

I assent.

(L.S.)

GUIDO DE MARCO
President

9th April, 2002

ACT No. III of 2002

AN ACT to amend the Criminal Code, Cap. 9.

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:

1. (1) The short title of this Act is the Criminal Code Short title.
(Amendment) Act, 2002, and shall be read and construed as one with the Criminal Code, hereinafter referred to as “the principal law”.

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

2. ✓ In sub-article (1) of article 4 of the principal law, for the words Amendment of article 4 of the principal law.
“is vested in the Government by whom it is prosecuted” there shall be substituted the words “is vested in the State and is prosecuted”.

3. ✓ Sub-article (1) of article 5 of the principal law shall be amended Amendment of article 5 of the principal law.
as follows:

(a) for the words “A criminal action may be prosecuted in Malta,” there shall be substituted the words “Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta,”;

~~(b)~~ in paragraph (d) thereof:

(i) for the words “in articles 133 or 139A,” there shall be substituted the words “in articles 133, 139A, or of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system,”;

(ii) for the words “For the purposes of this paragraph” to “Immigration Act 1970;” there shall be substituted the following:

“For the purposes of this paragraph:

“permanent resident” means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the Immigration Act 1970;

“offence against the person” includes the offences mentioned in articles 86 to 90 and in articles 198 to 205 of this Code;

the expressions “state or government facility”, “infrastructure facility” and “public transportation system” shall have the same meaning assigned to them respectively by subarticle (4) of article 314B;

~~(c)~~ in subarticle (i) of paragraph (e) thereof; immediately after the words “312,” there shall be inserted the words “314A, 314B”;

~~(d)~~ in paragraph (g) thereof, immediately after the words “or 298,” there shall be inserted the words “or conspires with one or more persons for the purpose of committing any of the said crimes,”; and

~~(e)~~ immediately after paragraph (g) thereof, there shall be added the following new paragraph:

“(h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible

for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;

(i) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta.”.

4. ✓ Article 9 of the principal law shall be amended as follows:

Amendment of article 9 of the principal law.

(a) in subarticle (1) thereof, for the words “by the Government,” there shall be substituted the words “the Minister responsible for the prisons,”; and

(b) immediately after subarticle (6) thereof, there shall be added the following new subarticles:

“(7) Before awarding the punishment of solitary confinement the court shall satisfy itself, if necessary by medical evidence, which may include a medical examination of the person convicted, that the person convicted is fit to undergo the said punishment.

(8) Where, in the course of the execution of the punishment of solitary confinement, the Medical Officer of the prison certifies in writing that the prisoner is no longer fit to undergo such punishment, the execution of that punishment shall be suspended until such time as the prisoner is again certified to be medically fit to undergo such punishment.”.

5. ✓ In the proviso to sub-article (3) of article 11 of the principal law, for the words “three months if the fine is not higher than two thousand liri, six months if the fine is not higher than ten thousand liri, one year if the fine is not higher than thirty thousand liri and eighteen months if it is higher than thirty thousand liri.” there shall be substituted the words “six months if the fine is not higher than two thousand liri, one year if the fine is not higher than ten thousand liri, eighteen months if the fine is not higher than thirty thousand liri and two years if it is higher than thirty thousand liri.”.

Amendment of article 11 of the principal law.

6. ✓ For article 12 of the principal law there shall be substituted the following:

Substitution of article 12 of the principal law.

"Detention.

12. (1) Persons sentenced to detention shall be detained in the prison or in that part of the prison appointed for persons sentenced to that punishment.

(2) Where it is not otherwise specifically provided, no term of detention shall exceed two months."

Amendment of article 14 of the principal law.

✓ 7. Article 14 of the principal law shall be amended as follows:

(a) in the first proviso to subarticle (1) thereof, for the words "fifty cents" wherever they occur there shall be substituted the words "twenty-five liri" ; and

(b) for the second proviso to subarticle (1) there shall be substituted the following proviso:

"Provided that in default of payment of the fine (*multa* or *ammenda*) within the time laid down by the court in its sentence or, failing a time-limit in the sentence, within the time of one week from the date of the sentence, the said fine shall be converted forthwith into imprisonment or detention as provided in articles 11 and 13 as the case may be, and the police shall, by virtue of the authority conferred upon them by the sentence and by this proviso, arrest the person sentenced and shall escort him to the place designated according to law for the confinement of persons sentenced to a fine convertible into imprisonment or detention according to law;"

Substitution of article 22 of the principal law.

✓ 8. (1) Subject to the provisions of article 168 of this Act, for article 22 of the principal law there shall be substituted the following:

"Computation of sentences of imprisonment.

22. Except in the case of a sentence of imprisonment for life or of imprisonment or detention in default of payment of a fine (*multa* or *ammenda*), any time prior to conviction and sentence during which the person sentenced is in prison for the offence or offences for which he has been so convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment or detention under his sentence; but where he was previously subject to a probation order, an order for conditional discharge or to a suspended sentence in respect of such offence or offences, any such period falling before that order was made or suspended sentence passed shall be disregarded for the purposes of this article:

Provided that where any time prior to conviction as aforesaid has, by virtue of this article, been counted as part of the term of imprisonment or detention under the sentence in respect of that conviction, such time shall not be counted as part of the term of imprisonment or detention under any other sentence.”.

9. Immediately after article 23 of the principal law there shall be added the following new articles:

Addition of new articles 23A and 23B to the principal law.

Freezing of property of person accused.

23A. (1) In this article, unless the context otherwise requires:

“relevant offence” means any crime not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment for a term of more than one year,

“the Act” means the Prevention of Money Laundering Act, Cap. 373;

“the Ordinances” means the Dangerous Drugs Ordinance, Cap. 101, and the Medical and Kindred Professions Ordinance, Cap. 31.

(2) Where a person is charged with a relevant offence the provisions of article 5 of the Act shall apply *mutatis mutandis* and the same provisions shall apply to any order made by the Court by virtue of this article as if it were an order made by the Court under the said article 5 of the Act.

Forfeiture of proceeds.

23B. (1) Without prejudice to the provisions of article 23 of this Code the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D.

(2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted

or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence.

(3) For the purposes of this article:

“proceeds” means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

“relevant offence” has the same meaning assigned to it by sub-article (1) of article 23A.”.

Amendment of
article 28A of the
principal law.

10. Immediately after sub-article (5) of article 28A of the principal law there shall be added the following new sub-article:

“(5A) Without prejudice to the provisions of article 28F, the punishment awarded under a suspended sentence when that sentence has not taken effect shall, for the purposes of article 50, be deemed to have expired on the expiration of the original operational period referred to in subarticle (1) of this article or of the operational period substituted therefore as provided in paragraph (b) of subarticle (2) of article 28B.”.

Amendment of
article 28C of the
principal law.

11. Article 28C of the principal law shall be amended as follows:

(a) in sub-article (1) thereof, for the words “by the Criminal Court or,” there shall be substituted the words “by the Court of Criminal Appeal, by the Criminal Court or,”;

(b) for sub-article (3) thereof there shall be substituted the following sub-article:

“(3) For the purposes of this article and of articles 28D and 28E -

(a) a suspended sentence passed on an offender on appeal shall be deemed to have been passed by the court from which the appeal was made;

(b) the Juvenile Court shall be deemed to be a Court of Magistrates (Malta) or a Court of Magistrates (Gozo), as the case may be.”.

12. In subarticle (1) of article 28D of the principal law, for the words “to the Criminal Court” there shall be substituted the words “to the Court of Criminal Appeal, to the Criminal Court”.

Amendment of article 28D of the principal law.

13. Article 28E of the principal law shall be amended as follows:

Amendment of article 28E of the principal law.

(a) subarticles (2) and (4) thereof shall be deleted; and

(b) in subarticle (3) thereof, for the words “for the further offence.” there shall be substituted the words “for the further offence:” and immediately thereafter there shall be added the following proviso:

“Provided that if the Criminal Court does not make an order under subarticle (1) of article 28B, it shall determine the term of imprisonment for the further offence only.”.

14. Article 28G of the principal law shall be amended as follows:

Amendment of article 28G of the principal law.

(a) in subarticle (2) thereof, for the words “and named in the supervision order.” there shall be substituted the words “and named in the supervision order; and the supervision order may moreover require the offender to comply, during the whole or any part of the period of supervision, with such requirements as may be imposed by the court under the provisions of subarticles (2) and (4) of article 5 of the said Act.”; and

(b) in subarticle (9) thereof -

(i) for the words “of the requirements of sub-article (3) of this article,” there shall be substituted the words “of the requirements of subarticles (2) and (3) of this article,”; and

(ii) for the words “it may, without prejudice to the continuation of the order, impose on him a fine (*ammenda*) not exceeding one hundred liri.” there shall be substituted the words “it may either in serious or repeated cases order that the suspended sentence passed in the proceedings in which the supervision order was made shall have effect or, without prejudice to the continuation of the order, impose on him a fine (*ammenda*) not exceeding one hundred liri.”.

Amendment of
article 29 of the
principal law.

15. Article 29 of the principal law shall be amended as follows:

(a) for subarticle (1) thereof there shall be substituted the following:

“(1) Any person sentenced to the payment of a fine (*ammenda* or *multa*) and who is granted the benefit of time by order of the court according to the provisions of subarticle (2) of article 14, and who does not pay such fine in accordance with the conditions laid down in the same order, shall be liable to be arrested and brought before the court; and the court, upon ascertaining the identity of the person sentenced and that payment has not been paid according to the conditons of the order, shall commit such person to undergo the detention or imprisonment prescribed in substitution for the fine (*ammenda* or *multa*), or in substitution of the balance of the fine (*ammenda* or *multa*) still unpaid, as the case may be. The arrest shall take place upon a warrant to be issued by the court.”; and

(b) in subarticle (2) thereof, immediately after the words “within four days from the date” there shall be inserted the words “of any breach of the conditions laid down by the court in its order or from the date”.

Amendment of
article 30 of the
principal law.

16. Article 30 of the principal law shall be amended as follows:

(a) in subarticle (1) thereof, immediately after the words “the Government” wherever they occur there shall be inserted the words “or any other public authority”; and

(b) in subarticle (2) thereof, for the words “and to any other circumstances of the case,” there shall be substituted the words “and to any other circumstances of the case, and after hearing the Police in the case of an application before the Court of Magistrates or the Attorney General in the case of an application before any other court,”.

Substitution of
article 36 of the
principal law.

17. Article 36 of the principal law shall be deleted and substituted by the following:

“Minors
under
fourteen but
over nine
years acting
with
discretion.

36. Saving the powers of the Minister under the Children and Young Persons (Care Orders) Act, minors under the age of fourteen but over nine who, acting with a mischievous discretion, shall commit an offence, shall be liable on conviction to the punishments established for contraventions:

Provided that the court may instead of sentencing the minor to a punishment apply the provisions of subarticle (3) or (4) of article 35:

Provided also that where the court is of the opinion that, when it takes into account the age of the offender, his previous conduct, the gravity of the fact of which he has been convicted and the degree of mischievous discretion shown by the offender as it appears from his conduct by which the offence was committed and from all the other circumstances of the offence, the punishments established for contraventions would not be appropriate, the court may sentence the person convicted to the punishment laid down for the offence decreased by three degrees provided that in no case may the punishment exceed four years imprisonment.”.

18. Immediately after article 48 of the principal law and immediately before Title V of the said law there shall be added the following new title and new article:

Addition of new Title IV BIS to the principal law.

“Title IV BIS OF CONSPIRACY

“Conspiracy. 48A. (1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act, shall be guilty of the offence of conspiracy to commit that offence.

(2) The conspiracy referred to in sub-article (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.

(4) For the purposes of subarticle (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.”.

19. Immediately after article 82 of the principal law there shall be added the following new article:

Addition of new article 82A to the principal law.

"Incitement
to racial
hatred, etc.

82A. (1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing subarticle "racial hatred" means hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins."

Addition of new
article 83A to the
principal law.

20. Immediately after article 83 of the principal law there shall be added the following new article:

"Promoting
etc. an
organization
of two or
more persons
with a view
to commit
criminal
offences.

"83A. (1) Any person who promotes, constitutes, organises or finances an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more shall be liable to the punishment of imprisonment for a term from three to seven years.

(2) Any person who belongs to an organisation referred to in subarticle (1) shall for that mere fact be liable to the punishment of imprisonment for a term from one to five years.

(3) Where the number of persons in the organisation is ten or more the punishment in the preceding subarticles shall be increased from one to two degrees.

(4) Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable as follows:

(a) where the offence of which the person was found guilty is the offence in subarticle (1) of this article, to the payment of a fine (*multa*) of not less than 15,000 liri and not more than 50,000 liri;

(b) where the offence of which the person was found guilty is the offence in subarticle (2) of this article, to the payment of a fine (*multa*) of not less than 10,000 liri and not more than 30,000 liri;

(c) where the offence of which the person was found guilty is punishable as provided in subarticle (3) of this article—

(i) where the offence is that provided in subarticle (1) of this article, to the punishment of a fine (*multa*) of not less than 20,000 liri and not more than 500,000 liri;

(ii) where the offence is that provided in subarticle (1) of this article, to the punishment of a fine (*multa*) of not less than 15,000 liri and not more than 50,000 liri.

(5) The criminal action for an offence against the provisions of this article may be prosecuted in Malta notwithstanding that the organization of persons is based or pursues its criminal activities outside Malta.”

21. For article 100 of the principal law there shall be substituted the following:

Substitution of article 100 of the principal law.

“Interpretation. 100. In this sub-title “criminal proceedings” includes the inquiry referred to in Sub-title II of Title II of Part I of Book Second of this Code and any proceedings under the Malta Armed Forces Act.”.

22. In paragraph (b) of article 102 of the principal law, the words “by threats, bribes or promises,” shall be deleted.

Amendment of article 102 of the principal law.

23. Article 104 of the principal law shall be amended as follows:

Amendment of article 104 of the principal law.

(a) in subarticle (1) thereof, for the words “the person accused” there shall be substituted the words “the person charged or accused”; and

(b) subarticle (3) thereof shall be deleted.

Amendment of
article 105 of the
principal law.

24. In article 105 of the principal law, for the words “of the person accused,” there shall be substituted the words “of the person charged or accused,”.

Amendment of
article 106 of the
principal law.

25. Immediately after sub-article (2) of article 106 of the principal law there shall be added the following new sub-article:

“(3) Whosoever shall make a false affidavit, whether in Malta or outside Malta, knowing that such affidavit is required or intended for any civil proceedings in Malta, shall, on conviction, be liable to the punishment mentioned in sub-article (1) of this article.”.

Amendment of
article 108 of the
principal law.

26. In sub-article (1) of article 108 of the principal law, for the words “before a magistrate” there shall be substituted the words “before a judge, magistrate”.

Amendment of
article 115 of the
principal law.

27. Article 115 of the principal law shall be amended as follows:

(a) for the words “receives or accepts” there shall be substituted the words “requests, receives or accepts”; and

(b) in paragraph (a) thereof, for the words “nine months” there shall be substituted the words “thirteen months”.

Amendment of
article 121 of the
principal law.

28. Article 121 of the principal law shall be amended as follows:

(a) in sub-article (1) thereof, for the words “of a statutory body” there shall be substituted the words “of a statutory or other corporate body”;

(b) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

“(3) The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this sub-article the expression “breach of duty” includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.

(4) The provisions of this sub-title shall also apply to any conduct falling within the descriptions set out in the provisions of this sub-title and in which is involved:

(a) a public officer or servant of any foreign State;
or

(b) any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; or

(c) any member of a parliamentary assembly of any international or supranational organisation; or

(d) any holder of judicial office or any official of any international court; or

(e) any member, officer or servant of a Local Council; or

(f) any person mentioned in the preceding paragraphs and the offence was committed outside Malta by a Maltese citizen or by a permanent resident in Malta;

For the purposes of this paragraph, the phrase “permanent resident” shall have the same meaning assigned to it by paragraph (d) of subarticle (1) of article 5; or

(g) as the person who committed the offence, any person mentioned in paragraph (b) of this subarticle and the organisation, institution or body in question has its headquarters in Malta.”.

29. Immediately after article 121 of the principal law there shall be added the following new articles:

Addition of new articles 121A to 121J to the principal law.

“Trading in
influence.

121A. (1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this sub-title, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three months to one year.

(2) Any person who receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in sub-article (1) shall on conviction be liable to the punishment laid down in that sub-article.

(3) The offences referred to in sub-articles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

Accounting
offences.

121B. Whosoever, with intent to commit, conceal or disguise any offence under the preceding articles of this sub-title, creates or uses an invoice or any other accounting document or record containing false or incomplete information or unlawfully omits to make a record of payment, shall on conviction be liable to the punishment of imprisonment from three months to one year without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law.

Jurisdiction.

121C. Without prejudice to the provisions of article 5 of this Code, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

(a) only part of the action giving execution to the offence took place in Malta; or

(b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or

(c) the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council.

Corporate liability for offences under this title.

121D. Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than 500 liri and not more than 500,000 liri.”.

30. For the heading immediately preceding article 141 of the principal law and which reads “General Provision applicable to this Sub-title” there shall be substituted the following:

Substitution of heading preceding article 141 of the principal law.

“General Provision applicable to Public Officers”.

31. In article 161 of the principal law for the words “from one to three months or to a fine (*multa*)” there shall be substituted the words “from one month to one year or to a fine (*multa*) not exceeding one thousand liri”.

Amendment of article 161 of the principal law.

32. In article 162 of the principal law, for the words “from one to three months or to a fine (*multa*).” there shall be substituted the words “from one to eighteen months or to a fine (*multa*) not exceeding five hundred liri.”

Amendment of article 162 of the principal law.

33. Article 172 of the principal law shall be amended as follows:

Amendment of article 172 of the principal law.

(a) in sub-article (1) thereof:

(i) for the words “stamping or marking,” there shall be substituted the words “stamping, marking, authenticating or certifying,”;

(ii) for the words “documents or effects which are public property or are” there shall be substituted the words “documents or effects, whether public or private property, or which are”; and

(iii) in the Maltese text only, for the words “that il-kustodja pubblika,” there shall be substituted the words “that il-garanzija pubblika,”; and

(b) in subarticle (2) thereof, for the words “or mark,” there shall be substituted the words “or mark and whosoever shall knowingly and without lawful authority be in possession of the said objects,”.

Additon of new article 189 A to the principal law.

34. Immediately after article 189 of the principal law there shall be added the following new article:

“Definition of document, etc.

189A. For the purposes of this Title, “document”, “instrument”, “writing” and “book” include any card, disc, tape, soundtrack or other device on or in which information is or may be recorded or stored by mechanical, electronic or other means.”

Additon of new article 203A to the principal law.

35. Immediately after article 203 of the principal law there shall be added the following new article:

“Instigation, etc, of defilement of minors.

203A. Whosoever, by any means other than those mentioned in sub-article (1) of article 203, instigates, encourages or facilitates the defilement of a minor of either sex, shall, on conviction be liable to imprisonment for a term not exceeding two years and the provisions of sub-articles (2) and (3) of article 203 shall, *mutatis mutandis*, apply to an offence under this article:

Provided that the offence shall be punishable with imprisonment for a term not exceeding four years in any of the cases referred to in the proviso to sub-article (1) of article 203”.

Additon of new article 208A to the principal law.

36. Immediately after article 208 of the principal law there shall be added the following new article:

“Indecent photographs, films, etc., of persons under age.

208A. (1) Any citizen or permanent resident of Malta, whether in Malta or outside Malta, as well as any person in Malta, who takes or permits to be taken any indecent photograph, film, video recording or electronic image of a minor, or distributes or shows such indecent photograph, film, video recording or electronic image, or is in possession of such indecent photograph, film, or video recording or electronic image, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a

fine (*multa*) not exceeding two hundred liri, or to both such imprisonment and fine:

Provided that for the purposes of this article the expression "permanent resident" shall have the same meaning assigned to it by paragraph (d) of sub-article (1) of article 5.

(2) A photograph, film, video recording or electronic image shall, if it shows a person under age and is indecent, be treated for all purposes of this article as an indecent photograph, film, video recording or electronic image.

(3) Where the offence referred to in sub-article (1) is committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age shown in the photograph, film, video recording or electronic image, or where such person under age has not completed the age of nine years, the punishment shall be of imprisonment for a term from seven months to one year, with or without solitary confinement, and the provisions of sub-article (4) of article 197 shall also apply.

(4) Where a person is charged with distributing or showing, or with being in possession of, any indecent photograph, film, video recording or electronic image under subarticle (1), it shall be a defence for him to prove that he had a legitimate reason for distributing or showing, or for having in his possession, such photograph, film, video recording or electronic image, or that he had not himself seen the photograph, film, video recording or electronic image, and neither knew nor had any reason to suspect them to be indecent.

(5) For the purposes of paragraph (a) of subarticle (1) of article 635, the person under age shown in any such photograph, film, video recording or electronic image shall be deemed to be the person against whom the offence is committed.

(6) In this article references to a photograph includes the negative as well as the positive version."

Amendment of
article 222 of the
principal law.

37. In subparagraph (b) of subarticle (1) of article 222 of the principal law, for the words “nine years.” there shall be substituted the words “nine years;” and immediately thereafter there shall be added the following new subparagraph:

“(c) on the person of whosoever was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions.”.

Amendment of
article 222A of the
principal law.

38. In article 222A of the principal law, for the words “sixty-five years” there shall be substituted the words “sixty years”.

Amendment of
article 225 of the
principal law.

39. In article 225 of the principal law, for the words “not exceeding two years or to a fine (*multa*) not exceeding two thousand liri” there shall be substituted the words “not exceeding four years or to a fine (*multa*) not exceeding five thousand liri”.

Amendment of
article 226 of the
principal law.

40. Sub-article (1) of article 226 of the principal law shall be amended as follows:

(a) in paragraph (a) thereof, for the words “six months” there shall be substituted the words “one year” and for the words “one thousand liri” there shall be substituted the words “two thousand liri”; and

(b) in paragraph (b) thereof, for the words “three months” there shall be substituted the words “six months” and for the words “five hundred liri” there shall be substituted the words “one thousand liri”.

Amendment of
article 227 of the
principal law.

41. In paragraph (c) of article 227 of the principal law:

(a) for the words “whenever, in cases of provocation, the homicide be in fact” there shall be substituted the words “whenever the homicide be in fact”; and

(b) only in the Maltese text thereof, for the words “illi r-raguni tal-provokazzjoni kienet tali illi” għandhom jidhlu l-kliem “illi r-raguni kienet tali illi”.

Amendment of
article 228 of the
principal law.

42. In subarticle (2) of article 228 for the words “not exceeding twenty years” there shall be substituted the words “from five to twenty years”.

43. For the heading immediately preceding article 241 of the principal law and which reads "Of Abortion and of the Administering or Supplying of Substances Poisonous or Injurious to Health" there shall be substituted the following heading:

Substitution of heading immediately preceding article 241 of the principal law.

"Of Abortion, of the Administration or Supplying of Substances Poisonous or Injurious to Health, and of the Spreading of Disease".

44. In article 242 of the principal law, for the words "to homicide or bodily harm," there shall be substituted the words "to wilful homicide or wilful bodily harm,".

Amendment of article 242 of the principal law.

45. Immediately after article 243 of the principal law there shall be added the following new article:

Addition of new article 243A to the principal law.

"Culpable miscarriage.

243A. Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the miscarriage of a woman with child, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding one thousand liri."

46. Immediately after article 244 of the principal law there shall be added the following new article:

Addition of new article 244A to the principal law.

"Transmission, communication etc., of disease.

244A. (1) Any person who, knowing that he suffers from, or is afflicted by, any disease or condition as may be specified in accordance with sub-article (3), in any manner knowingly transmits, communicates or passes on such disease or condition to any other person not otherwise suffering from it or afflicted by it, shall, on conviction, be liable to imprisonment for a term from four year to nine years:

Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishment established in sub-article (1) of article 211.

(2) Where any such disease or condition as is referred to in sub-article (1) is transmitted, communicated or passed on through imprudence, carelessness or through non-observance of any regulation by the person who knew or should have known that he suffers there from or is afflicted thereby that person shall on conviction be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding one thousand liri:

Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishments established in article 225.

(3) The Minister responsible for justice shall, by notice in the Government Gazette, specify diseases or conditions to which this article applies.”.

Substitution of heading immediately preceding article 245 of the principal law.

47. For the heading immediately preceding article 245 of the principal law and which reads “Of Infanticide and of the Abandonment and Exposure of Children” there shall be substituted the following heading:

“Of Infanticide and of the Abandonment, Exposure and Ill-treatment of Children”.

Amendment of article 247 of the principal law.

48. In sub-article (1) of article 247 of the principal law, for the words “to be guilty of bodily harm,” there shall be substituted the words “to be guilty of wilful bodily harm,”.

Addition of new article 247A to the principal law.

49. Immediately after article 247 of the principal law there shall be added the following new article:

“Ill-treatment or neglect of child under twelve years.

247A. (1) Whosoever, having the responsibility of any child under twelve years of age, by means of persistent acts of commission or omission ill-treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.

(2) For the purposes of sub-article (1), ill-treatment includes neglecting the child’s need for adequate nutrition, clothing, shelter, and protection from harm, persistently offending the child’s dignity and self-esteem in a serious manner and persistently imposing upon the child age-inappropriate tasks or hard physical labour.

(3) The provisions of sub-article (4) of article 197 shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor.”.

Addition of new sub-title VIII BIS to the principal law.

50. Immediately after article 248 of the principal law and immediately before Sub-title IX of the said law there shall be added the following new sub-title and new articles:

“Sub-title VIII BIS

OF THE TRAFFIC OF PERSONS

Traffic of a person of age for the purpose of exploitation in the production of goods or provision of services.

248A. (1) Whosoever, by any means mentioned in subarticle (2) of this article, trafficks a person of age for the purpose of exploiting that person in the production of goods or provision of services shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.

For the purposes of this subarticle exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in subarticle (1) are the following:

(a) violence or threats, including abduction;

(b) deceit or fraud;

(c) misuse of authority, influence or pressure;

(d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.

Traffic of a person of age for the purpose of exploitation in prostitution, etc.

248B. Whosoever, by any means mentioned in subarticle (2) of article 248A, trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material shall, on conviction, be liable to the punishment laid down in subarticle (1) of article 248A.

Traffic of a person of age for the purpose of exploitation in the removal of organs.

248C. Whosoever, by any means mentioned in subarticle (2) of article 248A, trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from four to twelve years.

Traffic of a minor for any of the purposes mentioned in articles 248A to 248C.

248D. Whosoever trafficks a minor for any of the purposes mentioned in articles 248A to 248C, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in subarticle (2) of article 248A has been used:

Provided that where any of the means mentioned in subarticle (2) of article 248A has been used in the commission of the offence under this article the punishment for the offence shall be increased by one degree.

General provisions applicable to this sub-title.

248E. (1) In this sub-title, the phrase “trafficks a person” or “trafficks a minor” means the recruitment, transportation or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be.

(2) Where any of the offences in articles 248A to 248D, both inclusive,

- (a) is accompanied by grievous bodily harm;
- or
- (b) generates proceeds exceeding five thousand liri; or
- (c) is committed with the involvement of a criminal organisation within the meaning of subarticle (1) of article 83A

the punishment otherwise due shall be increased by one degree.

(3) The provisions of article 121D shall apply *mutatis mutandis* to the offences under this sub-title, so however that the punishment to which the body corporate shall be liable under this subarticle shall be the payment of a fine (*multa*) of not less than five thousand liri and not more than eight hundred thousand liri.

(4) Where the person found guilty of any of the offences under this sub-title -

- (a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and
- (b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D,

the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than two thousand liri and not more than five hundred thousand liri.

(5) Without prejudice to the provisions of article 5 of this Code, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

(a) only part of the action giving execution to the offence took place in Malta; or

(b) the offender is a Maltese national or permanent resident in Malta.”.

51. In article 249 of the principal law for the words “six months.” there shall be substituted the words “six months:” and immediately thereafter there shall be inserted the following proviso: Amendment of article 249 of the principal law.

“Provided that where the threat concerns the use of nuclear material to cause death or serious injury to any person or substantial damage to property or the commission of an offence of theft of nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act the punishment for the offence shall be increased by three degrees; the expression “nuclear material” shall have the same meaning assigned to it by subarticle (4) of article 314B.”.

52. Subarticle (1) of article 250 of the principal law shall be amended as follows: Amendment of article 250 of the principal law.

(a) for the words “title or security,” there shall be substituted the words “title or security, or to do or omit from doing any thing,”; and

(b) for the words “or to defame another person as guilty of an offence or of a dishonourable act,” there shall be substituted the words “or to defame, that or another person,”.

53. Immediately after paragraph (g) of article 271 of the principal law there shall be added the following new paragraph: Amendment of article 271 of the principal law.

“(h) when it is committed on nuclear material as defined in subarticle (4) of article 314 B.”.

Amendment of article 276A of the principal law.

54. In article 276A of the principal law, for the words “sixty-five years” there shall be substituted the words “sixty years”.

Amendment of article 293 of the principal law.

55. In article 293 of the principal law, for the words “for a term not exceeding nine months” there shall be substituted the words “for a term from three to eighteen months”.

Amendment of article 294 of the principal law.

56. In article 294 of the principal law, for the words “from five months to one year.” there shall be substituted the words “from seven months to two years.”.

Amendment of article 295 of the principal law.

57. In article 295 of the principal law, for the words “for a term from five months to one year” there shall be substituted the words “for a term from “seven months to two years” and for the words “from six to eighteen months” there shall be substituted the words “from nine months to three years”.

Amendment of article 296 of the principal law.

58. In sub-article (1) of article 296 of the principal law, for the words “for a term from five to eighteen months” there shall be substituted the words “for a term from five months to two years”.

Amendment of article 297 of the principal law.

59. In article 297 of the principal law, for the words “for a term from seven months to two years.” there shall be substituted the words “for a term from nine months to three years.”.

Addition of new article 298C of the principal law.

60. Immediately after article 298B of the principal law there shall be inserted the following new article:

“Usury.

298C. (1) Whosoever receives from another person or obtains from another person a promise to give, to himself or to others, in consideration of a loan, interests or any other gain under any form whatsoever in excess of what is allowed by law shall, on conviction, be liable to imprisonment for a term not exceeding eighteen months and to the payment of a fine (*multa*) from one thousand liri to fifteen thousand liri.

(2) The same punishment laid down in sub-article (1) shall apply to whosoever receives from another person or obtains from another person a promise to give, to himself or to others, in consideration of a service consisting in any other benefit of any kind, interests or any other gain under any form whatsoever in excess of what is allowed by law or otherwise grossly disproportionate to the service given.

(3) The same punishment laid down in subarticle (1) shall also apply to whosoever, not being an accomplice in the offence in the same subarticle, intervenes to procure for another person a sum of money or any other benefit by having a person give or promise to give, to himself or to others, in respect of the intervention, a grossly disproportionate compensation.

(4) For the purposes of subarticles (1), (2) and (3), in the determination of whether the interests are, or any gain or compensation is, grossly disproportionate account shall be had of all the circumstances of the fact and of the average rates usually applicable to operations similar to the one in question.

(5) Where, in the course of criminal proceedings for an offence under this article, it is proved before the court that the accused has received from another person an amount of interest, or a consideration of an amount, in excess of what is allowed by law or otherwise grossly disproportionate to the service given, the court shall order the accused to pay to the said other person such amount as may be determined by the court as being the excess received by the accused as aforesaid. The said order of the court shall be without prejudice to any right of such other person to recover by any other means any greater amount due to him and the order shall constitute an executive title enforceable as if it were a final judgement given in a civil action between the offender and the person to whom payment is ordered.

(6) The punishment for an offence under this article shall be decreased by one degree where the accused, before final judgement, reimburses excess amount received by him to the person from whom such amount was received.”.

61. Immediately after article 298C of the principal law there shall be inserted the following new article:

Addition of new article 298D to the principal law.

“298D. Any person who, without the prior approval in writing of the Commissioner of Police, in any manner whatsoever, tampers, removes, alters or makes a chassis or engine identification number of, or on, any motor vehicle shall, on conviction be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of not less than three hundred liri and not more than one thousand liri or to both such imprisonment and fine.”.

Amendment of article 308 of the principal law.

62. In article 308 of the principal law for the words “from four months to one year.” there shall be substituted the words “from seven months to two years.”.

Amendment of article 309 of the principal law.

63. In article 309 of the principal law, for the words “from one month to three months” there shall be substituted the words “from one to six months”.

Amendment of article 310 of the principal law.

64. For paragraphs (a) and (b) of sub-article (1) of article 310 of the principal law there shall be substituted the following:

“(a) when the amount of the damage caused by the offender exceeds one thousand liri the punishment shall be that of imprisonment from thirteen months to seven years;

(b) when the amount of the damage caused by the offender exceeds one hundred liri but does not exceed one thousand liri, the punishment shall be that of imprisonment from five months to three years:

Provided that if the punishment laid down for the relevant offence in the preceding articles of this sub-title is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum.”.

Addition of new articles 310A and 310B to the principal law.

65. Immediately after article 310 of the principal law there shall be inserted the following new articles:

“Corporate liability for offences under this sub-title. Jurisdiction.

310A. The provisions of article 121D shall apply to offences under this sub-title.

310B. The offences under this sub-title shall be deemed to be offences even when committed outside Malta and, without prejudice to the provisions of article 5, the criminal action therefor may also be prosecuted in Malta according to the laws thereof against any person who commits or participates in the offence as provided in this Code-

(a) when the offence took place, even if only in part, in Malta or on the sea in any place within the territorial jurisdiction of Malta; or

(b) when the gain to the prejudice of another person has been received in Malta; or

(c) when a person in Malta knowingly assisted or induced another person to commit the offence; or

(d) when the offender is a Maltese citizen or a permanent resident in Malta and the fact also constitutes an offence according to the laws of the country where it took place:

Provided that for the purposes of this paragraph “permanent resident” shall have the same meaning assigned to it by paragraph (d) of subarticle (1) of article 5.”.

66. In article 313 of the principal law, for the words “Offenders Act” there shall be substituted the words “Offenders Act and of article 21 of this Code”.

Amendment of article 313 of the principal law.

67. Immediately after article 314 of the principal law there shall be added the following new articles:

Addition of new articles 314A and 314B to the principal law.

“314A. (1) Whosoever, maliciously, delivers, places, discharges or detonates a lethal device likely to endanger the life or to cause serious injury to the property of any other person, shall be liable, on conviction, to the punishment laid down in article 311, even though no injury to such person or property has been actually caused.

(2) If as a result of the offence referred to in subarticle (1) any person shall perish, or a grievous bodily harm is caused to any person, or any serious spoil, damage or injury to or upon any movable or immovable property belonging to any person is caused, the offender shall be liable to the punishments laid down in article 312 as the case may be.

(3) Where the offence takes place in, or is directed at, a public place, a state or government facility, an infrastructural facility or a public transportation system the punishment for the offence shall be increased by one degree.

(4) In this article:

“lethal device” includes any thing that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination

or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;

“state or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

“infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

“public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

314B. (1) Whosoever, maliciously, is in possession or makes use of, transfers, alters, disposes of or disperses nuclear material which is likely to cause death or serious injury to any person or substantial damage to property shall be liable, on conviction, to the same punishment laid down in article 311, even though no injury to such person or property has been caused.

(2) The provision of subarticle (2) of article 314A shall apply to an offence under this article.

(3) The provisions of article 313 shall apply to whosoever keeps or is in possession of or has under his control any nuclear material under the same circumstances mentioned in that article.

(4) In this article:

“nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium enriched in the isotopes 235 and 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

“uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.”.

68. Article 325 of the principal law shall be amended as follows:

Amendment of article 325 of the principal law.

- (a) the present provision shall be renumbered as sub-article (1);
- (b) immediately after sub-article (1) there shall be added the following new sub-article:

“(2) Where because of the geological, palaeontological, archeological, architechtonic, artistic or historical nature or importance of the property spoiled, damaged or injured it is not possible to estimate the damage according to the rule laid down, in article 335, the damage shall be deemed to exceed five hundred liri.”.

69. Paragraph (a) of article 330 of the principal law shall be amended as follows:

Amendment of article 330 of the principal law.

- (a) for the words “was to commit a theft,” there shall be substituted the words “was to commit theft or damage to property or any offence against the person as defined in paragraph (d) of subarticle (1) of article 5,”; and
- (b) for the words “previously convicted of theft” there shall be substituted the words “previously convicted of any such offence”.

70. Immediately after article 334 of the principal law there shall be added the following new article:

Addition of new article 334A to the principal law.

“Failure to inform about stolen etc. property.”

334A. Whosoever, on becoming aware that any property in his possession is stolen property or property misapplied or obtained by means of any offence, fails to give notice thereof to the Executive Police within a week of becoming so aware, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa*).”.

Substitution of
article 337 of the
principal law.

71. For article 337 of the principal law there shall be substituted the following:

“Decrease of
punishment.

337. (1) In cases of fraud, the prescribed punishment shall be diminished by one or two degrees if, previously to the commencement of any criminal proceedings against the offender, the damage caused by the offence shall have been fully made good.

(2) In cases of theft, whether simple or aggravated, as well as any offence of voluntary damage to property committed in the course of the execution of the offence of theft, the prescribed punishment shall be diminished by two degrees if, prior to his arraignment in court in connection with that theft:

(a) the offender discloses to the competent authority any person who may have received or purchased from him, or who may have taken part in the sale or disposal of, the stolen property, and

(b) (i) either he delivers to the competent authority all the property stolen by him, making good to the injured party any damage that may have been caused to the property, or

(ii) where the property has not been recovered, he pays to the injured party the full value of the property so stolen; and

(c) fully makes good to the injured party any damage, to other moveable or immoveable property, caused by, or in the course of the execution of, the offence of theft.

(3) The prescribed punishment in the case of the offences mentioned in sub-article (2) may be diminished by one degree if the offender complies with the provisions of that subarticle after his arraignment in court as aforesaid.

(4) The provisions of sub-articles (2) and (3) shall not apply -

(a) in the case of theft aggravated by violence consisting in wilful homicide, attempted homicide, wilful bodily harm or confinement of the person;

(b) in the case of theft aggravated by violence directed against any of the persons mentioned in article 276A;

(c) in the case of theft in the course of the execution of which a death or bodily harm ensues as provided in article 226A.

(5) The circumstances mentioned in sub-articles (1) and (2) shall not be considered as special or exceptional reasons for the purpose of article 21.”.

72. Immediately after article 337 of the principal law there shall be added the following new article:

Addition of new article 337A to the principal law.

“Traffic in persons to enter or leave Malta illegally.

337A. Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (*multa*) of ten thousand liri or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation of Offenders Act shall not apply:

Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees.”.

73. Article 338 of the principal law shall be amended as follows:

Amendment of article 338 of the principal law.

(a) for paragraph (z) there shall be substituted the following:

“(z) when so ordered by a court or so bound by contract fails to give to his or her spouse the sum fixed by that court or laid down in the contract as maintenance for the spouse and, or, the children, within fifteen days from the day on which, according to such order or contract, such sum should be paid;”;
and

(b) in paragraph (II) thereof, immediately after the words “by a court” there shall be inserted the words “or bound by contract”.

Substitution of
articles 346 to 355
of principal law.

74. For articles 346 to 355, both inclusive, of the principal law there shall be substituted the following:

“GENERAL

“Duties of the
Police.

346. (1) It is the duty of the Police to preserve public order and peace, to prevent and to detect and investigate offences, to collect evidence, whether against or in favour of the person suspected of having committed that offence, and to bring the offenders, whether principals or accomplices, before the judicial authorities.

(2) Notwithstanding the generality of sub-article (1), where authorised by law and in the manner so provided, the Police may delay its immediate intervention for the prevention of the commission of an offence.

Complaint of
the injured
party.

347. The Police shall not institute criminal proceedings, except on the complaint of the injured party, in cases where the law does not allow criminal proceedings to be instituted without such complaint.

Tendering of
assistance
when
required by
head of
household.

348. Where the head of any household requires an officer of the Police to proceed to such house in order to ascertain any offence which has been committed or to secure the evidence relating thereto, the officer shall proceed thither with all convenient speed taking with him witnesses where practicable.

Powers
according to
law.

349. (1) A police officer shall only have such powers as are vested in him by law and to the extent authorised by law and in this provision the word law has the same meaning assigned to it in article 124 of the Constitution.

Omission of
precaution,
formality or
requirement
not a bar to
admissibility
of evidence.

(2) The omission of any precaution, formality or requirement prescribed under this Title shall be no bar to proving, at the trial, in any manner allowed by law, the facts to which such precaution, formality or requirement relates.

Definitions.

350. (1) In this Title, and subject to the provisions of subarticle (2):

“appropriate consent” means-

(a) in relation to a person who has attained the age of 18 years, the consent of that person;

(b) in relation to a person who has not attained the age of 18 years but has attained the age of 14 years, the consent of that person and the consent of his parent or guardian;

(c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“designated police station” means a police station designated by the Minister responsible for the Police by a notice published in the Gazette;

“excluded material” means:

(a) personal records acquired or created by a person in the course of any trade, business, profession or other occupation, or for purposes of any paid or unpaid office and which he holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purpose of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence;

“intimate sample” means a sample of blood, semen or any other tissue fluid, or pubic hair, and includes a swab taken from a person’s body orifice other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“items subject to legal privilege” means any communication between a professional legal adviser and his client or any person representing his client and any document or record enclosed with or referred to in such communication and made in connection with the giving of legal advice or in connection with or in contemplation

of legal proceedings and for the purposes of such proceedings, but the expression does not include items held with the intention of furthering a criminal purpose;

“journalistic material” means material in the possession of a person who acquired or created it for the purposes of journalism and a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes;

“non-intimate sample” means -

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body including the mouth but not any other body orifice;
- (d) urine or saliva;
- (e) a footprint or a similar impression of any part of a person’s body other than a part of his hand;

“personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating -

- (a) to his physical or mental health; or
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who by reason of his office or occupation has responsibilities for his personal welfare or by reason of an order of a court has responsibilities for his supervision.

(2) For the purpose of this article:

(a) a person holds journalistic material in confidence if -

(i) he holds it subject to such an undertaking, restriction or obligation; and

(ii) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(b) a person holds material other than journalistic material in confidence if he holds it subject -

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction on disclosure or an obligation of secrecy contained in this Code or in any other law.

Sub-title I

POWER TO STOP AND SEARCH

Power to
stop snf
search.

351. (1) A police officer may, in a public place, or in any place to which the public is admitted, even against payment of an entrance fee, search any person or vehicle, if he has a reasonable suspicion that the search will discover the possession of things, which are prohibited, stolen or acquired as the result of any offence whatsoever, or which may be used or may have been used in the commission of an offence or which may serve in the investigation of an offence.

(2) For the purposes of sub-article (1) of this article, the Police may stop a person or a vehicle until the search is performed and shall seize any thing discovered during the search and the possession of which is prohibited or which may be connected with an offence.

Warrant.

352. Where the search to be performed is required in an unattended vehicle and it is not possible to obtain the attendance of its registered owner, then a police officer may only carry out the search if he has a warrant from a superior officer not below the rank of an inspector.

Limitation as
to search etc.

353. Except in urgent cases and when a person is apprehended *in flagrante delicto* nothing in this title authorises the search of a person by a police officer of the opposite sex, or that a search be conducted by a police officer not in uniform unless clearly identified by the production of a police identity card.

Report on
search.

354. Anything seized as a result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the search and including a detailed list of the things so seized.

Sub-title II

ROAD CHECKS

Conditions
for road
checks.

355. The Police may organise a road check where there are reasonable grounds for believing that a check on vehicles in or passing through a locality may lead to -

(a) the arrest of a person who has committed or is reasonably suspected of having committed or of being about to commit a serious crime, not being a crime punishable under the Press Act; or

(b) the discovery of anything the possession of which is prohibited or restricted by law or which is connected in any way whatsoever with the commission of a serious crime or which is evidence of any such crime; or

(c) the arrest of any person whose arrest has been ordered by a court or any other lawful authority or who is otherwise unlawfully at large; or

(d) the ascertainment that a person is not abiding by a condition lawfully imposed on him by a court; or

(e) the ascertainment of violations of any law regarding motor vehicles or traffic regulation:

Provided that for the purposes of this article “serious crime” means any crime liable to the punishment of imprisonment.

Exercise
of road
check.

355A. (1) For the duration of the road check the Police may stop all or any vehicles passing through or in the locality where the road check is being organised.

(2) Where a vehicle has been stopped in pursuance of the provisions of this sub-title that vehicle may be searched by the Police.

Authorisation.

355B. A road check under this sub-title may only be organised upon an authorisation in writing by a police officer not below the rank of Inspector unless the matter admits of no delay in which case such authorisation may be given orally by a police officer not below the rank of sergeant and reduced to writing as soon as practicable.

Evidence
of other
offences.

355C. Notwithstanding anything contained in the preceding articles of this sub-title, where in the course of a road check, evidence is found of the commission of an offence other than that in respect of which the road check was organised, the Police shall also be entitled to investigate such offence and where appropriate to institute proceedings for that offence.

Saving of
other
laws.

355D. The provisions of this sub-title shall be without prejudice to any power vested in the Police by any other law to stop vehicles for purposes other than those mentioned in this sub-title.

Sub-title III

POWERS OF ENTRY, SEARCH AND SEIZURE UNDER WARRANT

Conditions
for search of
premises etc.

355E. (1) Saving the cases where the law provides otherwise, no police officer shall, without a warrant from a Magistrate, enter any premises, house, building or enclosure for the purpose of effecting any search therein or arresting any person who has committed or is reasonably suspected of having committed or of being about to commit any offence unless —

(a) the offence is a crime other than a crime punishable under the Press Act and there is imminent danger that the said person may escape or that the corpus

dialect or the means of proving the offence will be suppressed; or

(b) the person is detected in the very act of committing a crime other than a crime punishable under the Press Act; or

(c) the intervention of the Police is necessary in order to prevent the commission of a crime other than a crime punishable under the Press Act; or

(d) the entry is necessary for the execution of any warrant or order issued by any other competent authority in the cases prescribed by law; or

(e) the arrest is for the purpose of apprehending a person who is unlawfully at large after escaping from lawful arrest or detention.

(2) The expression "enclosure" does not include any plot of land enclosed by rubble walls.

Subsidiary powers of Police in execution of warrants.

355F. In cases where a police officer is empowered to enter into any of the places mentioned in the last preceding article, it shall be lawful for such officer to open or break any door or window, if, after giving notice of his office and object, he cannot otherwise obtain entry.

Scope of search and of search warrant.

355G. (1) Any entry and search warrant issued under this Sub-title and any search or seizure made under the provisions of this Sub-title shall not extend to legal privilege or to any excluded material.

(2) An entry and search warrant issued under this Sub-title shall be deemed to have been granted to the police officer or officers executing it.

(3) Without prejudice to the right of obtaining a new warrant for the same purpose, an entry and search warrant may not be executed after the lapse of one month from the date of issue.

Times for execution of warrant.

355H. No warrant of entry and search may be executed after sunset unless the Magistrate has otherwise authorised in the warrant, or unless the executing Police officer has reasonable cause to believe that the purpose of the entry and

search will be frustrated if the execution of the warrant is delayed.

Copy of warrant
to person.

355I. The executing officer shall hand over a copy of the warrant to the person occupying and present at the place searched or to any other person who appears to the said officer to be in charge of the same place and who happens to be present during the search. If there is no person present who appears to the executing officer to be in charge of the premises the copy of the warrant shall be left in an easily visible place on the premises.

Limitation.

355J. A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued:

Provided that if, in the course of the search, offences other than the offence or offences mentioned in the warrant are discovered, the search may extend to the extent required for the purposes of such other offences.

Sub-title IV

POWERS OF ENTRY AND SEARCH WITHOUT WARRANT

Cases
admitting of
no delay.

355K. Any police officer may enter and search without a warrant any premises, house, building or enclosure in the circumstances laid down in paragraphs (a) to (e) of sub-article (1) of article 355E. Entry and search after arrest.

Entry and
search after
arrest.

355L. (1) The Police have the power to enter and search any premises, house, building or enclosure used, occupied or controlled, even temporarily, by a person who is under arrest, if they have reasonable grounds for suspecting that there is evidence, other than items subject to legal privilege, that relates to the offence or a connected offence, and such search shall be limited to the extent that is reasonably necessary for discovering such evidence:

Provided that if offences other than the offence or offences for which the person was arrested are discovered in the course of the search then the search may extend to the extent required for the purposes of such other offences.

(2) Without prejudice to the provisions of Sub-title V, the Police may in the course of a search carried out in pursuance of the provisions of sub-article (1) seize and retain anything not subject to legal privilege and which constitutes relevant evidence for the purpose of any offence mentioned in the same sub-article.

Limitation. 355M. (1) The powers mentioned in article 355L may be exercised by a police officer not below the rank of inspector or by officers of a lower rank if so authorised in writing by an officer not below the rank of inspector.

(2) Where the police officers on the scene are all below the rank of inspector and the matter admits of no delay and the person occupying or in control of the premises is present and his presence is necessary for the effective investigation of the offence, the said police officers may proceed to enter and search the premises without the authorisation in writing referred to in sub-article (1) of this article.

Report by officer. 355N. A police officer who has exercised any of the powers mentioned in articles 355K and 355L shall, as soon as practicable, draw up a report of the entry and search without warrant, stating the grounds for which it was exercised, and describing the results of the search.

Connection of offences. 355O. For the purposes of this Sub-title there is connection between offences when -

(a) the facts of the offences are substantially the same; or

(b) an offence has served as a means for the commission of another offence; or

(c) the proof of an offence or of a circumstance thereof has a bearing on the proof of another offence or of a circumstance thereof.

Sub-title V

SEIZURE AND RETENTION

General rules of seizure. 355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable

grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.

Computer
data.

355Q. The Police may, in addition to the power of seizing a computer machine, require any information which is contained in a computer to be delivered in a form in which it can be taken away and in which it is visible and legible.

Receipt for
thing seized.

355R. The Police shall always issue to the person on the premises or in control of the thing seized a receipt for anything seized and on request by any such person, the Police shall, against payment and within a reasonable time, supply to him photographs, or a film, video recording or electronic image or copies of the thing seized, unless the investigating officer has reasonable grounds for believing that this would be prejudicial to the investigation or to any criminal proceedings that may be instituted as a result thereof.

Retention.

355S. (1) Anything which has been lawfully seized by the Police may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of the aforesaid, anything lawfully seized by the Police under this Code may be retained for use as evidence at the trial or for forensic examination or any other aspect of the investigation, or in order to establish the thing's lawful owner.

(3) The Commissioner shall provide for the proper custody of anything seized.

Restitution to
owner.

355T. A person who is the rightful owner of a thing seized and retained may, unless criminal proceedings in the course of which the thing seized has been exhibited or is to be exhibited are pending before any court, make an application to a Magistrate for its restitution, and the Magistrate may, after hearing the Police, by a decree order its release either unconditionally, or under such conditions as may be necessary to preserve the evidential aspects of the thing.

Photographs.

355U. Unless a thing is liable to forfeiture, nothing shall be retained if a photograph, film, video recording or electronic image or a copy of the thing would be sufficient:

Provided that before releasing the thing the Police may, where they deem so necessary, apply to a Magistrate for a *repertus* to be drawn up and the provisions of Title II of Part II of Book Second of this Code shall apply.

Sub-title VI

POWERS OF ARREST AND DETENTION

Arrest under
warrant.

355V. Where there are lawful grounds for the arrest of a person, the Police may request a warrant of arrest from a Magistrate, unless in accordance with any provision of law the arrest in question may be made without a warrant.

Arrest by
private
persons.

355W. (1) Any person not being a police officer may arrest without warrant anyone who is in the act of committing or has just committed any crime concerning the peace and honour of families and morals, any crime of wilful homicide or bodily harm, or any crime of theft or of wilful unlawful entry or damage to property.

(2) The person making any arrest under sub-article (1) of this article shall without delay inform the Police of the fact of the arrest and shall exercise such power only until it is strictly necessary for the Police to take over the person arrested.

Arrest by
police without
warrant.

355X. (1) Any police officer may arrest without warrant anyone who is in the act of committing or has just committed a crime punishable with imprisonment, or whom he reasonably suspects to be about to commit or of having just committed such a crime.

(2) Any police officer may also proceed to the arrest of any person who knowingly, or after due warning, obstructs or disturbs him in the execution of his duties, or disobeys his lawful orders.

(3) The powers mentioned in sub-articles (1) and (2) hereof shall only be exercised until it is strictly necessary for the police officer to convey the person arrested to a police station and deliver him to a superior officer not below the rank of sergeant.

(4) The provisions of this article shall not apply to any crime punishable under the Press Act.

Arrest for
minor
offences.

355Y. (1) In the case of contraventions, or of crimes not subject to the punishment of imprisonment, excepting always the crimes punishable under the Press Act, it shall be lawful for the Police to proceed to the arrest of any person without a warrant, provided that -

(a) the person be detected in the very act of committing the offence; or

(b) the arrest be necessary to prevent the commission of an offence in respect of which the Police may institute criminal proceedings without the complaint of the injured party; and

(c) in either of the cases mentioned in (a) or (b) above one of the conditions mentioned in article 355Z is satisfied.

(2) A person shall be deemed to be detected in the very act of committing an offence, if he is caught, either in the act of committing the offence, or while being pursued by the injured party or by the public hue and cry.

General arrest
conditions.

355Z. The general arrest conditions are -

(a) that the identity of the person is unknown or cannot be readily ascertained by the police officer; or

(b) there is a doubt whether the particulars furnished by the person are true; or

(c) that the person has not furnished a satisfactory address for service, or there are doubts about whether the address provided is satisfactory for service, or that at least some other person may according to law receive service on his behalf at the address given; or

(d) that the arrest is necessary to prevent the person -

(i) causing physical harm to himself or to any other person; or

(ii) suffering physical injury; or

(iii) causing loss or damage to property; or

(iv) committing an offence against public decency; or

(v) causing an unlawful obstruction on any public road; or

(e) that the police officer has reasonable grounds for believing that the arrest is necessary to protect a child or any other vulnerable person.

Conduct
towards
person
arrested.

355AB. The officer or any other person authorised by law making an arrest shall not use any harshness, bond or other means of restraint unless indispensably required to secure, or rendered necessary by the insubordination of the person arrested.

Information to
be given on
arrest.

355AC. (1) When a person is arrested, the arrest is not lawful unless the person arrested is informed that he is under arrest, even though the arrest may be obvious.

(2) The arrest is not lawful unless the person arrested is informed at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this sub-article at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable:

Provided further that, in any case, where the arrest is made by a private person under the provisions of article 355V the giving of the information may be delayed until the person arrested is taken over by the Police.

Attendance at
a police
station or
office.

355AD. (1) Where, in the course of an investigation, a person attends voluntarily at, or accompanies a police officer to, a police station or office, that person shall be free to leave at any time, unless and until he is informed that he is under arrest.

(2) Where an inspector of Police has a reasonable suspicion that the person who attended voluntarily at the police station or office may have committed an offence subject to

imprisonment, he may arrest such person forthwith without warrant and inform him accordingly. The time of the arrest shall be immediately recorded and immediate notice thereof shall be given to a Magistrate.

(3) The Police may, orally or by a notice in writing, require any person to attend at the police station or other place indicated by them to give such information and to produce such documents as the Police may require and if that person so attends at the police station or place indicated to him he shall be deemed to have attended that police station or other place voluntarily. The written notice referred to in this subarticle shall contain a warning of the consequences of failure to comply, as are mentioned in sub-article (5) of this article.

(4) Any person who is considered by the police to be in possession of any information or document relevant to any investigation has a legal obligation to comply with a request from the police to attend at a police station to give as required any such information or document:

Provided that no person is bound to supply any information or document which tends to incriminate him.

(5) A person who fails to comply with a notice in writing as is referred to in sub-article (3) of this article or who fails, upon being so requested, even if only orally, to accompany voluntarily a police officer to a police station or other place indicated by the police officer for any purpose mentioned in the said sub-article (3) shall be guilty of a contravention punishable with detention and shall be liable to be arrested immediately under warrant.

(6) The notice mentioned in sub-article (3) may be served with urgency in cases where the interests of justice so require.

(7) A person who attends voluntarily as mentioned in subarticle (3) may be kept apart from any other person, but shall not be kept in any place normally used for the detention of arrested persons.

Arrest outside
police stations
or offices.

355AE. (1) When a police officer arrests a person at a place other than a police station the arrested person shall be taken to the nearest police station and where the arresting

officer is an officer below the rank of inspector he shall forthwith report the arrest to an officer not below the rank of inspector. In any case the inspector or officer in charge of that police station shall also be informed.

(2) Where there are grounds for the continuation of the arrest the person arrested shall be taken to a designated police station as soon as practicable and in no case later than six hours from the time of the arrest.

(3) The taking of an arrested person to a police station in accordance with the foregoing provisions of this article may be delayed if that person's presence is required elsewhere for the purpose of any investigation which may be necessary.

(4) Where a person is released following arrest the police officer ordering release shall record in writing the fact stating reasons.

Search on
arrested
person.

355AF. (1) A police officer may immediately search the person arrested:

(a) if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or others; or

(b) for anything which the arrested person might use to assist him to escape from custody; or

(c) for anything which might be evidence related to an offence.

(2) The provisions of article 353 of this Code shall apply to searches under this article.

Sub-title VII

WARRANTS

Police to
execute
warrants of
arrest or
search.

355AG. (1) Saving the provisions of article 666, it is the duty of the Police to execute any warrant or order of arrest or search that may, in the cases prescribed by law, be issued or given by any other competent authority.

(2) Any such warrant or order shall set forth the nature of the offence, the name of the person, if known, by whom the offence is alleged to have been committed and, in the case of a search warrant, it shall indicate the place where the search is to be carried out.

(3) Once a warrant or order of arrest or search has been issued any police officer may execute the warrant or order.

Procedure for
warrants.

355AH. (1) Whenever according to law the carrying out of an act by the police requires the issue of a warrant by a Magistrate a police officer may apply in person to a Magistrate requesting the issue of the appropriate warrant stating the grounds for the request and giving the Magistrate all such information that will enable the Magistrate to decide on the request. Before deciding whether to issue the warrant the Magistrate may require the police officer to confirm on oath the information supplied by him and the warrant shall only be issued upon the Magistrate being satisfied that sufficient grounds for the issue of the warrant exist.

(2) In cases of urgency, the request for the issue of the warrant and the warrant may be communicated even by facsimile:

Provided that, as soon as practicable, the original warrant shall be delivered for record purposes.

(3) Any warrant issued by a Magistrate shall be issued in favour of the Commissioner of Police and may be executed by any police officer.

(4) Whenever a police officer requests the issue of a warrant of arrest or search from a Magistrate in accordance with the provisions of this Code and the Magistrate refuses to issue the warrant the Police may request the issue of the same warrant from a Judge who ordinarily sits in the Criminal Court.

Copies of
warrants.

355AI. Except in the case of a warrant transmitted by facsimile, any warrant shall be drawn upon in three signed copies one of which shall be retained by the Magistrate while the others shall be delivered to the police officer who shall retain one copy for his records and shall cause the other one to be served on the person entitled to be served with it:

Provided that where a police officer comes upon a person against whom a warrant of arrest has been issued and, although not in possession of a copy of the warrant, the police officer knows that the warrant has been so issued, the officer shall arrest that person and shall serve him with the copy of the warrant at the first opportunity.

Report of
arrest.

355AJ. (1) Where any person is arrested, whether with or without a warrant, the arresting police officer or his superior shall, as soon as practicable and unless the person arrested has been released within six hours from arrest, inform a Magistrate, giving all details as to time and place where the person is being held.

(2) The Magistrate may order that the person arrested be transferred to another place with immediate effect.

(3) Any person arrested in pursuance of any provision of this Code and who has not been brought before a court within forty-eight hours of his arrest shall be released.

Immediate
orders.

355AK. Any order of a competent authority touching on the rights of the individual arising from the provisions of this sub-title shall be carried out without delay, and for such purpose may be communicated even by facsimile or telephone, under such conditions as to guarantee its authenticity.

Sub-title VIII

DETENTION

Right to
release.

355AL. (1) It shall be duty of the custody officer to order the immediate release from custody of any person in police detention in the circumstances mentioned in sub-article (3) of article 355AJ or where the custody officer becomes aware that the grounds for the detention of that person have ceased to apply and there are no other lawful grounds on which the continued detention of that person could be justified.

(2) Before ordering the release from custody of a person under subarticle (1) the custody officer shall inform the investigating officer and a Magistrate and the final decision shall be taken by the Magistrate.

(3) A person whose release is ordered under the provisions of sub-article (1) shall be released unconditionally unless it appears to the custody officer —

(a) that there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or

(b) that proceedings may be taken against him in respect of such matter,

and if it so appears, he shall be released subject to the conditions, reduced to writing and signed by the person to be released, that he will not attempt or do anything to leave Malta without the authority of the investigating officer under whose authority he was arrested and that he will attend at such police station at such time as the custody officer may appoint and, or that he will attend before the Court of Magistrates at such time and such place as the court may appoint.

(4) Where a custody officer has granted bail to a person subject to a duty not to attempt or do anything to leave Malta without authority or to appear at a police station, the custody officer may give notice in writing to that person that the condition not to attempt or do anything to leave Malta without authority no longer applied or that his attendance at the police station is not required.

(5) Any person who fails to comply with any condition imposed upon him upon his release as provided in subarticle (3) shall be guilty of a contravention.

(6) A police officer may arrest without a warrant any person who, having been conditionally released under subarticle (3) subject to a duty not to attempt or do anything to leave Malta without authority or to attend a police station or subject to a duty to appear before the Court of Magistrates, attempts or does anything to leave Malta without authority or fails to attend at that police station or before the Court of Magistrates at the time appointed for him to do so.

(7) For the purposes of this sub-title a person who returns to a police station to answer to bail or is arrested under subarticle (6) shall be treated as arrested for the offence under subarticle (5) and for the offence in connection with which he was granted bail and the provisions of this article shall apply to such person.

(8) The conditions made under subarticle (3) shall not remain in force for more than three months from the date on which they were imposed unless they are renewed by a Magistrate for further periods of three months each period upon an application by the Police which shall be served for his reply upon the person on whom the conditions were imposed.

(9) At any time during which the conditions made under subarticle (3) are in force the person on whom those conditions were imposed may by an application to be served on the Police for a reply request a Magistrate that those conditions be removed or modified.

(10) The Minister may issue guidelines to be followed by custody officers in the exercise of their discretion to impose conditions under subarticle (3).

Requirement
of custody
officer.

355AM. (1) At every designated place of detention the Commissioner shall appoint one or more custody officers not below the rank of sergeant who, in matters of detention, shall comply with any orders of a Magistrate.

(2) Any officer of any rank may perform the functions of a custody officer at a designated place of detention if a custody officer is not readily available to perform them.

(3) Where the custody officer who is called upon to carry out any of his functions with respect to a person in police detention is, at the time when the function falls to be performed, involved in the investigation of an offence for which the person is in police detention such function shall be carried out by another custody officer or, if no such other custody officer is available, by the next most senior police officer who happens to be available at the time.

(4) In this article and elsewhere in this sub-title "designated place of detention" means such place designated by the Minister where a person may be detained for more than six hours.

Functions of
custody
officer.

355AN. The custody officer shall perform such functions as may be assigned to him by this Code or by any other law.

Functions of custody officer at a place other than a designated place of detention.

355AO. (1) Where an arrested person is taken to a police station which is not a designated place of detention the functions in relation to him which would otherwise fall to be performed by a custody officer shall be performed:

(a) by an officer not below the rank of sergeant who is not involved in the investigation of an offence for which the arrested person is in detention, if such an officer is readily available; and

(b) if no such officer is readily available, by the officer who took the arrested person to the police station or by the most senior police officer at the police station at the time.

Intimate searches of the person detained.

355AP. Where the arresting officer or the custody officer has a reasonable suspicion that the person arrested may have concealed on his person any drug the unlawful possession of which would constitute a criminal offence or any other item which a custody officer is authorised by this Code or by any other law to seize from the possession of an arrested person, the said officer may request a Magistrate to order an intimate search of the person arrested.

Experts to be appointed.

355AQ. (1) Upon a request for an order under article 355AP the Magistrate shall appoint an expert to carry out the search under such safeguards as he may consider necessary for the purpose of decency and to report to him on his findings. A copy of the report shall be communicated without delay to the arresting or custody officer as the case may be.

(2) A person shall not be appointed an expert for the purpose of carrying out an intimate search on a person of the opposite sex unless the expert is a medical practitioner and the person to be searched consents thereto in writing.

Seizure.

355AR. Anything found as a result of an intimate search under the foregoing articles may be temporarily retained by the expert and may subsequently be seized by order of the Magistrate, and a receipt therefore shall be given to the detained person. The Magistrate may authorise the delivery against receipt of anything so seized to the police officer investigating the person intimately searched.

Sub-title IX

RIGHTS OF PERSONS DETAINED

Right to
inform
friends and to
medical
assistance.

355AS. (1) It shall be the duty of the Police to inform without undue delay the person arrested or detained of his right to request that a relative or friend be informed of the fact of his arrest and of his whereabouts unless such relative or friend is reasonably suspected of being involved in the offence being investigated. If the person arrested avails himself of such right the relative or friend shall without undue delay be informed accordingly and a record as provided in subarticles (2) and (3) shall be kept of the way the Police discharged their duty under this sub-article.

(2) In all cases the following information shall be entered in the detention record of the person detained:

(a) the day and time in which the detained person was informed of his right under this article;

(b) whether the detained person chose to avail himself of that right or not;

(c) if the detained person chose to avail himself of that right, the details of the relative or friend informed of the detained person's arrest and whereabouts together with the day and time in which the information was given; if such relative or friend was not so informed the reasons for this.

(3) The arrested or detained person shall be requested to sign the record referred to in sub-article (2) and should he refuse to do so an entry shall be entered in the record to this effect.

(4) Notwithstanding the provisions of sub-article (1) above, the investigating officer may by application to a Magistrate request that he be authorised to delay informing a relative or friend of the detained person if there are reasonable grounds for suspecting that the giving of such information may be prejudicial to the investigation or to the recovery of things, or that it may alert other persons who are connected with the offence and are still not in Police custody. Such a delay shall not be later than six hours from the time when the arrest was effected.

(5) An arrested person shall, at his request, be allowed to consult a medical adviser of his choice provided that such medical adviser is readily available.

(6) The application referred to in sub-article (4) may be communicated to the Magistrate by facsimile:

Provided that, as soon as practicable, the original application shall be delivered for record purposes.

Right to
legal advice.

355AT. (1) Subject to the provisions of sub-article (3), a person arrested and held in police custody at a police station or other authorised place of detention shall, if he so requests, be allowed as soon as practicable to consult privately with a lawyer or legal procurator, in person or by telephone, for a period not exceeding one hour. As early as practical before being questioned the person in custody shall be informed by the Police of his rights under this sub-article.

(2) A request made under sub-article (1) shall be recorded in the custody record together with the time that it was made unless the request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.

(3) Subject to the provisions of sub-article (7), compliance with a request under sub-article (1) may be delayed if the person making the request is in police detention for a crime and if an officer not below the rank of superintendent authorises such delay.

(4) An authorisation under sub-article (3) may be given orally or in writing but if it is given orally it shall be confirmed in writing as soon as it is practicable.

(5) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by sub-article (1) at the time when the person detained desires to exercise it —

(a) will lead to interference with or harm to evidence connected with the offence being investigated or interference with or physical injury to other persons;
or;

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence; or

(d) in the case of a person detained for an offence of drug trafficking, bribery, or money laundering, will hinder the recovery of the value of that person's proceeds from the offence.

(6) Where delay has been authorised as provided in subarticle (5) the Police may immediately proceed to question the detained person.

(7) The delay mentioned in subarticle (3) shall in no case exceed thirty-six hours from the time of the arrest.

(8) Any police officer who tries to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (*ammenda*) and this without prejudice to any disciplinary proceedings that may be taken against him.

(9) Where the person detained chooses not to seek legal assistance the investigating officer shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately.

Inferences
from failure
to mention
facts.

355AU. (1) Where in any proceedings against a person for an offence, evidence is given that the accused —

(a) at any time before he was charged with the offence, on being questioned by the police trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, sub-article (2) shall apply if it is shown that the accused had received legal advice before being questioned, charged or informed as aforesaid.

(2) Where this sub-article applies —

(a) a Court of Magistrates as court of criminal inquiry in making a decision under sub-article (2) of article 401;

(b) the court or jury, in determining whether the person charged or accused is guilty of the offence charged,

may draw such inferences from the failure as appear proper, which inferences may not by themselves be considered as evidence of guilt but may be considered as amounting to corroboration of any evidence of guilt of the person charged or accused.

(3) In criminal proceedings against any person for an offence the prosecution shall not, without the permission of the court for reasons which it considers just, comment on the fact that that person did not request the assistance of a lawyer or a legal procurator in the course of police investigations before those proceedings.

Sub-title X

TAKING OF SAMPLES, FINGERPRINTING AND OTHER INVESTIGATIVE PROCEDURES

Samples under
authorisation.

355AV. The investigating officer may in person, by application or by facsimile, request a Magistrate to authorise the necessary procedure -

(a) where he has reasonable grounds to require the taking of intimate samples from the person arrested;
or

(b) to take photographs, a film, video recording or electronic image of intimate parts of the body of the person arrested; or

(c) where the person arrested withholds his consent for any procedure which the investigating officer may carry out according to law with the consent of the person arrested:

Provided that where the request falls under paragraph (a) above, the provisions of article 355AW shall apply and, if the request falls under paragraph (b) above, the provisions of article 355AP shall mutatis mutandis apply.

Intimate
samples by
consent.

355AW. Subject to the provisions of articles 355AV and 355AX, an intimate sample may be taken from a person arrested only if his appropriate consent is given.

When consent
for intimate
sample is
refused.

355AX. (1) Upon a request under paragraph (a) of article 355AV, the Magistrate shall obtain all such information from the investigating officer to enable him to decide on whether the request is justified or not.

(2) Where the Magistrate decides that the request is justified he shall visit the person arrested to request his consent and before asking for his consent he shall explain to him:

(a) the nature of the request and the reasons thereof;

(b) the consequences of giving his consent and of refusing consent as provided in article 355AZ; and

(c) that he is entitled to consult a lawyer or legal procurator before deciding whether or not to give his consent.

(3) Where the person arrested requests to consult a lawyer or legal procurator under subarticle (2) the magistrate shall make a record of the fact, date and time of the request and, subject to the provisions of sub-article (4) shall allow the person arrested to consult with a lawyer or legal procurator for such time as the magistrate may deem appropriate in the circumstances of the case.

(4) The magistrate may, on a justified objection by the Police, delay any communication with an advocate or legal procurator if the interests of justice so require or when any of the events mentioned in subarticle (5) of article 355AT

is likely to occur if such communication is allowed immediately:

Provided that where the person arrested has requested to consult a lawyer or legal procurator his consent can only be requested after such consultation has taken place.

Applicable
procedure for
samples.

355AY. Where an intimate sample is to be taken under these articles the provisions of articles 355AP shall apply.

Inferences
from refusal.

355AZ. Where the appropriate consent to the taking of an intimate sample from a person was refused without a good cause, in any proceedings against the person for an offence, those who have to judge of the facts may draw such inferences from the refusal as appear proper and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to corroboration of any evidence against the person in relation to which the refusal is material.

Samples with
the consent
or at the
request of
person
arrested.

355BA. (1) The investigating officer may, with the appropriate consent in writing of the person arrested, cause to be taken:

- (a) fingerprints, palm-prints from the person arrested;
- (b) photographs of the person arrested or of non-intimate parts of his body;
- (c) non-intimate samples from the person arrested.

(2) The person arrested may request in writing that:

- (a) his fingerprints, palm-prints or other prints,
- (b) photographs of his person or of non-intimate parts of his body,
- (c) non-intimate samples from his person,

be taken and any such request shall be complied with by the investigating officer with the assistance of any competent person as may be necessary.

(3) The person arrested may also request in writing the investigating officer to carry out any of the procedures mentioned in paragraphs (a) and (b) of article 355AV, and any such request shall be referred without delay to a Magistrate. The Magistrate shall authorise the procedure requested after verifying the request made by the person arrested and the provisions of article 355AP shall apply where appropriate.

Samples from persons other than arrested persons. 355BB. Samples from a person other than a person arrested may only be taken with that person's prior consent in writing:

Provided that for the taking of an intimate sample a Magistrate's authorisation must also be obtained upon application.

Samples at the request of persons other than arrested persons. 355BC. The provisions of article 355BA shall *mutatis mutandis* apply to any person, not being an arrested person, who makes a request for the carrying out in his respect of any procedure referred to in that article provided the request is made in writing and contains a declaration that the person making the request has reason to believe that there is the likelihood that the failure to carry out the requested procedure is likely to result in his being arrested or detained."

Insertion of new Sub-title in the principal law.

75. Immediately before article 356 of the principal law there shall be inserted the following Sub-title:

"Sub-title XI

POWERS AND DUTIES OF THE POLICE IN RESPECT OF COURT PROCEEDINGS".

Amendment of article 356 of the principal law.

76. Article 356 of the principal law shall be amended as follows:

(a) sub-article (2) thereof shall be re-numbered sub-article (3); and

(b) immediately after sub-article (1) thereof there shall be inserted the following sub-article:

"(2) It is the duty of police prosecuting officers to disclose to the defence such evidence which may appear to

favour the person charged and which the police, for any reason, might not have the intention to produce before the court as evidence for the prosecution.”.

77. For article 358 there shall be substituted the following:

Substitution of article 358 of the principal law.

“Duties of the Police in respect of criminal proceedings.

358. (1) It is the duty of the Police to issue and to serve citations summoning persons to appear before the Court of Magistrates, in matters within the jurisdiction of such court.

(2) In summary proceedings for offences within the jurisdiction of the Court of Criminal Judicature, it shall not be the duty of the Police to serve on the person charged notice of the date of hearing apart from the first sitting of the proceedings.”.

78. Immediately after article 360 of the principal law there shall be added the following new article:

Addition of new article 360A to the principal law.

“Service of affidavits together with summons.

360A. (1) In summary proceedings for offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under sub-article (1) of article 370 the police may, together with the summons or at any time thereafter, serve upon the accused copies of any affidavits made by a public officer or by an employee or officer of a body corporate established by law and who is to be produced as a witness for the prosecution in those proceedings as well as any document to be produced in evidence in the same proceedings and if the accused desires to cross-examine any person whose affidavit has been served upon him as aforesaid he shall, not later than fifteen days before the first sitting following the service of the affidavit, give notice thereof to the Commissioner of Police by registered letter whereupon the person to be cross-examined shall be summoned to give evidence in the proceedings:

Provided that for the purposes of this sub-article the word “document” shall have the same meaning assigned to it by subarticle (2) of article 558:

Provided further that where it results that it was not possible for the accused to give notice to the Commissioner of Police within the time provided aforesaid such notice of the desire to cross-examine may be given during the first sitting immediately after the service of the affidavit in which case the person to be cross-examined shall be summoned to give evidence in the following sitting.

(2) The person whose affidavit was served on the accused as provided in sub-article (1) shall not be summoned to testify in the proceedings if the accused fails to give notice of the intention to cross-examine that person as provided in that subarticle and the said affidavit shall be admissible in evidence as proof of its contents in those proceedings in the same way as if it had been testimony given viva voce in the presence of the accused.”.

Amendment of
article 362 of the
principal law.

79. Article 362 shall be amended as follows:

(a) the present provision shall be renumbered as sub-article (1); and

(b) immediately after sub-article (1) as renumbered there shall be inserted the following sub-articles:

“(2) The Minister responsible for justice after consulting with the Minister responsible for the police may make regulations providing, in summary proceedings as those mentioned in subarticle (1) of article 360A, for the service of the summons and of any accompanying documents, and of any other act of the proceedings, by post or in any other manner as may be provided in the regulations.

(3) Where the person to whom a summons or other act of the proceedings is addressed in accordance with any regulations made under subarticle (2) refuses to receive it the court may by means of a decree upon an application by the Police and after examining the certificate of service declare that person to have been duly served with the summons or with that other act and make an order for his arrest.

(4) Where any person, other than the person to whom a summons or other act of the proceedings is addressed, refuses to receive the summons or that other act personally the court may, upon an application by the Police and after examining the certificate of service and satisfying itself that that person is a person in whose hands the summons or that other act may be lawfully served, sentence that person to a fine (*ammenda*):

Provided that the Court may, at any time, on just cause being shown, remit the fine (*ammenda*).”.

80. For subarticle (2) of article 367 of the principal law there shall be substituted the following: Amendment of article 367 of the principal law.

“Number of Courts of Magistrates.” (2) There shall be two Courts of Magistrates, one for the Island of Malta and one for the Islands of Gozo and Comino to be styled Court of Magistrates (Malta) and Court of Magistrates (Gozo) respectively.”.

81. Article 370 of the principal law shall be amended as follows: Amendment of article 370 of the principal law.

(a) in sub-article (2) thereof, for the words “and punishments or of any previous conviction,” there shall be substituted the words “and punishments, of any previous conviction or of the application of the provisions of article 18,”;

(b) immediately after sub-article (4) thereof there shall be added the following new sub-articles:

“(5) The provisions of sub-article (2) shall apply, *mutatis mutandis*, to the crimes referred to in sub-articles (3) and (4).

(6) The court shall also be competent to pass sentence on the party accused in the circumstances and as provided in article 392A.”.

82. In article 373 of the principal law, for the words “As regards offences within the jurisdiction of the Court of Magistrates,” there shall be substituted the words “As regards offences referred to in sub-article (1) of article 370,”. Amendment of article 373 of the principal law.

83. Sub-article (3) of article 377 of the principal law shall be amended as follows: Amendment of article 377 of the principal law.

(a) for the words “to which the offence relates within a time,” there shall be substituted the words “to which the offence relates, or, according to circumstances, to conform with the law, within a time,”;

(b) for the words “he shall be liable to the penalty of a fine (*ammenda*)” there shall be substituted the words “he shall be guilty of an offence and shall, on conviction, be liable to a fine (*ammenda*)”; and

(c) the words “as the court may fix,” shall be deleted.

Amendment of article 385 of the principal law.

84. For sub-article (3) of article 385 of the principal law there shall be substituted the following:

“(3) The provisions of sub-article (1) of article 12 shall, *mutatis mutandis*, apply to a person detained under this article.”.

Addition of new article 392A to the principal law.

85. Immediately after article 392 of the principal law there shall be added the following new article:

“Admission of guilt by the accused during the examination.

392 A. (1) If the accused, in answer to the question in paragraph (b) of sub-article (1) of article 392, states that he is guilty of the offence charged and the said offence is liable to a punishment not exceeding ten years imprisonment, the provisions of sub-article (1) of article 453 shall *mutatis mutandis* apply subject to the following provisions of this article.

(2) Saving the provisions of sub-article (3) and notwithstanding any other provision of this Code or of any other law, if the accused persists in his statement that he is guilty of the offence charged the Court as a court of criminal judicature shall proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence and shall order that the record, together with a copy of the judgment, be transmitted to the Attorney General, as provided in sub-article (3) of article 401.

(3) Nevertheless, if there is good reason to doubt whether the offence has really taken place at all, or whether the accused is guilty of the offence, the court shall, notwithstanding the confession of the accused, order that the inquiry be proceeded with as if the accused had not pleaded guilty.

(4) The provisions of sub-article (2) of article 370 and of article 371 shall *mutatis mutandis* apply to proceedings under this article in respect of an offence to which sub-article (1) of this article applies.

(5) The provisions of article 453A shall apply *mutatis mutandis* before the accused replies to the question in paragraph (b) of article 392 provided that for the purpose the Attorney General shall appear for the prosecution, and a note made jointly by the Attorney General and the person charged, and which contains the agreement reached as provided in the said article 453A, shall be sufficient for this purpose.”.

86. Immediately after sub-article (3) of article 401 of the principal law there shall be added the following new subarticle: Addition of new article 409A to the principal law.

“(4) In deciding whether there are or not sufficient grounds for committing the accused for trial on indictment the court shall not consider any question of prescription or any plea as is mentioned in paragraph (d) of sub-article (1) of article 449.”.

87. Immediately after article 409 of the principal law there shall be added the following new article: Amendment of article 401 of the principal law.

409A. (1) Any person who alleges he is being unlawfully detained under the authority of the Police or of any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of criminal inquiry, demanding his release from custody. Any such application shall be appointed for hearing with urgency and the application together with the date of the hearing shall be served on the same day of the application on the applicant and on the Commissioner of Police or on the public authority under whose authority the applicant is allegedly being unlawfully detained. The Commissioner of Police or public authority, as the case may be, may file a reply by not later than the day of the hearing.

Application
by person in
custody
alleging
unlawful
detention.

(2) On the day appointed for the hearing of the application the court shall summarily hear the applicant and the respondents and any relevant evidence produced by them in support of their submissions and on the reasons and circumstances militating in favour or against the lawfulness of the continued detention of the applicant.

(3) If, having heard the evidence produced and the submissions made by the applicant and respondents, the court finds that the continued detention of the applicant is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the applicant it shall allow the application. Otherwise the court shall refuse the application.

(4) Where the court decides to allow the application the record of the proceedings including a copy of the court's decision shall be transmitted to the Attorney General by not later than the next working day and the Attorney General may, within two working days from the receipt of the record and if he is of the opinion that the arrest and continued detention of the person released from custody was founded on any provision of this Code or of any other law, apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released from custody. The record of the proceedings and the court's decision transmitted to the Attorney General under the provisions of this subarticle shall be filed together with the application by the Attorney General to the Criminal Court."

Amendment of
article 410 of the
principal law.

88. Immediately after sub-article (3) of article 410 there shall be inserted the following new sub-articles:

"Injured
party may be
present in
court during
sittings.

(4) Without prejudice to the provisions of sub-article (3) and subject to the provisions of sub-article (6), any party injured having an interest in being present during any proceedings instituted by the Executive Police shall have the right to communicate that interest to the police giving his or her particulars and residential address whereupon that injured party shall be served with a notice of the date, place and time of the first hearing in those proceedings and shall have the right to be present in court during that and all subsequent hearings even if he is a witness.

(5) Without prejudice to the provisions of sub-article (3) and subject to the provisions of sub-article (6), any person not served with the notice referred to in sub-article (4) and claiming to be an injured party may apply to the court to be admitted into the proceedings as an injured party and if his claim that he is an injured party is allowed by the court that person shall thereupon have the right to be present at all subsequent hearings even if he is a witness.

(6) The failure to serve the injured party with the notice of the date of the first hearing after an attempt has been made to that effect or the absence for any reason of the injured party at any sitting shall not preclude the court from proceeding with the trial or inquiry until its conclusion."

Amendment of
article 412 of the
principal law.

89. For sub-article (1) of article 412 of the principal law there shall be substituted the following subarticle:

"Days on which Court of Magistrates may hold sittings Cap. 252.

(1) The Court of Magistrates shall hold its ordinary sittings every day, except Saturdays, public holidays as provided in the National Day and other Public Holidays Act, and Wednesday and Thursday of Holy Week."

90. Immediately after article 412 of the Criminal Code there shall be added the following new articles:

Addition of new articles 412A and 412B to the principal law.

"Conditions on person charged or accused not in custody.

412A. (1) When the person charged or accused brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, is not in custody the Police may thereupon or at any stage of the proceedings thereafter request the court to impose conditions upon the person charged or accused in order to ensure the appearance of that person at the proceedings on the appointed time and place or to otherwise ensure that that person will not in any way unlawfully interfere in the correct administration of justice in those proceedings.

(2) The court may require the giving of sufficient security by the person charged or accused by the mere recognizance of the same person charged or accused in order to ensure that he abides by the conditions imposed upon him by the court and the provisions of articles 576 and 584, shall apply to the security given under this subarticle.

(3) The sum given by way of security shall be forfeited to the Government of Malta and a warrant of arrest shall be issued against the person charged or accused where that person fails to observe any of the conditions imposed by the court in pursuance of the provisions of this article and in any of the other circumstances mentioned in article 579 provided that the provisions of this sub-article shall not apply where the court considers that the infringement of the condition imposed by the court is not of serious consequence.

Application by person in custody pending criminal proceedings alleging unlawful detention.

412B. (1) Any person in custody for an offence for which he is charged or accused before the Court of Magistrates and who, at any stage other than that to which article 574A applies, alleges that his continued detention is not in accordance with the law may at any time apply to the court demanding his release from custody. Any such application shall be appointed for hearing with urgency and together with the date of the hearing shall be served on the same day of the application on the Commissioner of Police or, as the case may be, on the Commissioner of Police and the Attorney General, who may file a reply thereto by not later than the day of the hearing.

(2) The provisions of sub-articles (2) and (3) of article 574A shall *mutatis mutandis* apply to an application under this article.

(3) Where the application is filed in connection with proceedings pending before the Court of Magistrates as a court of criminal inquiry before a bill of indictment has been filed and the record of the inquiry is with the Attorney General in connection with any act of the proceedings the application shall be filed in the Criminal Court and the foregoing provisions of this article shall *mutatis mutandis* apply thereto.

(4) The provisions of sub-article (4) of article 355A shall apply to a decision of the Court of Magistrates under this article.”.

Amendment of
article 413 of the
principal law.

91. Subarticles (1) and (1A) of article 413 of the principal law shall be deleted and substituted by the following:

“(1) Any judgment of the Court of Magistrates may be appealed against -

(a) by the party convicted;

(b) in cases relating to summary proceedings for offences within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature under subarticle (1) of article 370, by the Attorney General, and, in the cases mentioned in article 373, by the complainant where:

(i) the inferior court rules that it has no jurisdiction to take cognizance of the offence;

(ii) the fact of which the party accused has been convicted is liable to a punishment exceeding the jurisdiction of that court as a court of criminal judicature;

(iii) the punishment awarded by the inferior court, is, by reason of its quality or quantity, different from that prescribed by law for the offence for which the party convicted has been sentenced;

(iv) the accused or defendant is acquitted on the ground -

i) that the fact does not contain the ingredients of an offence,

ii) of extinguishment of action,

iii) of a previous conviction or acquittal;

(v) the defendant, in a case in which he has been allowed to prove the truth of the fact attributed to the complainant in accordance with the provisions of article 253, is declared to be exempt from punishment;

(vi) the Police, or, as the case may be, the complainant has not been allowed at the trial to produce, in support of the charge, some indispensable evidence which was admissible according to law;

(vii) the party accused was released from any of the obligations referred to in article 321 of the Code of Police Laws or in article 377 of this Code, or from the observance of any of the prohibitions made, or from the observance or execution of any of the prohibitions or orders made or given, by the Police or by any other public officer, under the Code of Police Laws or any other law;

(c) in all other cases by the Attorney General and in cases mentioned in article 373 by the complainant.

92. Article 414 of the principal law shall be amended as follows:

Amendment of article 414 of the principal law.

(a) in subarticle (1) thereof, for the words “on a demand in writing by the Police,” there shall be substituted the words “on a demand in writing by the Police or by the injured party served with the notice of first hearing or admitted into the proceedings as provided in subarticles (4) and (5) of article 410,”; and

(b) in subarticle (2) thereof, for the words “by the court of Gozo and Comino,” there shall be substituted the words “by the Court of Magistrates (Gozo),”.

93. Article 416 of the principal law shall be amended as follows:

Amendment of article 416 of the principal law.

(a) immediately after sub-article (1) thereof shall be added the following new sub-article:

“(1A) Where the party convicted who is not in custody for the offence of which that party has been convicted is sentenced to imprisonment or detention and immediately prior to conviction that party was on bail as provided in Title IV of Part II of Book Second of this Code the conditions attaching to that bail, including the mode of security and the sum or equivalent pledge, if any, specified in the bail bond, shall continue to apply in addition to the security required under subarticle (1) upon obtaining a stay of execution of the judgement as provided in that subarticle either until the lapse of the time for the filing of the appeal if no appeal is filed or if otherwise until the determination of the appeal.”; and

(b) in the proviso to subarticle (2) thereof:

(i) for the words “equal to the amount of the penalty, but” there shall be substituted the words “equal to the amount of the penalty, and in such case the court may require that the security shall be either in the form of a deposit of a sum equal to the said amount or in the form of a bank guarantee, made out to its satisfaction, for the said amount; but”; and

(ii) for the words “of the party concerned” there shall be substituted the words “of the prosecution”.

Amendment of
article 419 of the
principal law.

94. Article 419 of the principal law shall be amended as follows:

(a) in subarticle (3) thereof, for the words “shall be delivered to the registrar of the court which shall have pronounced the judgment appealed from. The Registrar shall within two working days from the receipt of the application, transmit the same to the Registrar of the Superior Courts,” there shall be substituted the words “shall be filed in the registry of the court which shall have pronounced the judgment appealed from. The registrar shall, within two working days from the receipt of the application, transmit the same to the superior court,”; and

(b) in sub-article (4) thereof, for the words “the court of Gozo and Comino,” there shall be substituted the words “the Court of Magistrates (Gozo),”.

Substitution of
article 420 of the
principal law.

95. For article 420 of the principal law there shall be substituted the following:

“420. The appellant as well as the respondent may be assisted by the Advocate for Legal Aid and the provisions of article 570 of this Code shall apply.”.

- 96.** Article 421 of the principal law shall be amended as follows: Amendment of article 421 of the principal law.

(a) in subarticle (1) thereof:

(i) immediately after the words “to the parties” there shall be inserted the words “and to the injured party served with the notice of first hearing or admitted into the proceedings as provided in subarticle (4) and (5) of article 410”; and

(ii) for the words “by the Registrar of Courts.” there shall be substituted the words “by the Registrar of Courts:” and immediately thereafter there shall be inserted the following proviso:

“Provided that the failure to serve the injured party with the notice of the date of the first hearing after an attempt has been made to that effect or the absence of the injured party for any reason at any sitting shall not preclude the court from proceeding with the appeal until final judgment.”; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

“(3) The injured party served with the notice of first hearing or admitted into the proceedings as provided in subarticles (4) and (5) of article 410 may be present at any appeal hearing and may engage an advocate to assist him although he might not have been served with the notice referred to in subarticle (1) and although he may be a witness in the proceedings; any advocate engaged by the injured party may examine or cross-examine witnesses and make any other submission which the court may consider admissible.

(4) Notice in writing, as provided in sub-article (1), shall also be given to the party in whose absence the appeal shall have been put off.”.

- 97.** Article 422 of the principal law shall be amended as follows: Amendment of article 422 of the principal law.

(a) in subarticle (1) thereof:

(i) for the words “on the day appointed for the hearing of the appeal,” there shall be substituted the words “on any day appointed for the hearing of the appeal,”; and

(ii) for the words “the provisions of the last preceding article shall apply.” there shall be substituted the words “the provisions of sub-articles (1) and (2) of the last preceding article shall apply.”; and

(b) immediately after subarticle (2) thereof there shall be added the following new subarticle:

“(3) Where the appellant was on bail as provided in subarticles (1A) and (3) of article 416 prior to the abandonment of the appeal, his request for temporary release from custody may be made in the same application mentioned in subarticle (1) of this article.

(4) Where the appellant was on bail as provided in sub-articles (1A) and (3) of article 416 prior to the abandonment of the appeal, his request for temporary release from custody may be made in the same application mentioned in sub-article (1) of this article.”.

Amendment of
article 425 of the
principal law.

98. In article 425 of the principal law, for the words “in so far as applicable, shall apply.” there shall be substituted the words “in so far as applicable, shall apply. Unless the court orders otherwise, witnesses shall be summoned by the Police in the manner provided for in article 365.”.

Amendment of
article 428 of the
principal law.

99. Article 428 of the principal law shall be amended as follows:

(a) in sub-article (1) thereof, for the words “as court of criminal inquiry.” there shall be substituted the words “to proceed according to law.”;

(b) in sub-article (4) thereof, in the English text only, for the words “of the inferior court.” there shall be substituted the words “to the inferior court.”;

(c) in sub-article (8) thereof, for the words “to the Registrar of the Inferior Court,” there shall be substituted the words “to the inferior court”.

Amendment of
article 429 of the
principal law.

100. Article 429 of the principal law shall be amended as follows:

(a) in sub-article (2) thereof, for the words “of costs, to the payment of a fine (*ammenda*).” there shall be substituted the words “of costs, where applicable, to the payment of a fine (*ammenda*) not exceeding one hundred liri.”;

(b) in sub-article (4) thereof, for the words “in cases of proceedings instituted on the complaint of the injured party,” there shall be substituted the words “in cases of proceedings where the prosecution lies with the injured party or with the persons mentioned in article 542, as provided in article 373,”.

101. In sub-article (1) of article 431 of the principal law, for the words “The functions of” there shall be substituted the words “Unless otherwise provided in this Code or in any other law, the functions of”.

Amendment of article 431 of the principal law.

102. Immediately after article 435 of the principal law there shall be added the following:—

Addition of new articles 435A to 435D to the principal law.

“Special powers of investigation.

435A. (1) The provisions of article 4 of the Act shall apply *mutatis mutandis* where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence and the provisions of the said article 4 shall apply to any investigation order or attachment order applied for or issued by virtue of this sub-article as if it were an investigation order or attachment order applied for or issued under the same article 4 of the Act and in particular, the provisions of sub-articles (12) and (13) of the said article 4 shall also apply to any investigation for a relevant offence by virtue of this sub-article.

(2) The provisions of article 5 of the Act shall apply *mutatis mutandis* where any person is charged with a relevant offence and the provisions of article 6 of the Act shall apply to any order issued by virtue of this sub-article as if it were an order issued under the said article 5.

(3) In this article the expressions “the Act” and “relevant offence” shall have the meaning assigned to them respectively by subarticle (1) of article 23A of this Code.

Powers of investigation in connection with offences cognizable by courts outside Malta.

435B. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter in this article referred to as “the suspect”) suspected by that authority of a relevant offence, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the Dangerous Drugs Ordinance, hereinafter in this title referred to as “the Ordinance”, shall *mutatis mutandis* apply to that application and to the suspect and to any investigation order or attachment order made by the court as a result of that application.

(2) The phrase “investigation order” in sub-articles (2) and (5) of the same article 24A of the Ordinance shall be read and construed as including an investigation order made under the provisions of this article.

(3) The phrase “attachment order” in sub-article (6A) of article 24A of the Ordinance shall be read and construed as including an attachment order under the provisions of this article.

Freezing of
property of
person
accused with
offences
cognizable by
courts outside
Malta.

435C. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any or the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as “the accused”) charged or accused in proceedings before the courts of that place of a relevant offence, the Attorney General may apply to the Criminal Court for an order (hereinafter in this title referred to as a “freezing order”) having the same effect as an order as is referred to in subarticle (1) of article 22A of the Ordinance, and the provision of the said article 22A shall, subject to the provisions of sub-article (2) of this article, apply *mutandis mutandis* to that order.

(2) The provisions of sub-articles (2) to (5) of article 24C of the Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.

(3) Article 22B of the Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.

Enforcement
of
confiscation
orders made
by courts
outside Malta
following
conviction
for offences
cognizable
by those
courts.

435D. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of sub-articles (2) to (11) of article 24D of the Ordinance.

(2) For the purposes of this article “confiscation order” includes any judgement, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in subarticle (1) of this article.

435C: (3) For the purposes of this article and of articles 435B and

“the Act” and “the Ordinances” shall have the same meaning assigned to them respectively by subarticle (1) of article 23A of this Code;

“relevant offence” means an offence consisting of any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute a crime, other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment for a term of more than one year.”.

103. Article 438 of the principal law shall be amended as follows: Amendment of article 438 of the principal law.

(a) in the proviso to subarticle (4) thereof, for the words “by the witnesses” there shall be substituted the words “by the witnesses, documents or exhibits”; and

(b) immediately after subarticle (6) thereof there shall be inserted the following new subarticle:

“(7) If, on the day appointed for the hearing of the trial according to subarticle (5), or on any other day thereafter appointed for the same purpose, the trial is adjourned to another day on account of the fact that the accused, without just cause, and notwithstanding that he had been given notice according to law of the day appointed, fails to appear, or on account of the fact that although he appears, the trial cannot be heard for some cause attributable to the accused and which the Court determines not to be a just cause, all the expenses incurred shall be charged to the accused, and it shall be lawful for the court, at the request of the Attorney General, to compel the accused to pay the same.”; and

(c) subarticle (7) thereof shall be renumbered as subarticle (8).

104. In subarticle (3) of article 441 of the principal law, for the words “registrar of the Court of the Court of Magistrates (Gozo),”, wherever they occur, there shall be substituted the words “officer in charge of the Court of Magistrates (Gozo),”. Amendment of article 441 of the principal law.

Amendment of
article 444 of the
principal law.

105. In the second proviso of article 444 of the principal law for the words “to witnesses giving professional evidence” there shall be substituted the words “to witnesses giving professional or expert evidence”.

Amendment of
article 446 of the
principal law.

106. In subarticle (7) of article 446 of the principal law, for the words “abstain from sitting.” there shall be substituted the words “abstain from sitting, except where the cause for objection or abstention becomes known after the reading of the said indictment.”.

Amendment of
article 449 of the
principal law.

107. Article 449 of the principal law shall be amended as follows:

(a) in paragraph (f) of sub-article (1) thereof, for the words “plea relating to any other point of fact” there shall be substituted the words “plea of insanity at the time of the offence or any plea relating to any other point of fact which excludes the imputability of the accused or”;

(b) subarticle (2) thereof shall be deleted;

(c) in subarticle (3) thereof, for the words “mentioned in subarticles (1) and (2) of this article” there shall be substituted the words “mentioned in subarticle (1) of this article”.

Addition of new
article 453A to the
principal law.

108. Immediately after article 453 there shall be added the following new article:

“Sentence at
the request
of the
parties.

453A. (1) Before the accused pleads to the general issue as provided in article 453, the accused and the Attorney General may request the court, in the eventuality of a plea of guilty, to apply a sanction or measure or, where provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between them and to which the accused can be sentenced upon conviction for the offence or offences with which he is accused.

(2) If the court is satisfied that the sanction or measure, or combination of sanctions and measures, requested as provided in sub-article (1) is one which it would have been lawful for it to impose upon conviction for the offence to which the accused has pleaded guilty and does not have cause to order the trial of the cause to be proceeded with for a reason referred to in sub-article (2) of article 453 or for any other reason to reject the request, and after explaining to the accused in clear terms the consequences of his request, the court shall, upon a plea of guilty by the accused, proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(3) Where the Attorney General and the accused agree that the sentence to be imposed shall consist of a period of imprisonment which is to be suspended in accordance with the provisions of article 28A and the agreement is not rejected by the court as provided in subarticle (2) such agreement shall not in any way affect the court's power to make an order under article 28G or 28H or both.

(4) Where the Attorney General and the accused agree that a measure provided for under the Probation of Offenders Act is to be applied and the agreement is not rejected by the court as provided in subarticle (2) such agreement shall not in any way affect the court's power to make an order under article 11 of the said Act.

(5) A sentence imposed at the request of the parties as provided in this article shall not affect any matter referred to in paragraphs (a) to (h) of subarticle (3) of article 12 of the Probation of Offenders Act.”.

109. Immediately after article 458 of the principal law there shall be substituted the following new article:

Addition of new article 458A to the principal law.

458A. The provisions of subarticle (2) of article 458 shall apply *mutatis mutandis* where the conduct of the prosecution is delegated by the Attorney General to more than one counsel.”.

110. Immediately after article 459 of the principal law there shall be added the following new article:

Addition of new article 459 to the principal law.

459A. (1) The accused who takes the stand to testify shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than the one with which he is accused, or is of bad character, unless—

(a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of an offence with which he is accused; or

(b) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character

of the prosecutor or the witnesses for the prosecution, or the deceased victim of the alleged crime; or

(c) he has given evidence against any other person accused in the same proceedings.

(2) In any of the circumstances mentioned in paragraphs (a) to (c) above any record showing any previous convictions of the person charged or accused may be produced in evidence.”.

Amendment of article 467 of the principal law.

111. Article 467 of the principal law, shall be amended as follows:

In subarticle (2) thereof, for the words “that he was an accomplice,” there shall be substituted the words “that he was an accomplice or of being guilty of conspiracy to commit that offence,” and for the words “complicity in any such offence.” there shall be substituted the words “complicity in, or of conspiracy to commit, such offence; conversely, where a person is accused, in the indictment, of being an accomplice in an offence it shall be lawful for the jury to find him guilty of conspiracy to commit that offence or of being the principal, or one of the principals, in that offence and if he is accused of conspiracy to commit an offence he may be found guilty of being an accomplice in that offence or of being a principal, or one of the principals, in that offence, completed or attempted, if there is proof to that effect:

Provided that where a person accused in the indictment of conspiracy to commit an offence is found guilty as aforesaid of being a principal, or one of the principals, in the offence, completed or attempted, the punishment shall not be more severe than the punishment demanded in the bill of indictment.”.

Amendment of article 476 of the principal law.

112. Article 476 of the principal law shall be amended as follows:

(a) the present provision shall be renumbered as sub-article (1); and

(b) immediately after sub-article (1), as renumbered, there shall be added the following new sub-article:

“Verdict in the case of theft, misappropriation or receiving stolen property.

(2) If a person tried for the theft, whether simple or aggravated, of any object is found not guilty of that charge, it shall be lawful for the jury to find him guilty of misappropriation of that object or of the offence contemplated

in article 334 with regard to that object, if there is proof to that effect; and, conversely, a person tried for misappropriation or for the offence contemplated in article 334 may be found guilty of theft, whether simple or aggravated, of the object concerned if there is proof to that effect:

Provided that in no case shall the punishment be more severe than that demanded in the indictment.”

113. Immediately after sub-article (2) of article 490 there shall be inserted the following new sub-article:

Amendment of article 490 of the principal law.

“Submissions by injured party on sentence.

(3) An injured party may, by application, request the Criminal Court to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions at the stage referred to in subarticle (1) of this article and before the court asks the accused if he has to say anything in regard to the applicability of the punishment demanded by the Attorney General:

Provided that the failure, for any reason, of the injured party to make submissions on sentence as aforesaid shall not preclude the court from proceeding with any hearing or from pronouncing judgment as provided in article 491.”.

114. The present provision of article 492 of the principal law shall be renumbered as subarticle (2) and immediately before that provision as renumbered there shall be inserted the following new subarticle:

Amendment of article 492 of the principal law.

“(1) Where at any time before the constitution of the jury the accused declares himself guilty and for the fact admitted by the accused there is established the punishment of imprisonment for life, the court may, instead of the said punishment, impose the punishment of imprisonment for a term from eighteen to thirty years.”.

115. In subarticle (4) of article 495, for the words “if the Attorney General dies” there shall be substituted the words “if the Attorney General or prosecuting counsel dies” and for the words “in articles 456 and 457” there shall be substituted the words “in articles 456, 457 and 464”.

Amendment of article 495 of the principal law.

Amendment of
article 500 of the
principal law.

116. Article 500 of the principal law shall be amended as follows:

(a) the present provision shall be renumbered as sub-article (1); and

(b) immediately after sub-article (1), as renumbered, there shall be added the following sub-article:

“Appeals by
Attorney
General
against
sentence.

(2) Notwithstanding the provisions of sub-article (2) of article 28I and of the Probation of Offenders Act, if it appears to him that the sentence was unduly lenient the Attorney General may also appeal from any judgment convicting a person for an offence liable to imprisonment for a term exceeding two years if the sentence has applied the provisions of article 21 or of articles 28A to 28H or the provisions of the Probation of Offenders Act.”.

Addition of new
articles 500A and
500B to the
principal law.

117. Immediately after article 500 of the principal law there shall be added the following new articles:

“Submissions
by injured
party to
Court of
Criminal
Appeal on
sentence.

500A. On any appeal against sentence an injured party may, by application, request the Court of Criminal Appeal to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions after the court has heard the appellant’s submissions in support of the appeal; the person convicted and the Attorney General shall be given the opportunity to respond to the submissions by the injured party or his legal counsel:

Provided that the failure, for any reason, of the injured party or his legal counsel to make submissions on sentence as aforesaid on the appointed day shall not preclude the court from proceeding with any hearing or from pronouncing judgement.

References
by the
Attorney
General.

500B. (1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney General may, if he desires the opinion of the Court of Criminal Appeal on a point of law which has arisen in the case and within the time laid down in article 504, refer that point to the court, and the court shall, in accordance with this article, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point referred to them under this article the Court of Criminal Appeal shall hear argument -

(a) by the Attorney General; and

(b) either by counsel for the defence, if the acquitted person desires to present any argument to the court or, in default, by the Advocate for Legal Aid.

(3) A reference under this article shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

(4) The Board referred to under sub-article (3) of article 516 may make rules to regulate the form and contents of the reference by the Attorney General under this article and to provide for all other matters connected therewith or ancillary thereto.”.

118. Article 501 of the principal law shall be amended as follows: Amendment of article 501 of the principal law.

(a) in subarticle (1) thereof, for the words “On any appeal against conviction” there shall be substituted the words “On any appeal against conviction by the person convicted”;

(b) in subarticle (3) thereof, for the words “an appeal against sentence” there shall be substituted the words “an appeal against sentence by the person convicted,”; and

(c) immediately after subarticle (3) thereof there shall be added the following new sub-article:

“(4) On an appeal against sentence by the Attorney General, the Court of Criminal Appeal shall, if it thinks that a sentence of greater severity should have been passed, quash the sentence passed at the trial and pass such sentence of greater severity warranted in law in substitution therefore as it thinks ought to have been passed, and in any other case shall dismiss the appeal.”.

119. Subject to the provisions of subarticle (1) of article 168 of this Act, subarticle (5) of article 509 of the principal law shall be deleted. Amendment of article 509 of the principal law.

120. In subarticle (2) of article 510 of the principal law, for the words “to the accused shall be construed as a reference to the appellant” there shall be substituted the words “to the accused shall be construed Amendment of article 510 of the principal law.

as including the person convicted on indictment who has appealed and any person appealing in terms of sub-article (1) of article 503,”.

Amendment of article 511 of the principal law.

121. In subarticle (2) of article 511 of the principal law, for the words “If the Attorney General dies” there shall be substituted the words “If the Attorney General or counsel delegated by him dies”.

Amendment of article 512 of the principal law.

122. In subarticle (1) of article 512 of the principal law, for the numbers “427, 442,” there shall be substituted the numbers “427, 441, 442,”.

Amendment of article 517 of the principal law.

123. Article 517 of the principal law shall be amended as follows:

(a) in subarticle (2) thereof, for the words “by the registrar of that court” there shall be substituted the words “by the registrar”;

(b) in subarticle (4) thereof, for the words “Court of Magistrates” there shall be substituted the words “to the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as court of criminal judicature,”; and

(c) in subarticle (6) thereof, for the words “a true copy of the indictment,” there shall be substituted the words “a true copy of the charge or of the indictment,”.

Amendment of article 518 of the principal law.

124. In article 518 of the principal law, for the words “Provided that a *proces-verbal*” there shall be substituted the words “Provided that a *proces-verbal* and any depositions and documents filed therewith”.

Amendment of article 522 of the principal law.

125. For subarticle (2) of article 522 of the principal law there shall be substituted the following:

“(2) Any witness who refuses to be sworn or to depose when so required by the court shall, on conviction, be liable to the punishment of imprisonment not exceeding three months.

(3) The court before whom a witness refuses to be sworn or to depose shall order the arrest of the witness and shall order the Police to bring the witness before the competent court within forty-eight hours from arrest charged with an offence under subarticle (2) of this article.

(4) Where the witness charged as mentioned in subarticle (3) of this article, at any time before final judgement is given in his regard, gives his deposition under oath before the court before whom it is required and at a stage when it may still be

received by the court, that witness shall not be liable to the punishment of imprisonment but shall be liable to the punishment of a fine (*multa*) not exceeding five hundred liri.

(5) Any criminal proceedings in pursuance of an order of the court under subarticle (3) of this article shall be conducted with urgency.”.

126. Article 525 of the principal law shall be amended as follows: Amendment of article 525 of the principal law.

(a) for sub-article (2) thereof, there shall be substituted the following:

“(2) The provisions of articles 362, 363, 364, 383 to 387, inclusively, and of subarticle (5) of article 397 shall also apply to the Criminal Court and to the Court of Criminal Appeal; and the provisions of article 452 shall also apply to the Court of Criminal Appeal in the hearing of appeals from judgments of the Court of Magistrates.”;

(b) immediately after sub-article (2) thereof as substituted, there shall be added the following new sub-article:

“(2A) The provisions of subarticles (1) and (2) of article 412B shall also apply *mutatis mutandis* to the Criminal Court with respect to a person in custody for an offence for which a bill of indictment has been filed as well as to the Court of Criminal Appeal with respect to a person in custody who is a party to appeal proceedings before that court:

Provided that with respect to the Criminal Court the relevant decision shall in all cases be taken by the Court sitting without a jury.”; and

(c) in subarticle (3) thereof, for the words “of article 623” there shall be substituted the words “of sub-article (5) of article 397 and of article 623”.

127. In subarticle (1) of article 531 of the principal law, for the words “the court, if it is the Criminal Court or Court of Criminal Appeal,” there shall be substituted the words “the court”. Amendment of article 531 of the principal law.

128. In article 540 of the principal law, for the words “the Court of Magistrates,” there shall be substituted the words “the Court of Magistrates (Malta), or the Court of Magistrates (Gozo), or a magistrate, as the case may be,”. Amendment of article 540 of the principal law.

Amendment of
article 541 of the
principal law.

129. (1) In the proviso of subarticle (1) of article 541 of the principal law, for the words “as may lead to the conviction of the party accused.” there shall be substituted the words “as may lead to the conviction of the party accused.” and immediately thereafter there shall be added the following new proviso:

“Provided further that where the Attorney General by a note declares that agreement has been reached with the competent authorities of another country that the courts of that country shall exercise jurisdiction over the crime the Court of Magistrates shall consider such declaration conclusive and shall forthwith dismiss the application.”.

(2) Immediately after subarticle (2) of article 541 of the principal law there shall be inserted the following new subarticle:

“(3) Any decision of the Court of Magistrates allowing, in whole or in part, an application under sub-article (1) shall be served on the Attorney General within two working days from the date of the decision and the Attorney General may within seven working days from the date of service make an application to the Criminal Court for the reversal or variation of the decision. The applicant may also make a similar application to the Criminal Court within seven working days from the date of the decision of the Court of Magistrates disallowing, in whole or in part, the application. An application to the Criminal Court under this sub-article shall operate as a stay of execution of the decision of the Court of Magistrates.”.

Amendment of
article 546 of the
principal law.

130. Article 546 of the principal law shall be amended as follows:

(a) in subarticle (1) thereof:

(i) for the words “in respect of which it shall be necessary to proceed to an inquiry,” there shall be substituted the words “liable to the punishment of imprisonment exceeding three years,”; and

(ii) for the words “an inquest on the spot shall be held.” there shall be substituted the words “an inquest on the spot shall be held:

Provided that where it results that the fact in respect of which an investigation was not held under this subarticle constituted an offence liable to the punishment mentioned in this subarticle the failure to hold an investigation under this subarticle shall not, for that reason alone, prejudice in any

way whatsoever the institution or continuation of criminal proceedings for that offence or the admissibility of any evidence of that offence in those proceedings.”;

(b) in subarticle (2) thereof, for the words “or any amongst them:” there shall be substituted the words “or any amongst them, even if the fact is likely to constitute an offence liable to the punishment of imprisonment exceeding three years:”; and

(c) in subarticle (3) thereof, for the words from “Where the offence to be investigated is” to “the magistrate may” there shall be substituted the words “Where the offence to be investigated is theft, other than theft with violence against the person, the magistrate may”.

131. For subarticle (2) of article 547 of the principal law there shall be substituted the following:

Amendment of
article 547 of the
principal law.

“(2) Whenever the magistrate assigned to the Court of Magistrates (Gozo) is temporarily absent from Gozo with the permission of the Minister responsible for justice, or is, through a lawful impediment, precluded from performing his duties, the inquest and all proceedings connected therewith may, with the consent of the Attorney General, be held by the registrar who shall for such purpose have all the powers and duties conferred by this Title upon a magistrate.”.

132. Article 551 of the principal law shall be amended as follows:

Amendment of
article 551 of the
principal law.

(a) in subarticle (1) thereof:

(i) for the words “to the Court of Magistrates;” there shall be substituted the words “to a magistrate;”; and

(ii) for the words “stating his finding as to the cause of death;” there shall be substituted the words “stating his finding as to the cause of death.” and the words from “where, however, the inquest is to be held” to “shall not have the power to order the arrest of any person.”, both phrases included, shall be deleted.”; and

(b) immediately after subarticle (4) thereof there shall be added the following new sub-article:

“(5) The provisions of subarticle (2) of article 547 shall apply to inquests held for the purpose of this article.”.

Amendment of
article 554 of the
principal law.

133. Immediately after subarticle (2) of article 554 of the principal law there shall be added the following new subarticle:

“(3) In any proceedings under this Title the magistrate shall have the same powers and privileges of a magistrate presiding the Court of Magistrates as court of criminal inquiry.”.

Amendment of
article 569 of the
principal law.

134. Immediately after subarticle (4) of article 569 of the principal law there shall be added the following new subarticles:

“(5) Where in the *proces-verbal* the magistrate shall have ordered that a person be arraigned in court on any one or more charges, the magistrate shall order that a copy of the same *proces-verbal* shall be transmitted by the registrar to the Commissioner of Police who, saving the provisions of subarticle (6), shall proceed accordingly.

(6) Notwithstanding the provisions of subarticle (5), in case of doubt the Commissioner of Police may consult with the Attorney General who may direct that no proceedings are to be taken or that the proceedings to be taken are to be for a charge or for charges different from those specified by the magistrate in the *proces-verbal*, without prejudice to the right of the Attorney General to direct otherwise whenever fresh evidence becomes available:

Provided that where the Attorney General shall have directed that no proceedings are to be taken, he shall make a report to the President of Malta stating the reasons for his action.”.

Substitution of
article 570 of the
principal law.

135. For article 570 of the principal law there shall be substituted the following:

“570. (1) The Advocate for Legal Aid shall gratuitously undertake the defence of any accused who has briefed no other advocate or who has been admitted to sue or defend with the benefit of legal aid in any court mentioned in this Code.

(2) The request for the assistance of the Advocate for Legal Aid or for the benefit of legal aid shall be made either by application or orally to the Advocate for Legal Aid.

(3) Subarticles (4), (5) and (6) of article 911 of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the Advocate for Legal Aid.

(4) Where any court is informed by the accused that he has been unable to brief any advocate or that he wishes to avail himself of the benefit of legal aid that court shall cause the declaration made by the accused to be registered in the records of the case and shall order that such declaration, together with the details of the accused, be served on the Advocate for Legal Aid who within two working days shall file a reply indicating if the request of the accused has been accepted and if so the name of the Advocate for Legal Aid who will be representing the accused:

Provided that in the case of summary proceedings before the Court of Magistrates acting as a Court of Criminal Judicature the Court shall appoint the advocate whose turn it is from the panel of advocates mentioned in article 91 of the Code of Organization and Civil Procedure to assist the accused in those proceedings as well as in any appeal from any decision given in those proceedings provided that before filing any such appeal he shall consult the Advocate for Legal Aid who may, at any time, decide to take over the appeal.

(5) The Advocate for Legal Aid may only decline his aid on any ground which, in the opinion of the court, *prima facie* justifies the refusal of his aid. In such event the Court shall order that the accused be represented by another advocate, who is not himself excusable, to be appointed by the Court on the recommendation of the Advocate for Legal Aid from the panel of advocates mentioned in article 91 of the Code of Organization and Civil Procedure provided that the court may in exceptional circumstances to be stated in its decree order any other advocate to take up the defence of the accused.

(6) The advocate appointed by the court in the exceptional circumstances referred to in subarticle (5) of this article shall render his services gratuitously.”.

136. In sub-article (1) of article 571 of the principal law, the words from “In any such case” to “may desire to retain.” shall be deleted. Amendment of article 571 of the principal law.

137. In article 572 of the principal law, for the words “the last preceding article” there shall be substituted the words “subarticle (4) of article 570”. Amendment of article 572 of the principal law.

Amendment of
article 574 of the
principal law.

138. For subarticle (1) of article 574 there shall be substituted the following:

“(1) Any person charged or accused who is in custody for any crime or contravention may, on application or as provided in article 574A, be granted temporary release from custody, upon giving sufficient security to appear at the proceedings at the appointed time and place under such conditions as the court may consider proper to impose in the decree granting bail which decree shall in each case be served on the person charged or accused”.

Addition of new
article 574A to the
principal law.

139. Immediately after article 574 of the principal law there shall be added the following new article:

574A. (1) When the person charged or accused who is in custody is first brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, the Court shall have the charges read out to the person charged or accused and, after examining the person charged as provided in article 392 as the proceedings may require, shall summarily hear the prosecuting or arraigning officer and any evidence produced by that officer on the reasons supporting the charges and on the reasons and circumstances, if any, militating against the release of the person charged or accused.

(2) After hearing the prosecuting or arraigning police officer and any evidence produced as provided in subarticle (1) the court shall inform the person charged or accused that he may be temporarily released from custody on bail by the court under conditions to be determined by it and shall ask him what he has to say with respect to his arrest and his continued detention and with respect to the reasons and the circumstances militating in favour of his release.

(3) Where any of the offences charged consists in any of the offences mentioned in subarticle (2) of article 575 the court shall, after hearing the person charged or accused as provided in subarticle (2) of this article, ask the prosecuting or arraigning officer whether he has any submissions to make on the question of temporary release from custody on bail of the person charged or accused and the latter shall be allowed to respond.

(4) Where none of the offences charged consists in any of the offences mentioned in subarticle (2) of article 575 the court shall, after hearing the person charged or accused as provided in subarticle (2) of this article, ask the prosecuting or arraigning officer whether he and the Attorney General have any submissions, in writing or otherwise, to make on the question of the temporary release from custody of the person charged or accused and the latter shall be allowed to respond.

(5) At the end of submissions as provided in the preceding subarticles of this article the court shall review the circumstances militating for or against detention.

(6) If the court finds that the continued detention of the person charged or accused is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the person in custody it shall unconditionally release that person from custody.

(7) If the court does not find cause to release unconditionally the person charged or accused under the provisions of sub-article (6) of this article it may nevertheless, saving the provisions of subarticle (1) of article 575 of this Code and unless release is prohibited by any provision of law, release that person from custody on bail subject to such conditions as it may deem appropriate.

(8) If the court does not find cause to release unconditionally the person charged or accused and refuses to grant that person bail the court shall remand that person into custody and the provisions of subarticle (11) of article 575 shall apply.

(9) Where the court orders the release from custody of the person charged or accused, whether unconditionally or on bail subject to conditions, under any of the provisions of this article the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates.”.

140. Article 575 of the principal law shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:

(i) for the words “of the last preceding article” there shall be substituted the words “of article 574”; and

(ii) in paragraph (c) thereof, for the words “to impose in the bail bond;” there shall be substituted the words “to impose in its decree granting bail;”;

(b) subarticle (2) thereof shall be amended as follows:

(i) for the words “The demand for bail shall” there shall be substituted the words “At any stage other than that referred to in article 574A, the demand for bail or any demand for the variation of the conditions of bail after bail has been granted, shall”; and

(ii) in paragraph (c) thereof, for the words “with more than three years’ imprisonment, except in the cases referred to in articles 217, 218 and 219.” there shall be substituted the words “with more than three years’ imprisonment.”;

(c) immediately after sub-article (4) thereof there shall be inserted the following new sub-article:

“(4A) Where the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, grants bail to the person in custody or subsequently amends the bail conditions, the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates.”;

(d) in subarticle (5) thereof, for the words “is brought before the said court,” there shall be substituted the words “is brought before the said court, or from the day on which he is arrested as provided in subarticle (5) of article 397,”;

(e) in paragraph (a) of sub-article (8) thereof, for the words “has been brought before the Court of Magistrates;” there shall be substituted the words “has been brought before the Court of Magistrates or from the day on which he has been arrested as provided in subarticle (5) of article 397;”;

(f) in subarticle (10) thereof, for the words “shall not apply” there shall be substituted the words “shall not apply if at the time the request for bail is made or within a week thereafter the indictment shall have been filed, or”; and

(g) immediately after subarticle (10) there shall be added the following new subarticle:

“Court to state reasons. (11) In refusing to grant bail the court shall state the reasons for such refusal in its decree refusing bail which decree shall be served on the person accused.”.

141. In subarticle (3) of article 577 of the principal law, for the words “of the Court of Magistrates as court of criminal judicature,” there shall be substituted the words “of the Court of Magistrates as court of criminal judicature in terms of subarticle (1) of article 370 and subarticle (2) of article 371,”.

Amendment of article 577 of the principal law.

142. Article 579 of the principal law shall be amended as follows:

Amendment of article 579 of the principal law.

(a) for the words “or fails to observe any of the conditions therein imposed,” there shall be substituted the words “or fails to observe any of the conditions imposed by the court in its decree granting bail,”; and

(b) in the proviso thereto, for the words “infringement of the condition imposed in the bail bond” there shall be substituted the words “infringement of the condition imposed in the decree granting bail”.

143. For subarticle (4) of article 580 of the principal law there shall be substituted the following:

Amendment of article 580 of the principal law.

“before Court of Magistrates. (4) Except as provided in subarticle (2) of article 575, the demand for bail before the Court of Magistrates shall be made orally.”.

144. In article 587 of the principal law, for the words “or leaves Malta” there shall be substituted the words “or leaves Malta, even temporarily,”.

Amendment of article 587 of the principal law.

145. In sub-article (5) of article 597 of the principal law, for the words “by the court of the Island of Malta and not by the court of the Islands of Gozo and Comino, or by the court of Gozo and Comino and not by the court of Malta.” there shall be substituted the words “by the Court of Magistrates (Malta) and not by the Court of Magistrates (Gozo) or by the Court of Magistrates (Gozo) and not by the Court of Magistrates (Malta).”.

Amendment of article 597 of the principal law.

Amendment of
article 602 of the
principal law.

146. In article 602 of the principal law, for the words “order the discharge of the accused:” there shall be substituted the words “order the discharge of the accused, and the provisions of article 434 shall, *mutatis mutandis*, apply:”.

Amendment of
article 604 of the
principal law.

147. In subarticle (1) of article 604 of the principal law, immediately after the word “judges,” there shall be inserted the words “honorary consuls,” for the words “professors of the University,” there shall be substituted the words “professors and full-time teachers of the University,” and for the words “the Government secondary, primary and technical schools,” there shall be substituted the words “the secondary, primary and technical schools,”.

Amendment of
article 608 of the
principal law.

148. Immediately after sub-article (3) of article 608 of the principal law there shall be inserted the following new subarticle:

“(4) Regulations made under sub-article (2) of article 362 for service by post shall also apply to the service of the writ referred to in subarticle (1) of this article and the provisions of subarticles (3) and (4) of the said article 362 shall *mutatis mutandis* apply to the service of a writ under this article. A person served with the said writ as provided in the said regulations or as provided in this subarticle shall be deemed to have been summoned in the manner provided in this article.”.

Amendment of
article 617 of the
principal law.

149. Article 617 of the principal law shall be amended as follows:

(a) for subarticle (2) thereof and the marginal note thereto there shall be substituted the following:

“Communica-
tion with
jurors.

(2) Whosoever shall, in any manner whatsoever, knowingly communicate or attempt to communicate with any person whose name has been drawn to serve as a juror and published as provided in subarticle (5) of article 606 and in subarticle (4) of article 607, with intent to influence such person, whether in favour of or against the accused, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from three to nine months:

Provided that when such crime is committed by a public officer whose duty is to prevent such communication, the applicable punishment shall be increased by one degree.”;

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

“(3) The foregoing provisions of this article shall, *mutatis mutandis*, apply in relation to the members of the empanelled jury as they apply in relation to the persons summoned to serve as jurors or whose name has been published as mentioned in sub-article (2).”.

150. In article 645 of the principal law, for the words “shall also apply to the courts of criminal justice.” there shall be substituted the words “shall also apply to the courts of criminal justice and the said articles 570, 574, 583, 590, and 592 shall moreover apply to any proceedings under Title II of Part II of Book Second of this Code.”.

Amendment of article 645 of the principal law.

151. In subarticle (2) of article 647 of the principal law, for the words “the registrar of the Court of Magistrates Gozo” there shall be substituted the words “the registrar”.

Amendment of article 647 of the principal law.

152. For article 649 of the principal law there shall be substituted the following:

Substitution of article 649 of the principal law.

“Examination of witnesses and investigation in connection with offences cognizable by courts outside Malta.

649. (1) Where the Attorney General communicates to a magistrate a request made by the judicial or prosecuting authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police.

(2) The provisions of sub-article (1) shall only apply where the request by the foreign judicial or prosecuting authority is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country from which the request emanates or which applies to both such countries or to which both such countries are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall

be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of subarticle (3) shall be applicable.

(3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognizable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing.

(4) The magistrate shall transmit the deposition so taken, or the result of the investigation conducted, or the documents or things found or seized in execution of any orders for search or/and seizure, to the Attorney General.

(5) For the purposes of sub-articles (1) and (3) the magistrate shall have the same powers, or as nearly as may be, as are by law vested in the Court of Magistrates as court of criminal inquiry, as well as the powers, or as nearly as may be, as are by law conferred upon him in connection with an inquiry relating to the “*in genere*”: provided that a magistrate may not arrest any person, for the purpose of giving effect to an order made or given under subarticle (2) of article 554, or upon reasonable suspicion that such person has committed an offence, unless the facts amounting to the offence which such person is accused or suspected to have committed amount also to an offence which may be prosecuted in Malta.”.

Amendment of
article 662 of the
principal law.

153. In subarticle (1) of article 662 of the principal law, for the words “held under the provisions of this Code,” there shall be substituted the words “held under the provisions of this Code (other than an inquest for the purpose of an inquiry relating to the “*in genere*”),”.

Amendment of
article 663 of the
principal law.

154. In subarticle (1) of article 663 of the principal law, for the words “in open court.” there shall be substituted the words “in open court: provided that a decision granting or refusing bail may be given *in camera*.”;

155. Articles 667 to 685 of the principal law, both inclusive, shall be deleted and substituted by the following:

Substitution of
articles 667 to 685
of the principal law.

"Property to be held
by registrar.

667. Any property connected with criminal proceedings shall, subject to the following provisions of this Title, be held by the registrar until the conclusion of such proceedings including any proceedings of appeal.

Record of property.

668. (1) All property connected with criminal proceedings shall be delivered by the court to the registrar and shall, subject to the following provisions of this Title, remain in the custody of the registrar except when required by the court for the hearing of such proceedings.

(2) The Minister responsible for justice may make regulations providing for the registration and preservation of any property connected with criminal proceedings and for the manner in which a record is to be kept of the movements of any such property.

Preservation of
property.

669. (1) The registrar shall ensure that all property delivered to him is properly catalogued, stored and preserved and kept in a secure place to be determined by the registrar.

(2) For the purposes of this article, the registrar may, with the approval of the Minister responsible for justice, appoint other persons to hold property or classes of property on his behalf under such terms and conditions as the Minister may think fit provided that the names of such persons shall be published in the Gazette.

Proces-verbal to be
drawn up when
property is released.

670. (1) Any property which is to be released by the registrar to any person or which is to be destroyed or otherwise disposed of in accordance with the provisions of this Title shall only be released, destroyed or otherwise disposed of following the drawing up of a *proces-verbal* containing an accurate description of the property released, the quantity and quality thereof and any photographs, video recordings and computer images of such property as the magistrate or the registrar may deem fit should be taken.

(2) The *proces-verbal* shall be signed by the registrar and if the property is to be released, destroyed or disposed of during *in genere* proceedings or during the inquiry it shall also be signed by the magistrate. In every case where the property is to be released in favour

of any person in the course of criminal proceedings which have not been finally determined that property shall only be so released after the person to whom the property is to be released gives an undertaking in writing to produce again such property on the order of a court.

(3) Notwithstanding any other provision of this Code or of any other law, any *process-verbal* drawn up in accordance with the provisions of this article including any photographs, video recordings and computer images shall be admissible in evidence in any criminal proceedings as if it were the property itself described in the *proces-verbal*.

(4) The provisions of this Title shall also *mutatis mutandis* apply to any property exhibited in the course of any proceedings under the provisions of Title II of Part II of Book Second of this Code even during such period that the relative *proces-verbal* is with the Attorney General.

(5) The provisions of this article shall *mutatis mutandis* apply to property disposed of in accordance with the provisions of articles 671, 672 and 673.

Prohibited property.

671. (1) Saving the provisions of subarticle (2), where the Comptroller of Customs certifies that any property in the custody of the registrar is property which may not be imported into Malta the registrar shall apply to the competent criminal court and request it to order the disposal of the said property. The court shall allow the application where it is satisfied that the property in question is in Malta in contravention of the law.

(2) Where the property certified by the Comptroller of Customs as provided in sub-article (1) is property which has been exhibited as evidence in the course of criminal proceedings which have not been finally determined, the application by the registrar shall be served on the party charged or accused and on the Attorney General or the Commissioner of Police as the case may be for their submissions and the court shall not allow the application unless it is satisfied that the property itself is not or is no longer necessary as evidence in the proceedings.

(3) Where the court has ordered the disposal of the property in accordance with the provisions of this article the registrar shall dispose of such property by destroying it provided that the Minister responsible for justice may order that the property is to be disposed of in any other manner whatsoever for special reasons to be expressly stated in the order.

Property exhibited
in certain
proceedings.

672. Notwithstanding any other provision of this Code or of any other law, where the property has been exhibited in court in the course of proceedings for an offence against the Customs Ordinance or against the Exchange Control Act and the property has been forfeited in favour of the Government by virtue of the operation of any provision of this Code or of any other law such property shall be released in favour of the Comptroller of Customs. In any other case the property exhibited as aforesaid shall not be released, except in execution of a final judgment of the competent civil court, if the Comptroller of Customs objects to such release.

Disposal of property
connected with
criminal
proceedings.

673. (1) Notwithstanding the foregoing provisions of this Title and subject to the provisions of article 671 the court shall, on the application of the Attorney General made at any time of the proceedings or, where the author of the crime is absent or unknown, before any proceedings are commenced, order the registrar to dispose of any property connected with criminal proceedings or with a crime, whether such property is liable to forfeiture or not, in any of the following cases:

(a) where, owing to the nature, quantity or dimensions of such property, considerable space is necessary to keep it;

(b) where such property is subject to deterioration or depreciation or the cost of its upkeep is out of proportion to its value;

(c) where it is not practicable or convenient for any other reason to keep such property in custody;

(d) where, owing to the absence of the party accused, the trial is not concluded within two years from the day on which such property was first brought before the court;

(e) in any other case where the court deems it so proper.

(2) The application for an order as is referred to in subarticle (1) and in the same circumstances mentioned in that sub-article may also be made by the registrar in which case the application shall be served on the Attorney General for his reply within such time, being not less than two working days, as may be determined by the court and the application shall not be allowed where the Attorney General objects to the application.

(3) The provisions of sub-articles (1) and (2) shall apply notwithstanding that the property is attached by a garnishee order.

(4) Where the court allows an application made under this article the order of the court shall be served on all the persons identified by the registrar to have an interest in the property, if their whereabouts are known, so however that the order of the court shall not be subject to revocation or modification except on the demand of the Attorney General.

(5) If the property is sold the proceeds shall be deposited in court and shall be disposed of on the conclusion of the proceedings in the same manner as if they were the property of which they are the proceeds.

(6) If the property is not sold the property may be disposed of as the registrar may deem fit subject to the payment of such indemnity as may be due to the owner of the property disposed of.

Release of property
in the course of
proceedings.

674. (1) Notwithstanding the foregoing provisions of this Title and subject to the provisions of article 671, the Court may, in the course of criminal proceedings, order the release of any property exhibited in court to the person to whom it belongs.

(2) The order referred to in subarticle (1) may be given by the Court either on its own motion or following an application by the person claiming the property. Where the Court acts upon its own motion it shall announce its intention to make such an order by means of a decree. Any such decree or any application made by the person claiming the property in terms of this

subarticle shall be served on the Attorney General or on the Commissioner of Police, as the case may be, and on the person charged or accused, each of whom shall be allowed five working days for a reply.

(3) Subject to the provisions of subarticle (4), if the property belongs to the party charged or accused and is in no manner connected with the offence or in any way required for the purpose of any criminal proceedings the court shall, after hearing the Attorney General or the Commissioner of Police, as the case may be, restore the property to the person charged or accused to whom the property belongs or deliver it to the person appointed by him in that behalf or to his lawful representative.

(4) Notwithstanding the provisions of sub-article (3), the court may abstain from ordering the restoration of the property to the person charged or accused -

(a) when the value of the thing is considerable and the person charged or accused is poor or of dubious means; or

(b) when the person charged or accused is tried for forgery with intent to misappropriate the property of another person, or for theft, or for any other offence against property:

Provided that the provisions of this sub-article shall not apply where the accused shall give sufficient security.

Disposal of property
on conclusion of
proceedings.

675. (1) Saving the provisions of article 671 and of the following sub-articles of this article, where the court on the conclusion of any criminal proceedings has not provided how property exhibited during the proceedings is to be disposed of according to law, any property so exhibited shall be preserved by the registrar.

(2) Where the Court of Magistrates as court of criminal inquiry discharges the person charged as provided in sub-article (2) of article 401 and the Court decides how the property exhibited before it is to be disposed of such decision shall not be given effect to before the lapse of the period of one month referred to in subarticle (3) of article 433 and if the Attorney General, within that period, issues a warrant for the arrest of the

person discharged the said decision shall remain without effect.

(3) Where the Court of Magistrates as court of criminal inquiry discharges the person charged but does not decide how the property exhibited in the proceedings is to be disposed of, and the Attorney General does not issue a warrant for the arrest of the person discharged, such property shall be preserved by the registrar and if within one year from the date of discharge no fresh proceedings are instituted as provided in article 434 and the property has not been released in accordance with the provisions of this title the registrar may apply to the court for an order authorising the return of the property to the person to whom it belongs, if known, or declaring the property forfeited in favour of the Government of Malta where the person to whom the property belongs is not known.

(4) Where in any final judgment of any court of criminal jurisdiction no provision is made for the disposal of any property exhibited in the proceedings and no claim is made for the release of such property within one month from the date of such judgment such property, unless forfeited by virtue of the provisions of article 18 or any other provision of this Code or of any other law, shall be forfeited and the court shall, on the application of the registrar and subject to the provisions of subarticle (5), order the release of such property in favour of the Government of Malta.

(5) Any person who immediately before the forfeiture had a legal title to the property forfeited as aforesaid, or the lawful heirs thereof, shall be entitled to compensation for the property forfeited provided that where the property has been sold such compensation shall not exceed the amount realised by the Government from the sale of the property and provided also that compensation is demanded by an application to the competent court within six months from the date of the order mentioned in subarticle (2).

Forfeited property.

676. Any property forfeited in favour of the Government in terms of the provisions of this Code may be disposed of immediately by the registrar unless the property has been exhibited in the course of a criminal

prosecution in which case that property shall not be disposed of before final judgment and not without the prior consent of the Commissioner of Police or of the Attorney General as the case may be.

When property is to be returned by order of the court in its final judgement.

677. (1) Any property which is to be returned to any person in pursuance of an order made by the court in its final judgment shall be retained by the registrar for a period of six months within which period it shall be incumbent on that person, or his lawful heirs, to claim from the registrar the said property. Within the same period the registrar shall be under an obligation to make all efforts to trace and notify with the court's order the person to whom the property is to be returned.

(2) Where the person to whom the property is to be returned, or his lawful heirs, either spontaneously or after being notified with the court's order, fails to claim the property within the period laid down in subarticle (1) of this article or where the registrar within the same period fails to trace that person, or his lawful heirs, and no claim as aforesaid is spontaneously made for the property, that property shall be forfeited in favour of the Government.

(3) In the event that the property is owned by co-owners the registrar shall be deemed to have complied with his obligations according to law if he delivers the property to any one of the owners.

(4) The registrar shall by application refer to the court which delivered judgment any dispute regarding the title to the property. The application shall be served on all the parties who shall be allowed a period of five working days within which to reply and after the lapse of the said period the court shall appoint the application for hearing and after hearing the parties shall decide on the disposal of the property. No appeal shall lie from the decision of the court.

(5) If the person to whom the property is to be returned, or his lawful heirs, claim the property within the period mentioned in subarticle (1) of this article such property shall, in the absence of a lawful obstacle, be returned by the registrar free of charge.

(6) If the property has been forfeited in terms of this article and was subsequently sold by auction following the publication of advertisements, the person to whom the property was to be returned in accordance with the order of the court, or his lawful heirs, may claim the amount realised from the sale after subtracting any costs and fees incurred by the registrar provided that such claim is made within two years of the property having been disposed of.

When owner is unknown.

678. (1) Where the court in its final judgment has ordered that any property is to be returned but does not name the person to whom the property is to be so returned and the identity of that person is unknown that property shall be retained by the registrar for a period of six months within which period any person claiming to have a legal title to the property may come forward and claim the property.

(2) Where the person having a legal title to the property fails to claim the property within the period specified in subarticle (1), or where the claims made in that period have been rejected by the court, the property shall be forfeited in favour of the Government.

(3) Any claim under sub-article (1) shall be made by application to the court before which the property was exhibited and shall be served on the registrar and on the Commissioner of Police or on the Attorney General, as the case may be, who shall have ten working days within which to file a reply. On the lapse of the time for the filing of a reply the court shall give its decision on the application and no appeal shall lie from that decision.

(4) If the court allows the application the property shall be delivered to the claimant free of charge.

Rules to be observed in the disposal of forfeited property.

679. In disposing of property forfeited in favour of the Government in terms of this Code the registrar shall observe the following rules:

(a) property which is of no or of little value may be disposed of at the discretion of the registrar provided that proper record of such disposal is kept;

(b) firearms, ammunition, explosives or other dangerous substances shall be consigned to the proper authorities designated by the Minister responsible for justice for disposal by them;

(c) other property which is of value shall be sold by auction by the registrar following the publication of at least three advertisements in a daily newspaper and any moneys deriving therefrom shall accrue to the Government.”.

156. Article 687 of the principal law shall be amended as follows: Amendment of article 687 of the principal law.

(a) the present article shall be renumbered as subarticle (1) thereof;

(b) immediately after subarticle (1) of article 687 as renumbered there shall be added the following new subarticle:

“(2) The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and, or bill of indictment is served on the person charged or accused until such time as a final and definitive judgment is delivered in the proceedings which commenced as a result of such charge or bill of indictment.”.

157. (1) Immediately after article 96 of the Code of Police Laws there shall be added the following new article: Amendment of Code of Police Laws, Cap. 10.

“Rules to be observed in the construction of houses.

97. (1) In the construction of any house or part of a house, the owner as well as the mason and the architect employed thereon, shall, unless otherwise provided by any regulations made under article 102, observe the rules contained in the following paragraphs:

(a) (i) in every wall, or where the wall has the cavity prescribed in paragraph (b), in the internal and in the external face of such wall, there shall be a layer of asphalt, sheets of lead, vitrified bricks, or any other substance impervious to dampness, approved by the General Services Board or prescribed in the said regulations;

(ii) the upper surface of such layer shall be at least ten centimetres above the level of the street, if the wall be adjacent to a street, or of the courtyard, if it be adjacent to a courtyard or at the level of the floor under the

pavement, if any, of the room on the groundfloor, in the case of an internal wall;

(iii) any wall between two rooms, on the ground floor, the floors of which are not on the same level, shall, moreover, have a layer of any of the said substances, at the level of the floor of the lower room; and such wall shall, from the said layer to the upper surface of the floor of the room situate at the higher level or of the floor of the ventilated underground place, if any, under such room, on the side of it towards the one or the other room, as the sanitary authority shall, according to circumstances, direct, be covered with asphalt or other substance approved by the General Services Board or prescribed in the said regulations;

(b) (i) every wall of any room, exposed to the rain, shall be of such thickness as the Minister responsible for public works may from time to time establish by order under this paragraph and, towards the middle of its thickness, there shall be left throughout its extent from the level of the room at ground floor or, if there is a cellar, from the floor of such cellar, up to the last course of the said wall a cavity of eight centimetres crossed only for solidity of the wall, and closed on the last course with a layer of asphalt, sheets of lead, vitrified bricks or any other substance impervious to dampness approved by the General Services Board, or with stone covered with such substance;

(ii) in the external face of such wall, there shall be such holes as the sanitary authority shall deem necessary for the passage of air, into the said cavity;

(iii) as regards one of the faces of the said wall, the bonds, if they are not of iron, or other substance impervious to dampness approved by the General Services Board, shall be introduced into grooves in the stones of such face; and the surface of the grooves, or of such parts of the bonds as are introduced into them, shall be covered with asphalt or other impervious substance approved by the General Services Board;

(iv) the said cavity, however, shall not be necessary, where, towards the middle of the thickness of the wall, there is introduced or applied throughout the extent of

such wall, hydraulic cement-concrete or other impervious substance approved by the General Services Board, save, as regards the bonds, the observance of the last preceding provision; and, in any such case, the thickness of the wall may be reduced to sixty centimetres;

(v) stone used in the building of any wall shall not exceed those dimensions as the said Minister may from time to time establish by order under this paragraph;

(vi) the said Minister may grant exemption from compliance with or permit departures from any provision of any order made by him under this paragraph, either with respect to any building or to any class or group of buildings, under such conditions as he may deem fit to impose;

(c) (i) the surface of the floor of any room on the groundfloor, not including the pavement, shall be at least fifteen centimetres higher than the level of the courtyard and of the level of the nearest street;

(ii) in any inclined street, such height shall be measured from the central line of the frontage, and if any portion thereof be below the prescribed height, such portion shall be separated from the street, as provided in article 108(2)(d);

(iii) the floor itself, if it has no ventilated underground place of a height of at least sixty centimetres, shall be formed or covered with a layer of asphalt, hydraulic cement-concrete, or other substance impervious to dampness approved by the General Services Board, the upper surface of which shall be in continuation of the impervious layer of the walls of the room; and if the room has any such underground place, there shall be, in the arches or pillars supporting the pavement of the room, immediately under such pavement, a layer of asphalt, sheets of lead, vitrified bricks, or other substance impervious to dampness approved by the General Services Board;

(d) every room shall, from the floor to the beams supporting the roof, or, if the roof be supported by arches, to half the height of each arch, be at least two point seven five metres high, in every part of it;

(e) every part of a house shall be constructed in such a manner as to secure, in the opinion of the sanitary authority, sufficient light and a free circulation of air; and there shall be in every room and in the place of the privy, such ventilators as the sanitary authority may consider necessary for the renewal of the air, even with doors and windows closed;

(f) (i) the cistern required under paragraph (n)(viii), shall be made to communicate with the roof of the house, by means of pipes sufficient for the passage of the rain-water falling on the said roof: none of such pipes shall be used to act as a ventilator of any privy, sewer, or cesspool, septic tank or sewage treatment and disposal plant; and no overflow pipe or conduit, for the carrying off of the water exceeding the capacity of the cistern, shall be connected with any sewer or cesspool, septic tank or sewage treatment and disposal plant, nor shall any other pipe or conduit for the carrying off of rain-water be, without the permission of the sanitary authority, communicated with any part of the house, so as such rain-water may find its way from such part of the house into a sewer;

(ii) the roof of any house shall be paved with such materials and drained in such a manner as to prevent the stagnation of water on such roof or the percolation of water into any part of the house;

(g) (i) every house shall be provided with a privy and such privy shall be communicated with the public sewer:

Provided that the Superintendent of Public Health may exempt any owner from communicating the privy with the public sewer under the condition that the owner provides, in respect of that house,

(a) a cesspool, or

(b) a septic tank, or

(c) a sewage treatment and disposal plant, at the option of, and under such conditions as may be imposed by, the said Superintendent;

(ii) where the privy is at a lower level than the public sewer, the owner of the house shall provide means of pumping or lifting the material towards the public sewer;

(iii) the privy, cesspool, septic tank or sewage treatment and disposal plant, as well as their conduit, shall be constructed in such manner, with such materials, in such parts of the house or so distant from the house, and with such traps or other means to prevent any exhalations or infiltrations as the superintendent may, in any case, direct;

(iv) in the case of a shop, this paragraph shall not apply if the Superintendent of Public Health is satisfied that it is impracticable to provide it with a privy.

For the purposes of this paragraph, of subarticle (2) and of article 102(2)-

“house” includes any premises used, or intended to be used, either wholly or partially for habitation purposes, or for purposes of animal husbandry, any hotel or catering establishment as defined in the Hotels and Catering Establishments Act, and any shop other than a stall or a kiosk;

“owner” shall not include a person holding the house under temporary emphyteusis for a period of not more than seventeen years;

(h) (i) every sink, wash-basin, bath or other similar appliance shall be of the proper pattern and material and shall not communicate directly with the drains but shall be provided with a waste pipe made to discharge on a gully-trap situated in the open air and connected with regular drains;

(ii) it shall be lawful for the Superintendent of Public Health to allow the waste pipe of any sink, wash-basin, bath or other similar appliance to discharge in any other manner which he may consider suitable in any particular case;

(i) the pipes or conduits for communication with the public sewer, with a cesspool, with a septic tank or with a sewage treatment and disposal plant shall be formed of glazed stoneware or other impervious substance approved by the General Services Board; such pipes or conduits shall be at such a distance from the cistern as the sanitary authority may deem necessary for the prevention of exhalations or infiltrations; and they shall, as far as practicable, be laid in

such a manner as to allow of their being, without much difficulty, opened by a mason;

(j) the privies shall have ventilators made in such a manner as, in the opinion of the sanitary authority, will prevent exhalations;

(k) every sink, wash-basin, bath or other similar appliance mentioned in paragraph (h), shall also have ventilators as provided in the last preceding paragraph, if the sanitary authority shall deem such ventilators to be necessary for preventing exhalations;

(l) (i) no external wall of any house adjacent to a new street shall be of a height, measured from the surface of such street, greater than twice the width of the street;

(ii) nor shall any internal wall be raised to a height, measured from the said surface, greater than twice the distance between such wall and the wall existing or which may be erected on the border of the opposite side of the said street;

(iii) the provisions of this paragraph shall also apply to any house adjacent to any other street whether such house is a new building or whether any new storey is erected thereon:

Provided that in any such case the height of the walls may be three times the said width or distance respectively;

(iv) the provisions of this paragraph shall not apply to any church, or other building constructed and perpetually destined for divine worship, or to any public building, or to any other work constructed and destined for the defence of Malta;

(m) saving the provisions of paragraph (g), the cesspool of any house or building shall be made or re-made, placed and ventilated in accordance with the directions which shall, in each case, be given by the Superintendent of Public Health, or be generally established by regulations made under article 102;

(n) (i) every house shall have at its back a courtyard exclusively belonging to it; and such courtyard shall be of the length of the wall of such house, and of a width not less than three metres, or half the height of the house, if such house be higher than six metres; one privy or more privies, one above the other, may be constructed in any such courtyard; but in any such case the surface of the courtyard shall be enlarged in proportion to the space thus occupied;

(ii) nevertheless, if the yard of a house be at the back of the yard of another house, the minimum width of each of such yards may be reduced to not less than two-thirds of the width as aforesaid, provided the width of the two yards together be not less than six metres, and provided the owners of the yards in question bind themselves by a notarial deed to be registered in the Public Registry by the notary by whom the deed has been received, not to raise the wall separating the yards to a height exceeding three point five metres from the surface of the yards or of the higher yard if the yards are not at the same level; and whosoever shall at any time raise, or keep raised, any such wall to a greater height shall be guilty of a contravention against this Code;

(iii) if the width of the yard corresponds to one or more storeys, in accordance with the foregoing rules, the sanitary authority will permit the construction of new storeys, provided that, on the upper storey already constructed, in contiguity to the yard, there be left an open space with an iron fence towards the yard, of a width not less than one-half the height of the new storey;

(iv) the foregoing provisions of this paragraph shall not apply to such houses as are situate at the corner of two streets or between two streets, provided that, in the latter case, at least one of the two streets be of a width not less than one-half of the height of the building or be adjacent to the sea-shore;

(v) it shall be lawful for the competent authority to dispense with the formation of a yard as provided in the foregoing rules, where the site on which the building is to be erected, be of a width so small as not to allow the formation of such yard, and where each of the rooms and the stairs of the building be directly lighted at least through a window opening on the public street or any other open space;

(vi) if, owing to the configuration of the site on which the house is to be constructed, the yard cannot be of the prescribed length or width, the Superintendent of Public Health may permit a smaller length or width, provided, in his opinion, such smaller length or width, having regard to the particular circumstances of the place, is sufficient to secure such light and ventilation as are required for the wholesome condition of the house;

(vii) the yard or yards of any house shall be paved and drained in the manner prescribed in the regulations made under article 102;

(viii) every house shall also have a cistern in good condition, of a capacity of at least three cubic metres, for every five square metres of the surface of the floor of each room of such house;

(o) (i) thirty days at least before the commencement of the building or re-building of any house, or part of a house, or, in the case of the communication of a privy with the public sewer, before such communication is covered up, the architect or mason, or the owner, shall give notice thereof to the Superintendent of Public Health, together with a drawing of the work proposed to be carried out;

(ii) where, in the opinion of the Superintendent of Public Health, the work proposed to be carried out is such as to require technical direction in order to prevent, during or after the execution of the work, injury to property or danger to the men employed on the work or to passers-by or other persons, it shall be lawful for the said Superintendent of Public Health to require a written declaration by an architect assuming the direction and responsibility of the work, saving in all cases any civil or criminal liability of any other person, according to law;

(iii) the Superintendent of Public Health shall, upon the demand of the architect, mason, or owner, within thirty days, from the delivery of the drawing, or forty days, if the matter has to be considered by the General Services Board, communicate to him the approval or disapproval thereof by the sanitary authority;

(iv) in all cases it shall not be lawful for any person to commence any work before the approval of the sanitary authority shall have been communicated to him in writing within the aforesaid time, or, during the execution of the work, to depart, without the sanction of the Superintendent of Public Health, from the plan as approved by the sanitary authority;

(v) such approval shall be deemed to be null and void if any information or specification contained in the said notice or in the drawing accompanying it is proved to be inaccurate or misleading;

(vi) it shall be lawful for any official of the Department of Health, in the course or after the completion of the work, to inspect the place in order to ascertain whether the work, both as regards the materials used and the mode of its execution, conforms to the provisions of the law or regulations;

(p) on the application of the architect in charge of the building or re-building of a house for an exemption in respect of such house from the provisions of paragraph (1) or of paragraph (n) (i), the Superintendent of Public Health may—

(i) in any case not specified in paragraph (n)(v) and (vi); and

(ii) if the General Services Board consider that such an exemption may be granted without detriment to the wholesome condition of the house or of other houses in its vicinity,

exempt such house from any or all of those provisions, subject to such conditions as he thinks fit, and no appeal shall lie from a decision of the Superintendent of Public Health under this paragraph;

(q) (i) this paragraph applies to any house the height of which, measured from the lowest damp proof course to the highest point of the house, exceeds twenty-four metres;

(ii) before the commencement of the building or rebuilding of any house to which this paragraph applies, the architect in charge shall submit to the Director of Public Works plans and specifications together with such other particulars relating to the building or re-building of the house as may be required by the Director of Public Works, who shall advise the Superintendent of Public Health in writing whether he is satisfied that the house when built or re-built, as the case may be, in accordance with such plans, specifications and particulars will be stable and safe;

(iii) the advice of the Director of Public Works given under the last preceding sub-paragraph shall not affect the liability of the architect or of any other person in respect of the stability or safety of the house;

(iv) the provisions of this paragraph shall be in addition to, and not in derogation of, any of the provisions of this Part applicable to houses, and in particular but without prejudice to the generality of the foregoing, the provisions of paragraph (o) shall apply to any house to which this paragraph applies as if the reference to the specification and drawing contained in subparagraph (v) thereof included a reference to the plans, specifications and any particulars referred to in subparagraph (ii), and as if the reference to any official of the Department of Health contained in subparagraph (vi) thereof included a reference to any official of the Public Works Department:

Provided that the times mentioned in paragraph (o)(i) and (iii) shall not run in any case to which this paragraph applies.

(2) When any house is to be connected with the public sewer in accordance with the provisions of subarticle (l)(g), the Director of Public Works may, if he deems it fit and practicable, lay the connection between the public sewer and the intercepting chamber relative to such house, and the owner of such house shall, within thirty days of an intimation by the said Director, pay to the latter such connection fee as the Minister responsible for public works may establish by regulations made under this subarticle, and, in default of payment within the said term of thirty days, interest shall be due by the said owner at the rate of six per cent per annum as from the date of intimation.

(3) Where, pursuant to regulations made under article 102(2), the Director of Public Works or any other person has carried out any works for or in connection with the provisions of sub-article (l)(g) and such works are carried out for or in the interest of other persons liable to carry out the same works in accordance with the said paragraph (g), the said Director or other person who will have carried out the above works shall have a privileged claim in his favour on the property in respect of which the works will have been carried out for the amount due to him in accordance with any regulations made as aforesaid, provided such claim is registered in the Public Registry within two months from the completion of the works, and such privileged claim shall have priority over all other claims, whether privileged or hypothecary, on such property, notwithstanding any other provision of law to the contrary.”.

(2) For Part XXV of the Code of Police Laws there shall be substituted the following:

“Part XXV

Of Scrap Dealers

311. Every scrap dealer shall keep one or more books legibly written, and enter therein an account of all scrap metal stores, whether new or old, purchased by him, stating in respect of each article the date on which, and the identity card number of the person from whom, he purchased the same.

312. A scrap dealer shall not purchase any scrap metal from any person unless such person satisfactorily proves the manner in which he came by such stores.

313. Any Police or customs officer may, at any time, enter any premises kept by a scrap dealer and inspect the articles contained therein as well as the book or books referred to in article 311.

314. (1) No person shall deal in scrap metal without a licence from the competent authority.

(2) Such licence shall remain in force for a period of twelve months from the first of January of the year of issue.

(3) The expression “scrap metal” means and includes any old metal, scrap metal, broken metal, partly manufactured metal goods, defaced or old metal goods, or parts of scrapped, broken or damaged motor vehicles.

315. Every licensed dealer in scrap metal shall conform to the following provisions:

a) he shall produce to the Police, whenever requested so to do, any scrap metal purchased or otherwise received by him, at the time being in his possession;

b) he shall give to the Police, whenever requested so to do, an account of any scrap metal sold or otherwise disposed of by him, stating identity card number of the person to whom he sold or otherwise transferred such metals;

c) he shall, without delay, give notice to the Police of any articles which come into his possession, answering to the description of any articles stolen or unlawfully obtained notice whereof has been given to him by the Police;

d) he shall not change the form of, or part with, any scrap metal within forty-eight hours after such metals were purchased or received;

e) he shall not have in his possession a destroyed or damaged vehicle unless he has in his custody a certificate from the competent officer under the Motor Vehicles Registration Tax Act confirming the classification of that vehicle.

316. Where any person is convicted of dealing in old metals without a licence as provided in article 314, or in breach of paragraphs (d) and (f) of subsection (2) of section 315, the metals in respect of which the offence is committed shall be forfeited.”.

Amendment of the
Code of
Organization and
Civil Procedure,
Cap 12.

158. The Code of Organization and Civil Procedure shall be amended as follows:

(a) for subarticle (1) of article 89 thereof, there shall be substituted the following:

“(1) The Minister responsible for justice shall nominate such panels as he may deem fit, each panel consisting of such number as he may deem fit of advocates, legal procurators and other experts, to perform the duties of curators, advocates or legal procurators ex officio and experts in the Courts of Malta and Gozo as occasion may require under this Code.”;

(b) article 90 thereof shall be deleted;

(c) article 911 thereof shall be amended as follows:

(i) for sub-article (5) thereof there shall be substituted the following:

“(5) The Minister responsible for justice shall provide such facilities as are necessary for the proper administration of the benefit of legal aid.”; and

(ii) for sub-article (6) thereof there shall be substituted the following:

“(6) There shall be an Advocate for Legal Aid and the expression “Advocate for Legal Aid” in this Code or in any other law includes any other lawyer, officer or public officer designated by the Minister responsible for justice to perform, under the guidance of the Advocate for Legal Aid, any function pertaining to the Advocate of Legal Aid or to the administration of the benefit of legal aid.”.

159. In subarticle (2C) of article 120A of the Medical and Kindred Professions Ordinance, immediately after the words “at any time before filing the bill of indictment,” there shall be inserted the words “or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused,” and immediately after the words “as if no previous direction had been given.” there shall be added the words “Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General’s direction to be served on the Commissioner of Police.”.

Amendment of the Medical and Kindred Professions Ordinance, Cap 31.

160. In article 5 of the Explosives Ordinance for the words “ninety one kilogrammes” there shall be substituted the words “that quantity as may be prescribed by regulations made by the Minister responsible for the police”.

Amendment of the Explosives Ordinance, Cap. 33.

161. Article 15 of the Traffic Regulation Ordinance shall be amended as follows:

Amendment to the Traffic Regulation Ordinance, Cap. 65.

(a) paragraph (b) of subarticle (1) thereof shall be deleted and paragraph (c) of the same subarticle shall be renumbered as paragraph (b); and

(b) immediately after subarticle (1) thereof there shall be inserted the following new subarticle:

“(1A) Any person who makes use of an identification number other than that allotted by the police or by the Authority in relation to a particular motor-car shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding five hundred liri or to imprisonment not exceeding six months or to both such fine and imprisonment.”.

Amendment of the
Dangerous Drugs
Ordinance, Cap.
101.

162. In article 31 of the Dangerous Drugs Ordinance, immediately after the words “at any time before the filing of the bill of indictment” there shall be inserted the words “or at any time after filing the bill of indictment before the jury is empanelled, and with the consent of the accused,” and immediately after the words “as if no previous direction had been given.” there shall be added the words “Where the Attorney General has given such new direction after the filing of the bill of indictment, the registrar of the Criminal Court shall cause the record to be transmitted to the Court of Magistrates, and shall cause a copy of the Attorney General’s direction to be served on the Commissioner of Police.”.

Amendment of the
Extradition Act
Cap. 276.

163. The Extradition Act shall be amended as follows and shall be read and construed accordingly:

(a) in article 12 thereof, for the words “to any country, or committed to or kept in custody for the purpose of such return,” there shall be substituted the words “to any country”;

(b) immediately after subarticle (3) of article 15 thereof the shall be added the following new subarticles:

“(4) Where a person has been brought before a court of committal as provided in subarticle (1) of this article, the provisions of subarticle (1) of article 401 of the Criminal Code shall apply as if the words “one month” wherever they occur therein were substituted with the words “two months” and as if the words “three months” in the proviso thereto were substituted with the words “six months”.

(5) Where the person arrested declares before the court of committal that he is willing to be extradited, the said court upon being satisfied of the voluntariness of such declaration shall commit him to custody to await his return and all the provisions of this Act for his extradition shall be deemed to be satisfied and the Minister shall thereupon, notwithstanding any other provision of this Act but saving the provisions of subarticles (2) and (4) of article 21 thereof, by warrant order him to be returned to the requesting country. No appeal shall lie from the decision of the court committing the person to custody under the provisions of this subarticle.”;

(c) in article 16 thereof:

(i) for the words “and that he may appeal” there shall be substituted the words “and that, except in the case of a committal to custody to await return under the

provisions of subarticle (5) of the said article 15, he may appeal”;

(ii) immediately after the words “of the Constitution of Malta” there shall be substituted the words “or of the European Convention Act”; and

(iii) for the words “of article 46 of the said Constitution” there shall be substituted the words “of article 46 of the Constitution or of the European Convention Act, as the case may be”;

(d) in subarticle (2) of article 21 thereof:

(i) in paragraph (b), for the words “the court’s order of committal, and there is established” there shall be substituted the words “the court’s order of committal, and the person committed has instituted such proceedings or, if there is established”; and

(ii) in the proviso to paragraph (c), for the words “withdrawn or abandoned.” there shall be substituted the words “withdrawn or abandoned;” and immediately thereafter there shall be added the following new paragraph:

“(d) if a the person committed to custody is accused or undergoing sentence as provided in article 12, until he has been discharged whether by acquittal or on the expiration of his sentence or otherwise.”;

(e) immediately after article 31 thereof there shall be inserted the following new article:

“Other
special
extraditable
offences.

32. (1) The offences referred to in articles 115 to 121B of the Criminal Code shall be deemed to have been included as extraditable offences in all extradition treaties made by Malta (or are applicable to Malta) with Convention countries and which extend to, and are binding on, Malta on the date of the coming into force for Malta of the Convention.

(2) Where this Act does not apply in the case of any state which is a party to the “Criminal Law Convention on Corruption” the

provisions of subarticles (2) and (3) of article 31 of this Act shall *mutatis mutandis* apply to any such country so however that the reference to “subarticle (1)” in the said subarticle (3) shall be read and construed as a reference to subarticle (1) of this article.

(3) In this article:

“Convention countries” means those countries which are contracting parties to the Convention;

“the Convention” means the “Criminal Law Convention on Corruption” done at Strasbourg on the 27th January 1999.”.

Amendment of The
Permanent
Commission
Against Corruption
Act, Cap 326.

164. The Permanent Commission Against Corruption Act shall be amended as follows and shall be read and construed accordingly:

(a) in paragraph (a) of article 4 thereof, for the words “alleged or suspected corrupt practices and” there shall be substituted the words “alleged or suspected corrupt practices committed by or with the participation of any person mentioned in paragraphs (b) and (c) of this article and”; and

(b) in paragraph (a) of subarticle (1) of article 6 thereof, for the words “121,” there shall be substituted the words “121 when committed by or with the participation of any person mentioned in paragraphs (b) and (c) or article 4 of this Act,”.

Amendment to the
Motor Vehicles
Registration Tax
Act, Cap, 368.

165. The Motor Vehicles Registration Tax Act shall be amended as follows:

(a) immediately after subarticle (2) of article 15 thereof there shall be inserted the following new subarticle:

“(3) Where an event occurs in relation to a motor vehicle in consequence of which an insurer may become liable to pay money to any person in compensation for damages to a demolished, destroyed, irreparably damaged or lost motor vehicle, it shall be the duty of such insurer to inform the competent officer immediately, and in any case not later than such term as may be prescribed, and provide him with all information as may be prescribed under this section.”;

(b) the provision of article 16 thereof shall be renumbered as subarticle (1) of the same article and immediately thereafter there shall be inserted the following new subarticles:

“(2) In the circumstances mentioned in subarticles (2) and (3) of the preceding article, the competent officer shall, as soon as possible and in any case not later than two months from the date when the incident was reported to him by the owner or the insurer, cause the motor vehicle to be classified under one of the categories listed in the Fourth Schedule to this Act. For this purpose, the motor vehicle shall be examined by the competent officer or by another authorised by him, and in the case of a vehicle classified in category C in the Fourth Schedule to this Act the same officer shall mark such vehicle as he may deem fit.

(3) A motor vehicle classified under category C in the Fourth Schedule of this Act, shall not be issued with a new registration document unless the competent officer is satisfied that the motor vehicle for which the new document is sought was previously examined and marked by him or by another officer authorised by him.

(4) Any person who, in any manner whatsoever, removes or alters a mark made by the competent officer or by an officer authorised by him, shall be guilty of an offence, and on conviction shall be liable to a fine (multa) of not less than one thousand liri or to imprisonment for a term from nine to eighteen months, or to both such fine and imprisonment.

(5) On conviction for the offence referred to in the preceding subsection the court shall, in addition to the penalty laid down in the said subsection, order the forfeiture of the motor vehicle to which the offence relates. The forfeiture of the motor vehicle with a forged or fictitious chassis or engine identification number may be ordered by the court even though there has not been a conviction.”;

(c) subarticle (2) of article 20 thereof shall be amended as follows:

(i) immediately after paragraph (c) thereof there shall be inserted the following:

“(d) the conditions which attach to each category of motor vehicles listed in the Fourth Schedule to this Act and the obligations of the licencing office, owners, insurers, salvage operators, salvage agents, scrap dealers, vendors, purchasers, surveyors and of all other persons and authorities concerned, in connection with each such category of motor vehicles;” and

(ii) paragraph (d) thereof shall be renumbered as paragraph (e);

(d) immediately after subarticle (2) of article 21 thereof there shall be added the following new subarticle:

“(2A). Any person or insurer who fails to inform the competent officer as required in subarticles (2) and (3) of article 15 shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five hundred liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.”; and

(e) immediately after the Third Schedule to the Act there shall be added the following New Schedule:

**“FOURTH SCHEDULE
(Article 16(2))
CLASSIFICATION OF MOTOR CARS .**

	CATEGORY A	CATEGORY B	CATEGORY C	CATEGORY D
Definition	SCRAP only (i.e. with no economically salvageable parts and which is of value only for scrap metal) e.g. total burn outs.	BREAK for spare parts if economically viable (excluding any residual scrap value).	REPARABLE but repair costs exceed the vehicle's pre accident value.	ALL OTHER REPARABLE VEHICLES.

Amendment of the Prevention of Money Laundering Act, Cap. 373.

166. The Prevention of Money Laundering Act shall be amended as follows and shall be read and construed accordingly:

(a) for sub-article (3) of article 3 thereof there shall be substituted the following:

“(3) In proceedings for an offence of money laundering under this Act the provisions of paragraph (b) of sub-article (1C) of article 22 of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply.

(4) Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than 500 liri and not more than 500,000 liri.

(5) Without prejudice to the provisions of article 23 of the Criminal Code the court shall, in addition to any punishment to which the person convicted of an offence of money laundering under this Act may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of subarticle (4) of this article, order the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said subarticle (4) of this article and any property of or in the possession or under the control of any person found guilty as aforesaid or of a body corporate as mentioned in this sub-article shall, unless proved to the contrary, be deemed to be derived from the offence of money laundering and liable to confiscation or forfeiture by the court:

Provided that, for the purposes of this sub-article, “proceeds” means any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

(6) Without prejudice to the provisions of article 5 of the Criminal Code, the Maltese courts shall also have jurisdiction over any offence of money laundering under this Act in the same circumstances as are mentioned in article 121C of the Criminal Code.”; and

(b) immediately after article 4 thereof there shall be added the following new article:

4A. The provisions of article 30B of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to proceeds within the meaning of sub-article (5) of article 3 of this Act.”.

167. Paragraph (a) of article 10 of the Private Guards and Local Wardens Act shall be amended as follows:

(a) in subparagraph (i) thereof, for the words from “any crime of voluntary harm or injury” to “or public trust” there shall be substituted the words “any crime of wilful homicide or of wilful grievous bodily harm or any crime against property aggravated by amount exceeding one thousand liri or by violence or any crime against public trust”;

(b) in subparagraph (iv) thereof, immediately after the words “is a public officer” there shall be inserted the words “other than one who belongs to a grade or category as may be prescribed by the Minister”; and

(c) immediately after subparagraph (iv) thereof there shall be inserted the following new subparagraph:

“(v) has been convicted in Malta or elsewhere of a crime against the person or against property and the application is made within five years from the commission of the crime.”.

Transitional.

168. (1) The provisions of article 22 and of subarticle (5) of article 509 of the Criminal Code before the date of coming into force of this Act (hereafter in this article referred to as “the relevant date”) shall continue to apply to any sentence passed before the relevant date in respect of any person or passed on or after the relevant date in respect of a person who on the relevant date is in prison to await trial for the offence or offences to which the sentence refers and the provisions of article 8 and of article 112 of this Act shall have no effect on any such sentence.

(2) The following provisions shall apply to property belonging to the person charged or accused or to other persons and connected with criminal proceedings where such property has already been exhibited in criminal proceedings before the relevant date:

(a) property exhibited in proceedings which have not been determined by a final judgment shall be exclusively regulated by articles 667 to 679 of the principal law as substituted by article 155 of this Act;

(b) property exhibited in proceedings which have been determined by a final judgment shall:

(i) if the person to whom the property belongs is unknown to the registrar, be disposed of in the manner provided for in article 679 of the principal law as substituted by article 155 of this Act provided that the proceedings have been determined as aforesaid for a period of at least six months and the registrar draws up a *proces-verbal* to that effect prior to the disposal;

(ii) if the person presumed to be the person to whom the property belongs is known, the property shall be disposed of in accordance with the provisions of sub-paragraph (i) of this paragraph if after the registrar has written to such person giving him a period of one month to withdraw the property that person fails to do so; provided that the person to whom the property belongs may claim the proceeds realised by the registrar from the disposal of such property if that person makes his claim within two years from the date in which the property was disposed of and proves his title to the property claimed.

(3) Any appointments which are current and which may have been made in terms of articles 89 and 90 of the Code of Organization and Civil Procedure before the relevant date may be terminated by the Minister responsible for justice notwithstanding that such appointments were made for a fixed term provided that any cause which may have already been assigned to an advocate shall continue to be dealt with by that advocate.

Passed by the House of Representatives at Sitting No. 717 of 20th March, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives