contract.

(3) The Minister may, after consultation with the Board, make regulations to -

(a) give better effect to the principle of non-discrimination between employees on fixed-term contracts and employees on indefinite contracts;

(b) establish the circumstances when, for objective reasons, conditions in fixed term contracts may be different from conditions in indefinite contracts;

(c) generally to regulate any matter relating to fixed-term contracts.

Rights of
employees to
minimum
information.

35. The Minister may, after consultation with the Board, make regulations prescribing the minimum information which every employer shall be bound to provide to every employee and the manner in which such information is to be given to the employee and to regulate any other matter relating to the employer's obligation to inform or consult the employee or the employees' representatives on employment conditions, and, in such regulations the Minister may grant exemption from the obligation imposed by this article or establish different rules for different classes or types of employment.

Notice of and
compensation
for termination
of contracts of
service.

36. (1) Saving the provisions of sub-article (16), the first six months of any employment under a contract of service shall be probationary employment unless otherwise agreed by both parties for a shorter probation period:

Provided that in the case of a contract of service, or collective agreement, in respect of employees holding technical, executive, administrative or managerial posts and whose wages are at least double the minimum wage established in that year, such probation period shall be of one year unless otherwise specified in the contract of service or in the collective agreement.

(2) During the probationary period the employment may be terminated at will by either party without assigning any reason:

Provided that a week's notice of the termination of employment shall be given to the other party in the case of an employee who has been in the employment of the same employer continuously for more than one month.

(3) A contract of service for an indefinite time may be terminated, by giving notice as set out in sub-article (5), by the employee without assigning any reason and by the employer, saving the provision of sub-article (14), only on grounds of redundancy:

Provided that any employee whose employment is terminated on grounds of redundancy shall be entitled to re-employment if the post formerly occupied by him is again available within a period of one year from the date of termination of employment:

Provided further that such an employee shall be so re-employed at conditions not less favourable than those to which he would have been entitled if the contract of service relating to him had not been terminated:

Provided, finally, that any employee who shall have been so re-employed shall, for the purposes of this Act, be deemed to have continued in his employment notwithstanding the termination made under this sub-article.

(4) Where an employer intends to terminate the employment of an employee on grounds of redundancy, he shall terminate the employment of that person who was engaged last in the class of employment affected by such redundancy:

Provided that, where such person is related to the employer (not being a limited liability company or a statutory body) by consanguinity or affinity up to the third degree, the employer may, instead of terminating the employment of such person, terminate that of the person next in turn.

(5) Notwithstanding any agreement to the contrary, and without prejudice to what is stated in sub-paragraph (f), notice of the termination of employment proposed either by the employer or by the employee under a contract of service for an indefinite time, shall be of the following respective duration, if the employee has been in the employment of the same employer continuously -

- (a) for more than one month but not more than six months one week;

(b) for more than six months but not more than two years two weeks;

(c) for more than two years but not more than four years four weeks;

(d) for more than four years but not more than seven years eight weeks;

(e) for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks;

(f) or such longer periods as may be agreed by the employer and employee in the case of technical, administrative, executive or managerial posts:

Provided that notice of termination of employment may not be given during maternity leave or during the period of incapacity for work to which sub-article (17) refers or during such other period as the Minister may prescribe.

(6) Where one period of employment on a contract of service for an indefinite time is of less than six months but is followed by another period of employment in the same class of employment commencing within the next following six months from the last day of employment, the two periods shall, for the purposes of sub-article (5), in regard to the second period of employment be deemed to be one continuous period.

(7) The period of notice shall begin to run from the working day next following the day on which notice is given.

(8) On receiving notice from the employer as aforesaid the employee under a contract of service for an indefinite time shall have the option either of continuing to perform work until the period of notice expires or, at any time during the currency of the period of notice, of requiring the employer to pay him a sum equal to half the wages that would be payable in respect of the unexpired period of notice.

(9) On receiving notice from the employee as aforesaid, the employer shall have the option either to allow the employee to continue to perform work until the period of notice expires or, at any

time during the currency of the period of notice, to pay the employee a sum equal to the wages that would have been payable in respect of the unexpired period of notice.

(10) If an employee under a contract of service for an indefinite time fails to give notice as aforesaid, he shall be liable to pay to the employer a sum, equal to half the wages that would be payable in respect of the period of notice. If the employer fails to give the said notice, he shall be liable to pay to such employee a sum equal to the wages that would be payable in respect of the period of notice.

(11) An employer who dismisses an employee before the expiration of the time definitely specified by a contract of service, shall pay to the employee one-half of the full wages that would have accrued to the employee in respect of the remainder of the time specifically agreed upon.

(12) An employee who abandons the service of his employer before the time definitely specified by the contract of service shall pay to his employer a sum equal to one-half of the full wages to which he would have become entitled if he had continued in the service for the remainder of the time so specifically agreed upon:

Provided that in this sub-article and in sub-articles (8), (9), (10) and (11), reference to "full wages" or "wages" is to mean the wage payable to an employed person by or on behalf of his employer, excluding any remuneration for overtime, any forms of bonus, any allowances, and remuneration in kind and commissions.

(13) In the case of employees under a contract of service paid by the unit of work, or by a share in the profits, or by a commission on the sales or payments made or received by the employer, the amount payable in terms of sub-articles (8), (10), (11) and (12) shall be calculated on the average earning of the employee during the three months immediately preceding the day on which notice is given or the abandonment or termination of employment takes place.

(14) Notwithstanding the foregoing provisions of this article, an employer may dismiss the employee and the employee may abandon the service of the employer, without giving notice and without any liability to make payment as provided in sub-articles (10), (11) and (12) if there is good and sufficient cause for such dismissal or abandonment of service:

Provided that an employer may not set up as a good and sufficient cause -

(a) that the employee at the time of the dismissal was a member of a trade union, or is seeking office as, or acting or has acted in the capacity of an employees' representative; or

(b) except in the case of a private domestic employee, that the employee no longer enjoys the employer's confidence; or

(c) that the employee contracts marriage; or

(d) that an employee is pregnant with child or is absent from work during maternity leave; or

(e) that the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting on the employer's name and interests; or

(f) that the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulations or is having recourse to competent administrative authorities; or

(g) that the business in which the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organisational reasons entailing changes in the workforce:

Cap. 318. Provided further that the employer can terminate the employment of an employee when the employee reaches retirement age as defined in the Social Security Act.

(15) A contract of service shall not, except with the consent of the employee, be terminated by the employer during any period of incapacity for work of the employee caused by personal injury by accident arising out of and in the course of employment or by any of the occupational diseases specified in the Social Security Act in each case occurring in the service of that employer:

Provided that -

(a) during such period of incapacity wages less injury benefit payable under the Social Security Act not including any benefit for permanent disability shall accrue in favour of the employee as may be provided by or under any recognised condition of employment as defined in Part II of Title I of this Act; and

(b) the provisions of this sub-article shall not apply beyond the first twelve calendar months of incapacity.

(16) On the cessation of the incapacity for work referred to in the last preceding sub-article the employer shall, within twenty-one days from an application made by the employee, re-instate the employee in his former employment or, if the injury or disease has caused a disablement rendering the employee unfit for the former employment, in other suitable employment:

Provided that the application for re-instatement by the employee shall be made in writing within seven days of the cessation of the incapacity for work.

(17) A whole-time female employee shall not be dismissed by the employer during the period of her maternity leave or the period of five weeks following the end of such leave in which she is incapable for work owing to a pathological condition arising out of confinement.

(18) Any period of incapacity for work referred to in the last preceding sub-article shall be deducted from the period of sick leave to which the employee is entitled at the time of such incapacity, so however that the period of incapacity which exceeds such entitlement shall be deemed to be leave of absence without entitlement to wages:

Provided that the employer may require the employee to produce evidence of such incapacity for work and may require his own doctor to visit such employee and to report to him on the condition of her health.

(19) The employee shall, at the termination of maternity leave to which she is entitled under the provisions of this Act or of the period of her incapacity for work to which sub-article (17) refers, be entitled to resume work in the post she occupied on the commencement of her maternity leave, or in an analogous post if at the time when she becomes so entitled the post she formerly occupied is no longer available.

(20) Where a female employee does not resume work as provided in the preceding sub-article, or, after having so resumed work, abandons the service of her employer without good and sufficient cause within six months from the date of such resumption, she shall be liable, without prejudice to any other liability under this Act, to pay the employer a sum equivalent to the wages she received during the maternity leave.

Collective
redundancies.

37. (1) An employer shall not terminate the employment of any employee on grounds of collective redundancy before he has notified in writing the employees' representatives recognised by him of the termination of employment contemplated by him and has provided the said representatives with an opportunity to consult with the employer.

(2) The Minister may, after consultation with the Board, make regulations prescribing the circumstances when redundancies are to be deemed collective redundancies; the manner in which consultations between the employer and the employees' representatives are to take place; the procedure to be adopted; the categories or classes of employment that are exempted from the effects of this article and any other matter that is related or ancillary thereto.

(3) Any person who fails to comply with the provisions of this article or of any regulations made thereunder shall be guilty of an offence against this Act.

Transfer of
business.

38. (1) When a business or other undertaking is taken over, in whole or in part by a person (hereinafter in this article referred to as the "transferee") from any employer (hereinafter in this article referred to as the "transferor") any employee in the employment of the transferor on the date of transfer of the undertaking shall be deemed to be in the employment of the transferee and the transferee shall take on all the rights and obligations which the transferor has towards the employee.

(2) The transferor or the transferee shall inform the employees' representatives of their respective employees affected by the transfer with:

- (a) the date or proposed date of the transfer;
- (b) the reasons for the transfer;
- (c) the legal, economic and social implications of the transfer for the employees; and
- (d) the measures envisaged in relation to the employees.

(3) Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.

(4) This article shall not apply to any transfer of an undertaking, business or part of an undertaking or business where the transferor is the subject of bankruptcy proceedings or in a winding up by the Court in accordance with the provisions of the Companies Act or other insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a court appointed liquidator. Cap. 386.

(5) The Minister may make regulations prescribing the manner in which consultations between the employer and the employees' representatives are to take place; the procedure to be adopted; the categories or classes of employment or undertakings that are exempted from the effects of this article and any other matter that is related or ancillary thereto.

(6) Any person who fails to comply with the provisions of this article or of any regulations made thereunder shall be guilty of an offence against this Act.

39. The provisions of articles 36, 37 and 38 shall not apply in respect of seamen employed on ships under the provisions of the Merchant Shipping Act; and in the event of any conflict between any of the provisions of the said Act and any of the provisions of this Act, the former shall apply. Employees excluded from operation of articles 36, 37 and 38. Cap. 234.

40. Any condition in a contract of service which empowers the employer to terminate the employment of a female employee on her contracting marriage or becoming pregnant with child shall be null and void. Condition in contract of service without effect.

41. On the termination of a contract of service lasting over one month, the employer shall be bound, at the employee's request, to give him a certificate stating the duration of the employment, the nature of the work or services performed and, if the employee so desires, the reason for the termination of the contract, and the rate of wages paid: Certificates of service.

Provided that the employer shall not be required to state the reason of termination of employment, if the employment was terminated during probation.

42. Unless in such case as is otherwise provided by this Act, if a contract of service between an employee and his employer or a collective agreement entered into between the employer and the recognised union representatives, provides for any conditions of employment, including conditions relating to the termination of the contract, less favourable to the employee than those specified in or under this Act, they shall have effect as if for those conditions less Conditions less favourable than Act.

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favourable to the employee there were substituted the conditions specified in or under this Act:

Provided that, in exceptional cases, the employer in agreement with the employee or union representatives may provide for different conditions of employment than those specified in or under this Act as long as such agreement is a temporary measure to avoid redundancies and as long as it is approved by the Director, which approval needs to be reviewed every four weeks.

PART VI

ENFORCEMENT AND NON-COMPLIANCE RELATED TO EMPLOYMENT

Appointment of
inspectors.

43. (1) The Minister shall appoint such officers of the department responsible for employment and industrial relations as he may think fit to be inspectors for the purposes of this Act.

(2) Inspectors so appointed as aforesaid shall be empowered -

(a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under this Act;

(b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of this Act or of any regulations or orders thereunder as well as any recognised conditions of employment are being observed, and in particular -

(i) to interrogate, alone or in the presence of witnesses, the employer or the employees on any of the said matters;

(ii) to require the production of any books, registers or other documents the keeping of which is prescribed by this Act or by any order issued under this Act and to copy such documents or make extracts therefrom.

(3) On the occasion of an inspection visit, an inspector shall notify the employer or his representative of his presence, unless he considers that such a notification may be prejudicial to the performance of his duties.

(4) The premises and places liable to inspection under this Act are any premises or places in respect of which any provisions of this Act or of any regulation or order thereunder or any recognised conditions of employment apply or any premises or places in respect of which an inspector has reasonable cause to believe that this Act or any regulations or orders thereunder or any recognised conditions of employment apply.

(5) Such inspectors -

(a) shall be prohibited from having any direct or indirect interest in any premises or places which may be subject to inspection by them;

(b) shall not reveal at any time even after ceasing to be inspectors any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties;

(c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or a breach of the provisions of this Act or of any regulations or orders thereunder or of any recognised conditions of employment; and

(d) shall not in any case give intimation to the employer or his representative that a visit of inspection was made as a consequence of the receipt of such a complaint.

(6) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purpose of this Act, shall, if so required, produce the said certificate.

(7) Any inspector who acts in contravention of the provisions of sub-article (5), shall, in addition to any other punishment to which he may be liable, be also liable to dismissal *ipso facto* from his employment with the Government.

(8) A person shall not -

(a) omit to answer or answer falsely or cause any other person not to answer or to answer falsely to any question which an inspector is authorised to ask under this Act; or

(b) fail to produce any books, registers or other documents which, pursuant to sub-article (2)(b)(ii), he is required by an inspector to produce; or

(c) directly or indirectly prevent any person from appearing before or being questioned by an inspector, or attempt so to do; or

(d) obstruct in any manner an inspector in the performance of his duties under this Act;

Provided that no person shall be required under paragraph (a) to answer any question which may incriminate him.

Criminal proceedings.

44. (1) In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of this Act, the Director or any officer of his department deputed by him may, notwithstanding the provisions of any law to the contrary, lay the charge before the court, produce the evidence, plead and otherwise conduct the prosecution instead of the Police.

(2) The sworn statement of any officer mentioned in the last preceding sub-article to the effect that he has been deputed by the Director for the purpose therein stated, shall be conclusive evidence of such fact, should the proof thereof be required by the accused.

(3) The Director or the officer deputed by him may, nevertheless, be produced as a witness, but should his evidence be required as part of the case for the prosecution, he shall be heard in evidence before assuming the duties of prosecuting officer (other than that of stating the facts constituting the offence) unless the necessity of his evidence arises subsequently.

Penalties.

45. (1) Any employer who contravenes or fails to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of this Act or any regulations made thereunder shall, unless a different penalty is established for such offence, on conviction be liable to a fine (*multa*) of not less than one hundred liri (Lm 100) and not exceeding one thousand liri (Lm 1000).

(2) Where any employer is convicted of -

(a) having failed to pay wages at not less than the rate applicable in accordance with a recognised condition of employment as defined in Part III of this Act or with a contract of service whichever shall be the higher, or

(b) having made any illegal deduction or inflicted any fine other than those specifically permitted by article 19, or

(c) having failed to make payment of any bonus payable under article 23, or any other payment due by an employer to any employee under this Act or under any order made thereunder, or

(d) having withheld any remuneration or any payment in lieu of notice, or

(e) having failed to allow paid holidays as provided for or specified in any national standard order, sectoral regulation order or contract of service, or

(f) having failed to effect payment of any moneys due to an employee under this Act or under any national standard order or sectoral regulation order or any other order made under this Act.

the court shall, at the request of the prosecution, besides awarding the punishment imposed by the preceding sub-articles of this article, order the offender, on proof of the amount, to refund or pay to the employee or employees concerned, or to the apprentice or apprentices concerned, as the case may be, the said amount due by him and, in the case of holidays with pay not allowed, a sum equal to the pay thereof, and any such order by the court shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted between the employee or employees concerned or the apprentice or apprentices concerned, as the case may be, and the employer:

Provided that nothing in this sub-article shall derogate from any right of the employee or apprentice, as the case may be, to recover by any other means any amount due to him.

(3) Article 24 of the Criminal Code shall apply in respect of offences under this Act. Cap. 9.

46. Where an offence against the provisions of this Act or of any regulations or orders made thereunder is committed by a partnership, company, association or other body of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such partnership, company, association or other body of persons or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Offence by
partnership, etc.

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Limitation of
action.

47. (1) Proceedings for an offence under this Act or of any regulations or orders made thereunder may be commenced at any time within one year from the commission of the offence.

(2) Where the offence relates to the failure by an employer to pay wages to an employee or failure to allow paid holidays as required by this Act or by any national standard order or sectoral regulation order, the offence shall be deemed to be a continuous offence if the employer had failed to pay the wages due to the employee regularly over the period of prescription.

PART VII

ADMINISTRATION RELATED TO EMPLOYMENT

Regulations.

48. (1) The Prime Minister shall have power to prescribe by regulations the applicability of any article or sub-article of Title I of this Act to service with the government.

(2) The Minister shall have power to make and when made vary or repeal regulations for the purpose of carrying out and giving effect to any of the provisions of this Act.

(3) Without prejudice to the generality of the power conferred by sub-article (2), the regulations may -

Cap. 327.

(a) prescribe the manner and the circumstances in which persons who are above compulsory school age, as defined in the Education Act, and who have not yet attained the age of 18 years, may be employed, including the power to designate certain categories or class of employment as prohibited employment for such persons;

(b) prescribe the procedure to be adopted by the Employment Relations Board, including the method of voting and of filling casual vacancies in membership, the method of and the quorum necessary for the transaction of business;

(c) prescribe fees to be levied with respect to any matter required or allowed under this Act;

(d) prescribe or otherwise provide for any matter which is to be or may be prescribed or provided for by this Act or by regulations made thereunder.

(4) Any regulation made under this Act may provide for any matter relating to liability for the observance of such regulations, and the persons who may be liable, and for any matter relating to the

enforcement of the said regulations, including, but not limited to, the imposition of a fine (*multa*) not exceeding five thousand liri (Lm 5000) in respect of any contravention of, or failure to comply with, the provisions of such regulations.

TITLE II

INDUSTRIAL RELATIONS

PART I

ORGANIZATION OF WORKERS AND EMPLOYERS

Sub-Part I

Status, registration and conduct of trade unions and employers' Associations

49. (1) A trade union and an employers' association shall, for all purposes of law, be treated as an association of persons and not as a body corporate, but -

Status of trade
unions and
employers'
associations.

(a) it shall be capable of making contracts;

(b) all property belonging to the union or association shall vest in the union or association, but all powers, whether of disposal, administration or otherwise, in relation to such property shall be exercisable by or by the authority of the body of persons, by whatever name called, entrusted by the rules of the union or association with the conduct and management of its business;

(c) it shall be capable of suing and, subject to the provisions of this Act, of being sued, whether in proceedings relating to property or founded on contract, tort or quasi-tort, or any other cause of action whatsoever;

(d) proceedings in respect of any offence alleged to have been committed by it or on its behalf may be brought against any of its officers or other officials as provided in article 13 of the Interpretation Act;

Cap. 249.

(e) any judgement or order made in any proceedings shall be enforceable against any property of the union or association.

(2) The purposes of any trade union or employers' association shall not, by reason only that they are in restraint of trade, be unlawful

so as -
(a) to make any member of the union or association liable to criminal proceedings; or

(b) to make any agreement void or voidable, nor shall any such rule of a trade union or employers' association be unlawful or unenforceable by reason only that it is in restraint of trade.

Rules of trade
unions and
employers'
associations.

50. (1) The rules of every trade union and of every employers' association shall contain provisions in respect of the matters mentioned in the following sub-articles of this article.

(2) The rules shall -

(a) specify the name of the trade union or employers' association, the address of its principal office and the objects for which it is established;

(b) make provision as to the purposes for which, and the manners in which, any property or funds of the union or association are authorised to be applied or invested;

(c) if any financial benefits are to be available for members of the trade union or of the employers' association out of its property or funds, make provision as to the amounts of those benefits and the circumstances in which they are to be available to members;

(d) specify the offences for which the union or association may under the rules expel a member or take other disciplinary action, the penalties applicable for each of those offences, and the procedure for the hearing of cases in which offences against the rules are alleged;

(e) make provision for the election of a governing body and for its re-election at reasonable intervals; for the election or appointment of officers of the union or association and other officials, and for the manner in which the governing body, officers and other officials can be removed from office;

(f) make provision for the keeping of full and accurate accounts by the union or association, for the appointment of auditors and for the annual auditing of the accounts;

(g) make provision for the inspection of the books and names of members of the union or association by every person

having an interest in the funds of the union or association;

(h) specify the manner in which any rules of the union or association can be made, altered or revoked, and the circumstances and manner in which the union or association can be dissolved.

(3) Every trade union and every employers' association shall at the request of any person supply him with a copy of the rules, as in force at the date of the request, either free of charge or on payment of a fee as may be prescribed.

51. (1) A trade union or an employers' association, and any member, officer or other official thereof, shall not perform any act in furtherance of any of the purposes for which it is formed unless such union or association has first been registered.

Trade unions and employers' associations not to carry on business unless registered.

(2) Any trade union or employers' association, and any member, officer or other official thereof, who contravenes the provisions of sub-article (1) shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding five hundred liri (Lm 500).

52. (1) For the purposes of this Act, a public officer shall be appointed as, or designated to perform the functions of, Registrar of Trade Unions.

Registrar of Trade Unions.

(2) The Registrar shall perform the functions and duties conferred on him by this Act, and for the purpose of the exercise of those functions and of the performance of those duties he shall have power to require any person to give him any relevant information and to produce to him any relevant document, and may also administer oaths.

53. (1) Any seven or more members of a trade union or of an employers' association may, by subscribing their names to the rules of the union or association, and otherwise complying with the provisions of this Act relating to registration, register the union or association under this Act:

Registration of trade unions and employers' associations.

Provided that if any of the purposes of a trade union or of an employers' association is unlawful the registration of such union or association shall be void.

(2) In determining the number of the members of a trade union for any of the purposes of this Act no account shall be taken of any individual who has not attained the age of sixteen years or who does not reside in Malta; and in determining the number of the members of

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an employers' association no account shall be taken of any person with whom or for whom no individual has entered into or works under a contract of employment for service in Malta.

Provisions with respect to registration.

54. (1) Every trade union and every employers' association shall be registered in accordance with the provisions of this Act.

(2) Without prejudice to any other provision of this Act relating to registration, the following provisions shall have effect with respect to the registration of trade unions and employers' associations under this Act, that is to say -

(a) an application to register the union or association and its rules shall be forwarded or produced to the Registrar together with two printed copies of the rules and with a list of the names of the officials of the union or association in which there shall also be shown their respective offices;

(b) no trade union or employers' association shall be registered under a name identical with that by which another union or association is for the time being registered under this Act, or so nearly resembling any such name as to be likely to deceive the public;

(c) if the Registrar is satisfied that the union or association have complied with the provisions of this Act relating to registration, or if the Court of Appeal has so directed under article 55, he shall register the union or association, as the case may be, and its rules;

(d) upon registering a trade union or an employers' association, the Registrar shall issue a certificate of registration.

(3) Every alteration of the rules of a registered trade union or employers' association shall be registered with the Registrar, and any such alteration shall not take effect except from the date of its registration or from such later date as may be specified in the rules.

(4) The rules of any registered trade union or employers' association shall not be so altered as to cease to satisfy or comply with the provision of this Act applicable thereto; and the Registrar shall not register any rules, or alteration to the rules, which contravene the foregoing provisions of this article.

Refusal or cancellation of registration.

55. (1) If the Registrar is satisfied that -

(a) the applicants for registration have not been duly authorised to apply for registration; or

(b) any of the purposes of the trade union or employers' association is unlawful; or

(c) the application for registration or the rules of the union or association are not in conformity with the provisions of this Act, he shall refuse registration.

(2) It shall be lawful for the Registrar to cancel the registration of any trade union or employers' association -

(a) at the request of the union or association, to be evidenced in such manner as he may require;

(b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration was void, or that the union or association has wilfully contravened any of the provisions of this Act;

(c) if, for any reason, the rules of the union or association are not in conformity with the provisions of this Act;

(d) if he is satisfied that the union or association has ceased to exist;

(e) if he is satisfied that the membership of the union or association has been reduced to less than seven members calculated as provided in article 53(2).

(3) Where the Registrar refuses to register a trade union or an employers' association, he shall forthwith inform the applicants in writing of the refusal and of the grounds thereof.

(4) Where the Registrar proposes to cancel the registration of a trade union or of an employers' association, he shall give notice of the proposed cancellation to the union or association specifying the reason therefor; and the registration shall not be cancelled before the expiration of two months from the giving of such notice, nor shall the registration be cancelled if, prior to the cancellation, the union or association has remedied any default or otherwise taken steps to avoid cancellation. If notwithstanding any representations made, or other steps taken, by the union or association, the Registrar decides that he ought to cancel the registration, he shall inform the union or association in writing of his decision:

Provided that, where the union or association has ceased to exist, the Registrar may cancel the registration without complying

with any of the provisions of this sub-article and give notice of the cancellation in the Gazette.

(5) From any refusal by the Registrar to register a trade union or an employers' association and from any decision by him to cancel any such registration, an appeal shall lie to the Court of Appeal by application made not later than seven days from the communication by him of his refusal or decision as required by this article. On any such appeal the court may make such orders as it may deem proper, including a direction as to the costs of appeal; and any such order of the court shall be final.

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(6) The board established under article 29 of the Code of Organization and Civil Procedure may make rules governing such appeals, providing for the method of giving evidence, prescribing the procedure to be followed, the manner of notifying the Registrar of the appeal and generally providing for such other matter as the court may deem necessary or expedient.

(7) The Minister responsible for justice may by regulations under this sub-article establish the fees payable in the registry of the court for the filing of judicial acts in connection with appeals under this article:

Provided that until such fees are so established by the Minister, the fees established in Schedule A to the Code of Organization and Civil Procedure shall apply.

(8) The Registrar shall be entitled to be heard on any such appeal and shall be given the opportunity to do so.

Register of trade unions and employers' associations.

56. (1) The Registrar shall keep a register of all trade unions and employers' associations registered under this Act, showing the names of such unions and associations and such other particulars as the Registrar may deem appropriate.

(2) The register of trade unions and employers' associations shall be open to inspection by any person free of charge at all reasonable times.

Register of members to be kept by trade unions and employers' associations.

57. (1) Every trade union and every employers' association shall keep an up-to-date record of the names of the members of the union or association, as the case may be, showing their respective date of membership, identity card numbers, addresses and trades or occupations.

(2) The Registrar shall have power at any time to inspect such records or to cause such records to be inspected by a person

authorised by him in that behalf, and every trade union and every employers' association shall give him and any other person authorised as aforesaid all reasonable facilities for that purpose.

58. On or after the second day of June and before the first day of July in every year, the Registrar shall by notice in the Gazette, call upon and require all registered trade unions and employers' associations to transmit to him, in such form or format as he may require - Annual returns.

(a) a list of the names of the officers of the union or association, showing also the office held by each of them;

(b) a declaration that the names of members and other particulars shown in the record required to be kept by article 57 have been brought up-to-date and that the necessary alterations have been made to the said record for that purpose;

(c) a statement of the receipts, funds and expenditure of the union or association in respect of the preceding year;

(d) a copy of the annual report showing the activities of the union or association during the preceding year or, if no such report has been made, a statement signed by the secretary of the union or association showing the said activities during that year,

and every trade union and every employers' association shall comply with such requirement, within fifteen days from the publication of the notice in the Gazette as aforementioned.

59. (1) Every trade union and every employers' association shall - Accounting records.

(a) cause to be kept proper accounting records with respect to its transactions and its assets and liabilities, that is to say such records as are necessary to give a true and fair view of the state of affairs of the union or association and to explain its transactions; and

(b) establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances.

(2) Every trade union and every employers' association shall appoint an auditor or auditors having the qualifications required by this article to audit its accounts; and every trade union or employers' association which has been in existence for more than twelve months shall once at least in every calendar year cause such accounts to be

prepared and audited by such auditor or auditors as aforesaid.

(3) Every trade union and every employers' association shall, not later than one month from the auditing of the accounts, transmit a copy of such accounts to the Registrar.

(4) Every trade union and every employers' association shall at the request of any of its members supply him with a copy of its most recent audited accounts either free of charge or on payment of a fee as may be prescribed.

(5) A person shall be qualified to audit the accounts of a trade union or of an employers' association if he is qualified to audit the accounts of a company in accordance with the provisions of the Companies Act.

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Report by
Registrar.

60. (1) In the month of August of each year the Registrar shall make out and send to the Minister a report on the working of this Part of this Act. The report shall include a list of all registered trade unions and employers' associations and a statement as to the inspections carried out by the Registrar under article 57.

(2) The Minister shall cause the report to be published in the Gazette.

Rules with
respect to
registration.

61. The Minister may make rules with respect to the registration of trade unions and employers' associations and in particular, but without prejudice to the generality of the foregoing, with respect to -

(a) the seal, if any, to be used by the Registrar for the purposes of registration;

(b) the forms to be used for such registration and for any application therefor;

(c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;

(d) the fees to be charged for registration, for the inspection of any register or other document, for any copies made out of any entries or documents, and for any other service provided or other matter prescribed or permitted by this Act;

(e) generally for carrying into effect the provisions of this Part of this Act.

62. (1) If a trade union or an employers' association refuses or wilfully neglects to perform a duty imposed on it by or under any of the provisions of article 57, 58 or 59, the trade union or employers' association shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding five hundred liri (Lm 500).

Offences against
articles 57, 58
and 59

(2) Any person who wilfully alters or causes to be altered a document which is required for the purposes of the provisions of article 57, 58 or 59, with intent to falsify the document or to enable a trade union or employers' association to evade any of those provisions, shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding one year or to a fine (*multa*) of one thousand liri (Lm 1000) or to both such imprisonment and fine.

Sub-Part 2

Restrictions on legal liability and proceedings and on union membership

63. (1) Subject to the provisions of sub-article (2) of this article, no action in tort or quasi-tort shall lie in respect of any act -

Immunity of
trade unions and
employers'
associations to
actions in tort

(a) alleged to have been done by or on behalf of a trade union or by or on behalf of an employers' association; or

(b) alleged to be threatened or to be intended to be done as aforesaid,

against the union or association in its own name, or against any members, officers or officials of the union or association on behalf of themselves and all other members of the union or association.

(2) Sub-article (1) of this article shall not affect the liability of a trade union or of an employers' association to be sued in respect of the following, if not arising from any act done in contemplation or furtherance of a trade dispute, that is to say -

(a) any negligence, nuisance or breach of duty, (whether imposed on them by any rule of law or by or under any enactment) resulting in personal injury to any person; or

(b) without prejudice to paragraph (a), breach of any duty so imposed in connection with the ownership, possession, control or use of property, whether movable or immovable.

64. (1) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort or quasi-

Acts in
contemplation
or furtherance of
trade disputes.

tort on the grounds only -

(a) that it induces another person to break a contract of employment; or

(b) that it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken or that he will induce another person to break a contract of employment to which that other person is a party; or

(c) that it is an interference with the trade, business or employment of another person, or with the right of another person to dispose of his capital or his labour as he wills.

(2) An act which by reason of sub-article (1) is itself not actionable, and a breach of contract in contemplation or furtherance of a trade dispute, shall not be regarded as the doing of an unlawful act or as the use of unlawful means for the purposes of establishing liability in tort or quasi-tort.

(3) An agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute shall not be actionable in tort or quasi-tort if the act is one which, if done without any such agreement or combination, would not be actionable in tort or quasi-tort.

(4) An act done by a person in contemplation or furtherance of a trade dispute and in pursuance of a directive issued by a trade union, whether he belongs to it or not, shall not be actionable in damages on the ground only that it consists in a breach of a contract of employment; and any act done as aforesaid, not being an act in breach of a collective agreement, or of a settlement, decision or agreement which is still binding in accordance with the provisions of article 70 or 72, or of a decision or award of the Tribunal, shall not by itself entitle the employer to terminate the contract of employment of, or discriminate against, any person doing any such act as aforesaid, and shall not constitute a break in the service of such person.

Cap. 9.

(5) The provisions of article 338(t) of the Criminal Code shall not apply to any agreement or combination by two or more persons to do or procure the doing of any act in contemplation or furtherance of a trade dispute.

(6) Subarticle (4) of this article shall not apply to:

(a) persons employed as Air Traffic Controllers at the Malta International Airport and in the Airport Fire Fighting Section of the said airport;

(b) members of the Assistance and Rescue Force established by virtue of article 8 of the Civil Protection Act;

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(c) persons employed to provide pilotage and mooring, tug services, fire fighting, medical health services and pollution combating services as may be required in cases of port emergency;

(d) such minimum number of persons needed to guarantee that life is not endangered through the non import or discharge into Malta of wheat, grain, domestic gas, aviation fuel, diesel and petrol and oil fuel for the operation of air transport facilities and power generation and water facilities, as agreed upon by their respective employer and the recognised trade union or in default of such agreement, as shall be decided by the appropriate controlling body or in the absence of such body, the Industrial Tribunal;

(e) such minimum number of persons as may be required to guarantee the combined production, provision and distribution of water and electricity, as agreed upon by their respective employer and the recognised trade union or in default of such agreement, as shall be decided by the Industrial Tribunal;

(f) such number of persons as may be required to maintain the continued and uninterrupted services listed in the Schedule to this Act and required to be manned at all times for the continued provision by the Government of essential services to the community;

Provided that, for the purposes of subparagraphs (d) and (e) if no agreement is reached as aforesaid within a period of one month from the date of coming into force of this Act, the matter shall be referred to the appropriate controlling body or Industrial Tribunal, as the case may be, at the request of any one of the parties.

(7) Where the number of public officers holding or employed in any of the offices aforesaid is greater than the number indicated in the said Schedule as essentially required, sub-article (6) shall apply only to the more senior among those officers who together make up that number (excluding only any of them who are on leave authorised expressly for the purposes of this sub-article, and only while they are so on leave), seniority being determined by any seniority inherent in the office itself or, in the absence of such seniority, by the length of the officers' service in the office held by them or in which they are employed at the relevant time, and in cases of equal lengths of service

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by the age of the officers having the same length of service.

(8) Any public officer to whom, by virtue of sub-articles (6) and (7), sub-article (4) does not apply, shall have his service with the Government terminated forthwith if, in contemplation or furtherance of a trade dispute or of any other action taken by two or more public officers or other workers (whether or not in pursuance of a directive issued by a trade union), or in support thereof or in sympathy therewith, such officer refuses or otherwise fails to carry out those duties that are necessary for the continued provision of the essential service, in accordance with this Act and with the terms of service or conditions of employment and under the direction of the competent authorities of the Government.

(9) The Schedule to this Act may be altered, added to or otherwise amended -

- (a) by a resolution of the House of Representatives; or
- (b) by the Prime Minister by order in the Gazette:

Provided that an order as aforesaid may not increase the total number of officers in Category A to more than forty-five (45); in Category B to more than one hundred (100) and in Category C to more than two hundred and twenty-five (225).

Peaceful
picketing

65. It shall be lawful for one or more persons in contemplation or furtherance of a trade dispute to attend at or near -

- (a) a place where another person works or carries on business; or
- (b) any other place where another person happens to be, not being a place where he resides,

for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

Use or threats of
violence

66. Any person who, for the purpose of compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or to abstain from doing, wrongfully and without legal authority -

- (a) uses or threatens to use violence against such person, or the wife, husband or child of such person, or a member of his household, or causes or threatens to cause damage to his property;

- (b) persistently follows such other person from place to place;
- (c) watches or besets the house or other place where such other person resides or the approaches to such house or place;
- (d) deprives such person, or in any manner hinders him in the use of, any tools, clothing or other property owned or used by such other person.

shall be guilty of an offence and be liable on conviction to imprisonment for a period not exceeding three months or to a fine (*multa*) not exceeding five hundred liri (Lm500) or to both such imprisonment and fine, without prejudice to any heavier punishment to which the offence may be liable under any other enactment.

67. (1) The holder of an office in the public service declared by the Prime Minister to be an office the holder whereof may not be a member of a trade union in respect of which he may be required to represent or advise the Government in industrial relations with the union or unions representing its employees, shall not become, and if he is shall cease to be, a member of that trade union; and the provisions of this sub-article shall be an implied term of his terms of service with the Government.

Restriction on
union
membership.

(2) Subject to the provisions of sub-article (3), in respect of a person employed in such managerial or executive post, in any corporation or other body established by law or in any company or other partnership or in any other body having a distinct legal personality (hereinafter referred to as a "corporate employer"), as will require the holder of that position to represent or advise the corporate employer in its relations with the union or unions representing its other employees or any part thereof, it shall be an implied term of the contract of employment of such person that he shall not, while occupying such position, be a member of any of the trade unions aforesaid.

(3) Sub-article (2) shall apply only to such posts, being:

- (a) not more than three in the case of a corporate employer employing not more than two hundred persons;
- (b) not more than seven in the case of a corporate employer employing more than two hundred employees,

as such employer shall have indicated in writing to the trade union of which the holder of the said posts may not be a member.

PART II

VOLUNTARY SETTLEMENT OF DISPUTES

Conciliation
Panel.

68. The Minister shall appoint a Conciliation panel composed of not less than five persons to serve as conciliators in trade disputes as may be referred to them from time to time, so however that:

(a) the panel shall be composed of such persons appointed by the Minister after consultation with the Malta Council for Economic and Social Development;

(b) the appointment shall be for a period of two years;

(c) during the term of the appointment, the Minister may substitute members or fill in vacancies whenever necessary, after consultation with the Malta Council for Economic and Social Development:

Provided that no person as is mentioned in article 73(3), shall be nominated or appointed on the Conciliation panel.

Powers of the
Minister for
promoting
conciliation and
preventing
disputes.

69. (1) Where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to -

(a) the Director, or

(b) a conciliator who may be chosen -

(i) either by the same parties to the dispute in agreement between them;

(ii) or, if there is no such agreement, by the Director from amongst the Conciliation panel established by virtue of article 68:

Provided that nothing shall preclude the Director or his delegate from inviting the parties to the dispute to attend conciliation meetings.

(2) The functions of the conciliator appointed in accordance with sub-article (1) shall be -

(a) to communicate with the parties to the trade dispute immediately on the referral;

(b) to organise and preside conciliation meetings between the parties as may be necessary in order to resolve the trade dispute;

(c) to consider the causes and circumstances of the trade dispute;

(d) to endeavour to bring about an amicable settlement of the dispute as expeditiously as possible; and

(e) to make such recommendations as the conciliator may deem fit in order to resolve the trade dispute.

(3) Where a trade dispute exists or is apprehended and the parties fail to nominate or to agree on the appointment of a conciliator in accordance with sub-article (1), or where an appointed Conciliator reports a deadlock, the Director shall refer the matter to the Minister and copy such referral to the parties to the dispute.

(4) Where a trade dispute is referred to the Minister in accordance with the last preceding sub-article, the Minister may, if he thinks fit:

(a) appoint a court of inquiry to inquire into and establish the causes and circumstances of the dispute;

(b) on an application by both parties to the dispute, refer such trade dispute to the Industrial Tribunal.

(5) A court of inquiry shall have the same powers as are by the Code of Organization and Civil Procedure conferred on a superior court, except that it shall not have the power to order the detention of any person, and without prejudice to the generality of the aforesaid, a court of inquiry may summon witnesses and administer the oath, appoint assessors, and require any person who appears to it to have special knowledge of the matter of the inquiry to furnish, in writing or otherwise, and to confirm on oath, such opinion and such particular relating to that matter as the court may require. Where the court consists of more than one person, the oath shall be administered by the Chairperson.

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70. If a settlement of a trade dispute (being a settlement not inconsistent with any enactment, or other instrument having the force of law, regulating wages and other terms and conditions of employment) is reached as a result of measures taken under article 69, and a memorandum of the terms of that settlement has been drawn up in writing and has been signed by the parties or their representatives and a copy thereof, together with a declaration that is a settlement for the purposes of this article signed as aforesaid, has been delivered to the Minister -

Voluntary settlements

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(a) it shall not be open to any of the parties to seek by unilateral action a revision of the terms of the settlement before the expiration of at least one year from the date of that settlement; and

(b) any such settlement shall be binding on the parties to it, on the workers represented in the dispute and the workers affected by it and shall be binding on any successor in title of any one of the parties to the dispute.

Regulations.

71. The Minister may make regulations for any of the following purposes -

(a) for regulating the procedures to be followed by the Conciliation Panel and by the conciliators appointed on the panel;

(b) for regulating the composition and procedure of courts of inquiry.

Negotiating
machinery for
public officers.

72. (1) There is hereby established a Joint Negotiating Council as a special negotiating machinery with respect to trade disputes concerning the conditions of work of persons providing the services listed in article 64(6):

Provided that the Council and any other negotiating machinery established by or under this article, shall not in any way deal with or encroach on any matter falling within the functions of the Public Service Commission.

(2) The Council shall consist of not more than four members representing the Government, and not more than four members representing the trade union having as its members the largest number of persons providing the essential service in the relevant section or area involved in the dispute:

Provided that the members appointed by the recognised trade union in accordance with the provisions of this sub-article, shall be so appointed by the union concurrently with the official registration of a trade dispute and shall be signified in writing by letter addressed to the Permanent Secretary in the Office of the Prime Minister:

Provided further that, in accordance with the preceding proviso, the composition of the Council may vary if there is more than one dispute that has been referred to the Council and such disputes are separate and are made by a different trade union as specified in the first paragraph of this sub-article.

(3) Saving what is provided in sub-article (4), the decisions of the Council shall only be taken by a unanimous vote. Any decision so taken or agreement so reached shall be binding on the Government and on all public officers to whom that decision or agreement applies.

(4) Where in respect of any trade dispute falling within the functions of the Council an agreement acceptable to all the members cannot be reached, and the Chairperson of the Council registers disagreement, the Chairperson shall refer the matter to the Industrial Tribunal within fifteen days of such disagreement being registered and the Industrial Tribunal shall be bound to reach a final decision on the trade dispute (including the making of recommendations) by not later than two months from the referral, unless in the opinion of the Chairperson of the Industrial Tribunal, a longer period is necessary for a valid reason which must be stated and recorded in the proceedings of the Tribunal.

(5) The Minister may, after consultation with the Council, make regulations to give fuller effect to the provisions of this article and to any other relevant provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid, such regulations may -

(a) determine the procedure of the negotiating machinery established by this article;

(b) specify in more detail and otherwise determine the functions, powers and duties of any such machinery and of any sub-committee or other body thereof, and of any of their chairpersons or other members;

(c) provide for any matter connected with or ancillary to any of the foregoing matters.

(6) The provisions of article 70 shall apply to an agreement reached as provided in sub-article (3) or sub-article (4) as they apply to a settlement referred to in that article.

PART III

THE INDUSTRIAL TRIBUNAL

73. (1) There is hereby established a tribunal to be known as the Industrial Tribunal.

Establishment
and composition
of Industrial
Tribunal.

(2) The Prime Minister shall appoint a panel of not more than fifteen persons to act as chairpersons of the Industrial Tribunal, after consultation with the Malta Council for Economic and Social

Development, so however that -

(a) at least three of the members so appointed shall be persons who are advocates of at least seven years experience;

(b) such persons shall be appointed for a period that does not exceed three years from the date of their appointment and may be re-appointed for further periods each of not more than three years;

(c) such persons shall serve as chairpersons either in turn or in accordance with such distribution of duties and subject to such provisions as to inability to serve and other circumstances, as may be prescribed by the Minister.

(3) Save as is provided in sub-article (4), the Industrial Tribunal shall consist of -

(a) a Chairperson chosen in accordance with the provisions of sub-article (2); and

(b) two other members of the Tribunal who shall be selected by the Chairperson of the Tribunal to represent, so far as may be equally, the interests in dispute, from two panels of persons appointed by the Minister to serve as members of the Tribunal as occasion may require, one panel consisting of persons nominated by trade unions represented on the Malta Council for Economic and Social Development and the other panel consisting of persons nominated by employers' associations and other organisations representing employers represented on the Malta Council for Economic and Social Development;

Provided that if the parties to a trade dispute agree, within such time as the Chairperson shall fix for the purpose, on the selection of the two members who are to sit with the Chairperson, the Chairperson shall make the selection according to that agreement.

(4) In all cases covered by article 75, the Tribunal shall be composed of a Chairperson alone provided that in those cases covered by article 75(1)(b), the Chairperson shall be one of the members appointed in accordance with sub-article (2)(a).

(5) In all cases in which the Government, or any body or company referred to in article 80(3), is a party, the Tribunal shall be composed of -

(a) a Chairperson chosen in accordance with the provisions of sub-article (2);

(b) a member selected by the Chairperson of the Tribunal from the panel of persons nominated by trade unions as prescribed in sub-article (3)(b); and

(c) a member representing the government, or other body or company involved in the trade dispute who shall be appointed *ad hoc* by the Minister.

(6) The Prime Minister may, from time to time, as he shall see fit and after consultation as provided in sub-article (2), vary the composition of the panel referred to in that paragraph, but a person actually serving as Chairperson of the Tribunal shall, notwithstanding the removal of his name from the panel, continue so to serve in the proceedings in which he is serving as chairperson until the conclusion of those proceedings and for the purpose of the interpretation of any award given therein.

(7) The Minister may, from time to time, as he shall see fit, request fresh nominations from the trade unions, associations and organisations referred to in sub-article (3)(b), and may vary the composition of the panels referred to in that sub-article accordingly, but no person actually serving as a member of the tribunal shall have his name removed from the panel whilst proceedings in respect of which he was selected as a member are still pending before the Tribunal.

(8) The Minister shall also designate a public officer to be Secretary of the Tribunal and may also detail other public officers to assist the Secretary in the performance of his duties. The Secretary of the Tribunal shall have *mutatis mutandis* such powers and duties as are by the Code of Organisation and Civil Procedure vested in the Registrar of Courts. Cap. 12.

(9) The registry of the Tribunal shall be the Registry of the Superior Courts; and the records of the Tribunal shall be kept therein.

74. (1) Where steps taken by the Minister under article 68 to promote an amicable settlement of a trade dispute have not resulted in a settlement, any of the parties may notify the Minister in writing accordingly. Reference to Tribunal.

(2) Where all the parties to a trade dispute agree to refer the dispute to the Industrial Tribunal, they may request the Minister in writing to refer the dispute to the Tribunal.

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(3) Upon receipt of a notification under sub-article (1) and upon being satisfied that the notification or request has been received from a *bona fide* employer or from an employers' association or from a trade union representing the interests of the workers concerned in the dispute, the Minister shall refer the dispute to the Tribunal for settlement by it; and he shall do so within twenty-one days from the date of the notification or request.

(4) The Minister may refer to the Tribunal for advice, any matter relating to or arising out of a trade dispute, or trade disputes generally, or trade disputes of any class, or any other matter which in his opinion ought to be so referred.

Jurisdiction of
the Industrial
Tribunal.

75. (1) Notwithstanding any other law, the Industrial Tribunal shall have the exclusive jurisdiction to consider and decide -

(a) all cases of alleged unfair dismissals; and

(b) all cases falling within the jurisdiction of the Industrial Tribunal by virtue Title I of this Act or any regulations prescribed thereunder,

for all purposes other than proceedings in respect of an offence against any enactment and the remedy of a worker so dismissed or otherwise alleging a breach of his right under Title I of this Act shall be by way of reference of the complaint to the Industrial Tribunal and not otherwise;

Cap. 171.
Cap. 214.

Provided that nothing in this sub-article shall be construed as affecting the provisions of the Constitution of Malta with respect to public officers or shall affect the operation of the Port Workers Ordinance, or of the Public Transport (Regulation of Employment) Act, and in this article the expression "worker" does not include public officers or any person to whom the Ordinance or the Act aforesaid applies.

(2) Where it is alleged that a worker has been unfairly dismissed by an employer, or where there is an alleged breach of any obligation under Title I of this Act or any regulations prescribed thereunder, the matter shall be referred to the Tribunal for a decision by it by means of a referral in writing made by the worker alleging the breach, or by some other person acting in the name and on behalf of such worker.

(3) Any referral made in accordance with the last preceding sub-article shall be made by means of a declaration stating the facts of the case, presented in the Registry of the Tribunal and shall, in all cases, be so presented by not later than four months from the effective

date of the alleged breach.

76. (1) The Chairperson of the Tribunal may be challenged, or shall abstain, from sitting in any of the circumstances set out in article 734 of the Code of Organisation and Civil Procedure; and in any such case the provisions of Sub-Title II of Title II of Book Third of that Code shall apply in so far as they are applicable and subject to the other provisions of this Act:

Procedure of the Tribunal.

Cap. 12.

Provided that if all the persons appointed in accordance with article 73(2) are successfully challenged, the Tribunal shall be chaired by another person appointed *ad hoc* by the Minister and who shall not be challenged.

(2) Any member of the Tribunal other than the Chairperson may be challenged, or shall abstain, if he has given evidence in any court of inquiry or before a conciliator concerning the trade dispute before the Tribunal, or if any party to the dispute proposes to call him as a witness; and in any such case, and in the case of any other lawful impediment of any such member, he shall be replaced by another person selected by the Chairperson from the appropriate panel referred to in article 73(3)(b), or, in any case in which article 73(5)(c) applies, by another person appointed *ad hoc* by the Prime Minister.

77. (1) The Tribunal shall have such powers as are, by the Code of Organisation and Civil Procedure, vested in the Civil Court, First Hall.

General powers of the Tribunal.
Cap. 12.

(2) Without prejudice to the foregoing provision of this article, the Tribunal shall have the power to summon witnesses and to administer the oath, to appoint assessors, and to require any person who appears to it to have special knowledge of any relevant matter, or of any of the matters to which the trade dispute or complaint referred to it relates, or of the matter referred to it, to furnish in writing or otherwise, and to confirm on oath, such opinion and such particulars relating to that dispute, matter or complaint as the Tribunal may require, and may authorise any person to administer the oath for that purpose.

(3) Witnesses shall be paid fees in accordance with the Witnesses (Fees) Ordinance.

Cap. 108.

78. (1) The Tribunal shall decide any issue referred to it within a period that does not exceed one month from the date of the referral, unless in the opinion of the Chairperson, a longer period is necessary for a valid reason which must be stated and registered in the proceedings of the Tribunal.

Further provisions with respect to the Tribunal.

(2) The case for any party to a dispute may be presented by the party itself which may choose to be represented or aided by a person or persons of its trust.

(3) Subject to the provisions of this Act and to any rules made or deemed to be made under this article, the Tribunal shall regulate its own procedure. Whatever the procedure adopted, the Tribunal shall endeavour to ensure that justice is done according to the substantive merits of the case; and, subject to the rules of natural justice, the Tribunal shall reach its conclusions on any matter in such a manner as it deems appropriate.

(4) The Tribunal shall hold its sittings in public unless, having regard to the nature of the dispute or other matter before it, the Chairperson deems it proper to conduct the proceedings or part thereof in private.

(5) Where the members of the Tribunal are more than one and they are unable to agree as to their award, decision or advice, the matter shall be decided by the Chairperson acting with full powers of an umpire.

(6) The Minister may make rules establishing the procedure to be followed by and before the Tribunal and otherwise making such provisions with respect to such proceedings as he may deem necessary or expedient.

Fees.

79. (1) The Minister may by regulations prescribe the fees payable to any person representing the parties in proceedings before the Tribunal.

(2) The Tribunal shall in its award or decision tax the fees of the person or persons representing either party in accordance with the Tariff made under the preceding sub-article.

(3) No person shall charge fees in excess of those taxed by the Tribunal or in the absence of such taxation, in excess of the Tariff.

(4) Any party who is charged fees in excess of any tariff which is or may be prescribed by law may claim back the excess by a written request to the Secretary of the Tribunal, who shall thereupon verify the claim, and if so verified, shall order the person to whom the excess was paid to refund it to that party.

(5) If the Tribunal finds that there was gross overcharging it may order the person so overcharging to pay a penalty not exceeding one thousand liri to the Secretary, who shall upon receiving that penalty transmit it to the Consolidated Fund.

(6) An order for reimbursement made in terms of sub-article (4) and an order to pay a penalty made in terms of sub-article (5), shall be an executive title for all intents and purposes of the Code of Organisation and Civil Procedure and shall be enforceable as such by the Civil Court, First Hall in the same manner and by the same means laid down in that Code. Cap.12.

80. (1) In giving any award, decision or advice, the Tribunal shall take into consideration the social policies of the Government based on principles of social justice and the requirements of any national development plan and other economic policies of the Government in the course of implementation, and shall endeavour to ensure that its award, decision or advice is in furtherance of any such policies and plans. Provisions affecting awards and decision of Tribunal.

(2) Where any matter before the Tribunal concerns or relates to public officers -

(a) the Tribunal shall ensure that there is no encroachment on the functions of the Public Service Commission, and shall abstain from taking cognizance of any matter which is within the functions of that Commission; and

(b) any award or decision of the Tribunal shall be subject to the overriding authority of the House of Representatives.

(3) Where the matter before the Tribunal concerns or relates to persons employed with bodies corporate established by law and managed by a board or other body appointed by the Government or to persons employed with companies in which the Government has a controlling interest, any award or decision of the Tribunal shall endeavour to establish or maintain due relativity between the terms and conditions of those employees and the terms and conditions of public officers.

(4) The Tribunal shall not make any award or decision which is inconsistent with any enactment, or other instrument having the force of law, regulating wages and other terms and conditions of employment.

81. (1) Where on a complaint for unfair dismissal referred to the Tribunal under article 75, the Tribunal - Powers of Tribunal in cases of dismissal.

(a) finds that the grounds of the complaint are well-founded, and

(b) on the specific request of the complainant to be reinstated or re-engaged made in the referral or in the statement of his case,

the Tribunal considers that it would be practicable and in accordance with equity, for the complainant to be reinstated or re-engaged by the employer, the Tribunal shall make an order to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so reinstated or re-engaged:

Provided that where the complainant is employed in such managerial or executive post as requires a special trust in the person of the holder of that post or in his ability to perform the duties thereof, the Tribunal shall not order the reinstatement or re-engagement of the complainant; but where the complainant was appointed or selected to such post as aforesaid by his fellow workers the Tribunal may order his reinstatement or re-engagement in the post held by him before such appointment or selection.

(2) Where on a complaint made under article 75, the Tribunal finds that the grounds for the complaint are well-founded:-

(a) in cases of unfair dismissal, if there is no specific request for reinstatement or re-engagement or the Tribunal decides not to make an order for reinstatement or re-engagement as aforesaid, the Tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal:

Provided that, in determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker's age and skills as may affect the employment potential of the said worker;

(b) in all other cases, the Tribunal may make such order as it deems necessary in order to remedy the breach or it may make an award of compensation to be paid by the employer to the complainant, or it may award such compensation and make such orders as it may deem necessary in order to remedy the breach.

82. (1) Any decision or award made by the Tribunal shall be binding on the parties to it, on the workers represented in the dispute and the workers affected by it and shall be binding on any successor in title of any one of the parties to the dispute:

Provided that it shall not be open to either of the parties to seek by unilateral action a revision of any award or decision of the Tribunal before the expiration of at least one year from the date of such award or decision.

(2) A decision or award of the Tribunal may be made retrospective to a date which -

(a) in the case of an unfair dismissal, is not earlier than the date of such dismissal; and

(b) in any other case is not earlier than the actual occurrence of the breach or, if such date is not determinable, is not earlier than the date on which the trade dispute to which the decision or award relates first arose.

(3) In cases of unfair dismissal and in cases falling under the jurisdiction of the Industrial Tribunal in accordance with article 75(1)(a) and (b), there shall be a right of appeal on a point of law. Such appeal shall be made by an application to the Court of Appeal constituted in accordance with article 41(6) of the Code of Organisation and Civil Procedure. Such application shall be filed by not later than twelve days from the date of the decision of the Tribunal: Cap. 12.

Provided that when an appeal is lodged to the Court of Appeal and a plea is entered by either of the parties that the appeal is null and void because it is not based on a point of law decided by the Tribunal or that the appeal is null and void at law for any other reason whatsoever, that appeal shall be referred by the Registrar to the Court of Appeal for a decree *in camera* on the admissibility or otherwise of the appeal.

(4) The enforcement of the awards and decisions of the Tribunal shall be carried out in the manner prescribed in this Act and in the Code of Organisation and Civil Procedure, and shall vest in the Tribunal itself.

83. (1) If any question arises as to the interpretation of any award or decision of the Tribunal (other than a decision under this article), the Minister or any party to the proceedings may apply to the Tribunal for a decision of such question and the Tribunal shall decide the matter after hearing the parties or, if the parties have so agreed, without any such hearing. The decision of the Tribunal shall be notified to the parties and shall be binding in the same manner as if it had formed part of the original award.

Interpretation of
awards and
Decisions of
Tribunal.

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(2) For the purposes of this article the membership of the Tribunal shall be as far as may be reasonably possibly identical to the membership of the Tribunal when it made the award the interpretation of which is requested.

(3) If during the hearing of any application made under sub-article (1) of this article, the Tribunal finds that the application is vexatious, the Tribunal may order the offending party to pay to the other party a penalty not exceeding two hundred liri (Lm200). Any such penalty shall be recoverable as a civil debt.

TITLE III

SUPPLEMENTARY PROVISIONS

Application of
Act to
government
employees.

84. (1) Subject to the provisions of Title II of this Act, and without prejudice to the special provisions therein contained with respect to public officers, the provisions of Title II of this Act, other than the provisions of articles 69 and 72 and the provisions relating to dismissals or termination of employment, shall have effect in relation to government employment and to workers who are government employees as they have in relation to other employment and to other workers. The provisions excluded by this sub-article shall not apply to government employees.

(2) In this article "government employment" means employment under or for the purposes of a government department, otherwise than as a member of a disciplined force, and "government employee" means a person who for the time being is in government employment.

Expenses
necessary for
putting Act in
operation.

85. All expenses required to put into operation the provisions of this Act, including the expenses of the Tribunal and of any council, court of inquiry or of any person appointed by or under this Act, shall be a charge on and be paid out of the Consolidated Fund.

Repeals and
saving.
Cap. 135.
Cap. 266.

86. (1) The Conditions of Employment (Regulation) Act and the Industrial Relations Act are hereby repealed.

(2) Notwithstanding the provisions of sub-article (1), all regulations, orders and subsidiary legislation made under or kept in force by the Conditions of Employment (Regulation) Act and by the Industrial Relations Act and any National Standard Order and Wages Council Wage Regulation Order in force on the date on which this Act comes into effect, shall continue in force thereafter and shall have effect thereafter as if made under this Act, and may be amended or repealed accordingly.

SCHEDULE

(Article 64(6))

List and number of offices required to be manned at all times for the continued provision by the Government of essential services to the community.

*Offices**Number***CATEGORY A****ADMINISTRATIVE SERVICES**

Director General (Health)

Administrative Director responsible for Pharmaceutical Services

Administrative Director responsible for Hospitals

Administrative Director responsible for Public Health

Administrative Director responsible for Primary Health Care

Consultants in Administrative Posts3

Principal Medical Officers3

Port/Airport Medical Officers2

CLINICAL SERVICES IN MALTA*Consultants*

All Directors and Clinical Chairpersons (with respect to administrative duties and responsibilities to ensure the effective running of their respective departments) 12

Medical Administrator – Gozo General Hospital1

Manager Nursing Services

St. Luke's Hospital

Mount Carmel Hospital

Boffa Hospital

Gozo General Hospital

A 1972

St. Vincent De Paule

Manager Midwifery services

Manager Radiography

Manager Physiotherapy

Manager Laboratory Services

CATEGORY B - DOCTORS

For the purposes of this category, the term "on call" shall mean that the person may be contacted by phone, pager or otherwise and is expected to exercise clinical judgement and the term "resident" shall mean present on site in the hospital to deliver emergency services; the term "by day" shall mean from 8.00 am to 10.30 pm and the term "by night" shall mean from 10.30 pm to 8.00am.

Accident and Emergency Department

On Call 1 Consultant

Resident by day 6 Senior Registrar/
Registrar/SHO/MO/HM

Resident by night..... 4 Senior Registrar/
Registrar/SHO/MO/HM

Medicine

Consultants On Call 1 Gastroenterology

..... 1 Diabetology

..... 1 Neurology

..... 1 Nephrology

..... 1 Haematology

..... 1 Respiratory

..... 1 Cardiology

..... 1. Infectious Disease

Resident 2 Senior Registrars

..... 2. Registrar/SHO

.....3. Housemen

Surgery

Consultants On Call1 Orthopaedic Surgery

.....1 ENT

.....1 Ophthalmology

.....1 Cardio Thoracic

.....1 Urology

.....1 Plastic Surgery

.....1 Neuro Surgery

.....1 Vascular/Transplant Surgery

Resident2 Senior Registrars

.....1 Sen. Reg. Orthopaedics

.....2 Reg/SMO Gen Surgery

.....1 Reg/SHO Orthopaedics

.....1 Reg/SHO Ophthalmology

.....1 Reg/SHO Cardiothoracic

.....1 Reg/SHO Urology

.....1 Reg/SHO ENT

.....4 Housemen

Paediatrics

Consultants On Call1 Consultant Paediatrician

.....1 Paediatric Surgeon

.....1 Paediatric Cardiologist

.....1 Paediatric Oncologist

Resident1 Senior Registrar

A 1974

.....3 Reg/SHO/Houseman

Obstetrics and Gynaecology

Consultants On Call1 Consultant Obstetrician

Resident1 Senior Registrars

.....2 Reg/SHO

.....2 Housemen

Anaesthesia

Consultants On Call3 Consultant Anaesthetists

Resident5 Senior Registrars

.....1 Sen Reg for ITU

Radiology

Consultants On Call1 Consultant Radiologist

Resident1 Senior Reg/ Reg/ SHO

Blood Transfusion

Consultants On Call1 Consultant

Resident1 SHO/MO/Houseman

Pathology

Officers in charge on Call1 Toxicology

.....1 Virology

.....1 Bacteriology

.....1 Infection Control

.....1 Histopathology

.....1 Biochemistry

.....1 Public Health Laboratory

Psychiatry

Consultants On Call 1 Consultant Psychiatrist

Resident 2 Sen Reg/ Reg/ SHO/ Houseman

Geriatrics

Consultants On Call 1 Consultant Geriatrician

Resident 2 Sen Reg/ Reg/ SHO/ Houseman

Oncology

Consultants On Call 1 Consultant Oncologist

Resident 2 Sen Reg/ Reg/ SHO/ Houseman

Dermatology

Consultants On Call 1 Consultant Dermatologist

CATEGORY C*Nursing Services*

For the purposes of this category, the term "by day" shall mean from 7.00 am to 7.00 pm and the term "by night" shall mean from 7.00 pm to 7.00am.

Special Care Baby Unit Full staff complement

Intensive Therapy Unit 1 Nurse per patient

High Dependency Unit 1 Nurse per 2 patients

Renal Unit 1 Nurse for every 4 patients plus 1 for every special case

Accident and Emergency 8 Nurses by day and 5 nurses by night

Labour Ward and Theatre 5 Midwives plus 2 nurses/midwives for Theatre

Operating Theatres Staff to provide services in 3 Theatres by day and 2 Theatres by night

Coronary Intensive Care Unit 1 Nurse per patient

Coronary Care Unit 3 Nurses by day and 3 Nurses by night

General Acute Wards 2 Nurses by day and 2 Nurses by night

A 1976

Chronic Wards 1 Nurse by day and 1 Nurse by night

Gynaecology Wards 4 Nurses/Midwife by day and 3 by night

Antenatal Wards 2 Midwives by day and 2 by night

Post natal Wards 4 Midwives by day and 3 by night

Paramedic and Other services

For the purposes of this category, the term "by day" shall mean from 7.00 am to 7.00 pm and the term "by night" shall mean from 7.00 pm to 7.00am.

Radiographers 2 by day and 2 by night

Physiotherapists 4 by day

Laboratory Technologists 4 by day and 4 by night

Pharmacists 3 by day and 1 by night

Electrical Engineer 1 by day and on call by night

Mechanical Engineer 1 by day and on call by night

Maintenance Staff 3 by day and 3 by night

Services at Gozo General Hospital

1 Consultant on call on each of General Medicine, General Surgery, Orthopaedics/Anaesthesia

4 Sen. Reg/ Reg/ SHO/ to cover wards and Emergency Department

1 Pharmacist

1 Lab Technologist

1 Maintenance Staff

Nursing and Midwifery as applicable to Malta Hospitals

Ambulance Drivers Service

By day 8 Drivers in Malta and 3 in Gozo

By night 4 Drivers in Malta and 2 in Gozo

A 1977

Passed by the House of Representatives at Sitting No. 802 of 21st October,
2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives