CHAPTER 237

REFERENDA ACT

To make provision for the taking of referenda.

20th July, 1973

ACT XXXIII of 1973, as amended by Acts XXXV and LVIII of 1974, XI of 1975, XIII of 1983, VIII of 1996 and XIX of 2002; and Legal Notices 411 of 2007 and 426 of 2012.

ARRANGEMENT OF ACT

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PART I

PRELIMINARY

Short title.

1. The short title of this Act is the Referenda Act.

Interpretation.
Amended by: XI. 1975.2; VIII. 1996.2; XIX. 2002.4.

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

"commissioners" means the members of the Electoral Commission;

"Constitution" means the Constitution of Malta,

"Electoral Commission" means the Electoral Commission established by article 60 of the Constitution;

"electoral division" has the same meaning as it has for the purposes of the election of members of the House;

Cap. 102.

Cap. 354.

"Electoral Polling Ordinance" means articles 41 to 62 of the Electoral (Polling) Ordinance (also reproduced as the Fourteenth Schedule to the General Elections Act;

"Gazette" means the Malta Government Gazette;

"House" means the House of Representatives;

"Malta" has the same meaning as is assigned to it in article 124 of the Constitution;

"referendum" includes a referendum under this Act and a referendum under the Constitution;

"referendum under this Act" means a referendum held for any purpose as provided in article 3(1);

"referendum under the Constitution" means a referendum held for the purposes of article 66(3) of the Constitution;

"writ" means the writ issued under article 9.

PART II

OBJECT, NATURE AND DATE OF A REFERENDUM

Objects of referenda.
Amended by: VIII. 1996.3.

3. (1) Persons entitled to vote in a referendum under this Act will be called upon to declare:

(*a*) whether they approve proposals set out in a resolution passed for that purpose by the House and published in the Gazette; or

(*b*) whether they agree that a provision of law should be abrogated in accordance with the provisions of Part V of this Act,

as the case may be.

(2) Persons entitled to vote in a referendum under the

Constitution will be called upon to declare whether they approve a bill for an Act of Parliament submitted to them for the purposes of article 66(3) of the Constitution.

Nature of referenda. *Amended by: XIX. 2002.5.*

4. (1) Every referendum shall be common, equal, secret and free.

(2) The question or questions to be put to those entitled to vote shall be so framed that they can be answered with either yes or no; and the ballot paper on which the vote is to be recorded shall be in such form that each such question may be so answered.

(3) The space in the ballot paper in which a vote is to be recorded shall have a coloured border: the border of the space in which an affirmative vote is to be recorded shall be coloured in one particular colour, and the border of the space in which a negative vote is to be recorded shall be coloured in a different colour.

(4) Where voters are asked to vote on more than one question in the same referendum, the parts of the ballot paper referring to each separate question shall be printed in a colour different from that in which the other parts of the ballot paper are printed.

(5) The form of the ballot paper shall be that approved by the Electoral Commission.

Day of a referendum. *Amended by: LVIII. 1974.68. Substituted by: XIX. 2002.6.*

5. The day of a referendum shall be fixed by the President of Malta, so however that a minimum of five weeks shall lapse between the publication of the Writ and the day of the polling.

PART III

POLLING DISTRICTS AND NOTICES AND POLLING AUTHORITIES

Polling district.

6. (1) For the purposes of any referendum there shall be one polling district.

(2) Unless the House otherwise resolves, the whole of Malta shall be one polling district. Where the House resolves that the question is to be put only to voters registered in any one or more electoral divisions, that division or those divisions shall form the polling district.

Electoral Commission to be polling authority.

7. Every referendum shall be conducted and shall be subject to the direction and supervision of the Electoral Commission.

Powers of Electoral Commission.

8. In the exercise of their functions and duties under this Act the Electoral Commission and the commissioners shall have the same powers, privileges and immunities as they have in the exercise of their functions in regard to the conduct of the election of members of the House.

Notice of day of a referendum. *Amended by: LVIII. 1974.68.*

9. (1) Whenever a referendum is to be held, notice thereof and of the day fixed by the President of Malta for the referendum shall be given to the commissioners by a writ under the hand of the

President of Malta.

(2) The Chief Electoral Commissioner shall cause the writ to be published in the Gazette.

Conduct of referenda. *Substituted by: XIX. 2002.7.* Cap. 354. Cap. 102.

10. (1) Save as otherwise provided in the Second Schedule, the provisions of the General Elections Act and of the Electoral Polling Ordinance shall apply to the conduct of referenda.

(2) The Electoral Commission may, from time to time, issue directives interpreting, as may be necessary, the provisions of the General Elections Act and the Electoral Polling Ordinance in their application to refrenda under this Act. Such directives shall be published in the Gazette as soon as may be after they are issued:

Provided that any directive so issued shall enter into force immediately even before its publication.

PART IV

PERSONS ENTITLED TO VOTE

Persons entitled to vote. *Substituted by: XI. 1975.3. Amended by: XIX. 2002.2, 8.*

11. All persons who, on the date of the publication of the writ to which a referendum refers, are entitled to vote for the election of members of the House shall be entitled to vote in that referendum:

Provided that, where, in a referendum under this Act, the House has resolved that the question is to be put only to voters in any one or more electoral divisions, the persons entitled to vote in a referendum held on that question shall be those persons only who are entitled to vote in that division or in those divisions, as the case may require.

Each voter to have one vote. *Amended by: XIX. 2002.2.*

12. Every person entitled to vote in a referendum shall have only one vote.

Added by: VIII. 1996.5. Amended by: XIX. 2002.2.

PART V

ABROGATIVE REFERENDA

Laws subject to be abrogated by referenda. *Amended by: XIX. 2002.2.*

13. (1) Any provision of any enactment, whether enacted before or after the coming into force of this Part, and not being an enactment listed in sub-article (2), shall have effect and continue to have effect subject to the provisions of this Part of this Act.

(2) The provisions of this Part of this Act shall not apply to this article and to the following enactments:

(*a*) the Constitution and any regulation made under any provision thereof;

Cap. 319.

(*b*) the European Convention Act;

(*c*) any law providing for the matters referred to in article 56(8)(*a*), (*b*) or (*c*) of the Constitution;

(*d*) the Interpretation Act; Cap. 249.

(*e*) the General Elections Act; Cap. 354.

(*f*) any fiscal legislation;

(*g*) any legislation giving effect to any treaty obligation undertaken by Malta; and

(*h*) save as provided in article 36A of the Local Government Act, any bye-law made by any local council under the said Act. Cap. 363.

(3) For the purpose of this article, "enactment" means an Act of Parliament and any Act passed by the Legislature of Malta and includes any Code, Ordinance, Proclamation, Order, Rule, Regulation, Bye-law, Notice or other instrument having the force of law in Malta.

Electors may demand referendum. *Amended by: XIX. 2002.2.*

14. (1) Any number of persons registered as voters for the election of members of the House of Representatives, being not less than ten per cent of the total number of persons registered as voters as appear in the revised Electoral Register last published before the delivery of the declaration in accordance with sub-article (2), may by signing a declaration in the form set out in the First Schedule demand that the question whether one or more provisions of an enactment to which this Part applies, shall not continue in force, shall be put to those entitled to vote in a referendum under this Act.

(2) The declaration made in accordance with sub-article (1) shall be delivered to the Electoral Commission which shall ascertain whether the number of voters required in accordance with sub-article (1) has signed the declaration.

(3) The Electoral Commission shall within fifteen days from the delivery of the declarations referred to in sub-article (1) ascertain the number of persons, qualified in accordance with sub-article (1), who have signed the declarations, and shall within the said period of fifteen days deposit the said declarations by means of a note in the registry of the Constitutional Court, stating in the note the number of valid signatures appearing on the declaration, as well as the number of invalid signatures and the reason for such invalidity, together with a statement indicating whether the number of persons required in accordance with sub-article (1) has signed the declaration.

(4) The determination by the Electoral Commission of the number of persons who have validly signed the declaration shall be final and conclusive.

(5) The Constitutional Court shall, through the Registrar not later than two days after the deposit referred to in sub-article (3), cause a notice to be published in the Gazette stating the date when the declaration has been delivered in the Registry of the said court, the provisions of the enactments upon the continuance in force which the question is demanded to be put to a referendum under this Part, and the number of persons as stated by the Electoral

Commission to have validly signed the declaration.

Form of declaration. *Amended by: XIX. 2002.2; L.N. 426 of 2012.*

15. (1) The declaration referred to in article 14 shall, together with the signature of each voter, show a legally valid identification document number of the voter signing it, his address and the electoral district wherein he is registered as a voter.

(2) The proposers of the referendum, being not less than five and not more than ten, shall sign the declaration before all other persons indicating that they are signing the same as proposers.

(3) The Electoral Commission shall have a right to ascertain that the persons actually appearing as signatories of the declaration have in fact signed it, and any signature which does not result to have been made by the person appearing to have made it shall be ignored by the Electoral Commission.

Voters may oppose referendum. *Amended by: XIX. 2002.2.*

16. (1) Any person registered as a voter for the election of members of the House of Representatives and the Attorney General on behalf of the Government may, within three months from the publication of the notice referred to in article 14, file an application in the registry of the Constitutional Court, requesting the said court to declare that the referendum should not take place on the grounds that -

(*a*) the number of persons stated by the Electoral Commission to have validly signed the declaration is less than that established in article 14(1); or

(*b*) the provision of the enactment referred to in the declaration is one to which the provisions of this Part of this Act do not apply in accordance with article 13(2); or

(*c*) were the provisions of the enactment referred to in the declaration not to continue to apply, the law would be incompatible with any of the provisions of the Constitution or of the European Convention Act; or

Cap. 319.

(*d*) the time fixed in article 20(2) before the declarations requesting the referendum may be made had not elapsed when the declarations were filed with the Electoral Commission.

(2) No person making an application in accordance with sub-article (1) shall be required to show any personal interest in support of his action.

(3) Any application filed in accordance with sub-article (2), shall be served on -

(*a*) the Prime Minister;

(*b*) the Leader of the Opposition;

(*c*) the proposers of the referendum; and

(*d*) any other person making an application in accordance with sub-article (1).

(4) Every person served with an application in accordance with sub-article (3) shall have a right to file a reply in the registry of the

Constitutional Court within one month from service, and such replies shall be served on the persons referred to in sub-article (3)(*a*) to (*d*) within ten days of filing.

(5) For the purpose of this article service shall be effected by the delivery by registered mail of the document to be served, and shall be deemed to have been so made two days after posting the document to be served in an envelope addressed in the case of the Prime Minister and the Leader of the Opposition at the office of the Clerk of the House of Representatives, in the case of the proposers at the address indicated by them in the declaration and in the case of a person making an application in accordance with sub-article (1), at the address shown in the application.

Constitutional Court shall determine applications. *Amended by: XIX. 2002.2.*

17. (1) As soon as may be after the service of the replies referred to in article 16(3), the Constitutional Court shall, unless it considers that such hearing is not required as the applications and replies are sufficiently clear and do not require further submissions, fix a date for the hearing of submissions on the applications made to in accordance with article 16, and shall cause to be published by the Registrar a notice in the Gazette stating the place, time and date where the hearing is to be held.

(2) The notice referred to in sub-article (1) shall be published not later tan ten days before the date of the hearing and not later than one month after the service of the replies.

(3) On the date of the hearing all the persons served with a reply shall have a right to be present and make further submissions in favour or against any application made in accordance with article 16. In such submissions the Constitutional Court shall forbid anything that is merely a repetition of what is contained in the applications and the replies.

(4) The Constitutional Court shall hear all submissions on the day fixed for the hearing, and if there is not sufficient time on that date it shall adjourn the hearing to the next day, not being a Saturday, Sunday or a public holiday, and shall so continue hearing all submissions until all submissions have been made.

(5) After all submissions have been made in accordance with sub-article (4), the Constitutional Court shall adjourn the hearing of the applications to a date not later than one month when it shall deliver its decision.

(6) Where no date has been appointed for the hearing of submissions the Constitutional Court shall, within the time referred to in sub-article (2), cause to be published a date being not later than two months after the date of service of the replies, on which it shall deliver its decision.

(7) On the date fixed for the delivery of the decision the Constitutional Court shall decide whether any of the grounds for not holding of the referendum exists and if no such grounds exist it shall decree that the referendum may be held. Where the Constitutional Court decides that grounds exist for not holding the referendum such referendum shall not be held, and the Electoral Commission, upon the service of a copy of the judgment upon it,

shall cause a notice to that effect to be published in the Gazette.

Date for polling in referendum. *Amended by: XIX. 2002.2.*

18. (1) A copy of the decision of the Constitutional Court shall be delivered personally to the President of Malta by the Registrar not later than ten days after its delivery, and thereupon the Registrar shall publish a notice in the Gazette stating the date when the copy was so delivered to the President.

(2) Where the Constitutional Court has decided that a referendum may be held, the President shall fix a day for it, being a date not earlier than three months and not later than six months after the copy of the decision of the Constitutional Court shall have been delivered to the President in accordance with sub-article (1), and the President shall issue a writ in accordance with this Act accordingly.

Where referendum shall not be held. *Amended by: XIX. 2002.2.*

19. (1) Notwithstanding any other provision of this Part, a referendum under this Part shall not be held if -

(*a*) the provision upon the repeal of which a referendum was to be held has, before the date fixed for polling, been amended or repealed; or

(*b*) between the handing of the copy of the decision of the Constitutional Court and the date fixed for polling, Parliament is dissolved.

(2) Where a referendum is not to be held in accordance with sub-article (1) the President of Malta shall issue a Proclamation accordingly.

Result of referendum. *Amended by: XIX. 2002.2.*

20. (1) Where the majority of voters, voting in a referendum under this Part, approve the proposal regarding the provision of the enactment the repeal of which is requested, the said provision shall no longer have effect and the President of Malta shall issue a Proclamation accordingly:

Provided that such proposal shall be deemed not to have been approved if less than fifty per cent of those entitled to vote in the referendum plus one, will have cast their vote.

(2) Where the majority of voters have not approved a proposal as is referred to in sub-article (1), the relative provision of the enactment shall continue to have effect, and no new declaration as provided in article 14 with respect to the same provision may be made before the lapse of two years from the publication of the result of the referendum.

PART VI

Amended by: XIX. 2002.2.

MISCELLANEOUS AND PENAL PROVISIONS

Appropriation of moneys required for the purposes of this Act. *Amended by: XIX. 2002.2.*

21. (1) The Minister responsible for finance may, from time to time, by warrant under his hand addressed to the Accountant General, authorise and direct that all such moneys as may be necessary for meeting any expense required to be incurred in the carrying out of the provisions of this Act be paid out of the Consolidated Fund without any further appropriation than this Act.

(2) A statement of the amounts so paid shall, as soon as practicable, be laid on the Table of the House.

General penalty. *Amended by: XIII. 1983.5; XIX. 2002.2; L.N. 411 of 2007.*

22. Save as otherwise expressly provided in this Act or in any other law, any person who contravenes or fails to comply with any provision of this Act, which he is by this Act required to observe or comply with, shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than four euro (4) and not exceeding one hundred and fifteen euro (115).

Added by:
VIII. 1996.9.
Amended by:
XIX. 2002.2;
L.N. 426 of 2012.

FIRST SCHEDULE

[ARTICLE 14]

REFERENDA ACT

Declaration for the Holding of a Referendum

We the undersigned persons being persons registered as voters for the election of members of the House of Representatives (the first *(1) .....persons undersigned being the proposers) demand that the question whether the following provisions of law, that is to say *(2)

.....
.....
.....
.....

should not continue in force shall be put to those entitled to vote in a referendum under Part V of the Referenda Act.

Cap. 237.

Signature	Legally valid identification document number.	Address	Electoral Division

Notes:

(1) a number not being less than five and not more than ten being proposers in terms of article 15(2) of the Referenda Act.

Cap. 237.

(2) insert here the details of the provisions on which the question is to be put.

SECOND SCHEDULE

Added by: XIX. 2002.9.

[ARTICLE 10]

Provisions regulating the Conduct of Referenda

1. In this Schedule: Interpretation.

"Act" means the General Elections Act; and Cap. 354.

"Ordinance" means the Electoral Polling Ordinance. Cap. 102.

2. The Act shall apply to referenda as if: Application of Act.

(1) unless otherwise determined by the Electoral Commission because of their context, references therein to "election" "general election" or "election of the Members of the House" were references to "referendum";

(2) the definition of "political party" in article 2(1) thereof were substituted by the following:

" "political party" means any person or group of persons who, having contested the general election under one name, is represented in the House by at least one member.";

(3) the reference to "the number of electoral divisions being contested by it" in article 61A(1) thereof were a reference to the number of electoral divisions involved in the referendum;

(4) the words "set out in Schedule 8(B) of this Act" in article 68(3) thereof were deleted;

(5) article 71 thereof were substituted by the following:

"71. (1) Each voter shall have one vote and shall indicate his choice by placing on the ballot paper an "X" or other mark either over the box indicating an affirmative vote or over the box indicating a negative vote:

Provided that a vote shall not be invalid if the mark is not over the box but is placed in such manner that in the opinion of the Commission it clearly indicates the choice of the voter.

(2) A ballot paper shall be invalid in which:

(*a*) an "X" or other mark indicating the choice of the voter is not placed; or

(*b*) an "X" or other mark indicating the choice of the voter is placed over both boxes; or

(*c*) it cannot be determined with certainty over which box the "X" or other mark is placed; or

(*d*) any writing or mark is placed by which the voter can be identified; or

(*e*) the official mark of the Commission is not made.";

(6) in article 72(4) thereof the words from "and following the procedure" to the end thereof were substituted by the words "after the Assistant Commissioner has read to the voter the question put and asked him whether he would like to vote "Yes" or "No".";

(7) article 77(2) thereof were substituted by the following:

"(2) A mixed polling place is a polling place which contains a ballot box in which the voters mentioned in sub-article (4)(*a*) and (*b*) shall vote.";

(8) in article 86(10) thereof the period of preservation of the papers and documents therein mentioned were five years from the day of publication of the official results;

(9) in article 89(2) thereof the words "the number of candidates presented by it to contest the election" were substituted by the words "the number of counters being used by the Commission at any one time";

(10) in article 107(1) thereof the period for which the papers shall be kept were five years from the date of the referendum;

(11) in articles 108 and 115(1) thereof the words from "the right of any person" to the words "to the House" were substituted by the words " the legality of the referendum";

(12) in the Sixth, Tenth and Eleventh Schedules thereto for the words "an election of Members of the House of Representatives" wherever they occur there were substituted the words "a referendum";

(13) the Thirteenth Schedule were amended as follows:

(*a*) regulations 2, 7(3) and (4), and 8 to 22, both inclusive, were deleted;

(*b*) in regulation 3 the words "first preference" were substituted by the word "mark";

(*c*) in regualtion 4(5) the words "indicating the candidate to which the first preference has been given" were substituted by the words "indicating the choice of the voter"; and

(*d*) in regulation 7 references to "candidates" and "trays" were references to the choice given to the voter between a "Yes" and a "No" vote;

(14) articles 15 to 44, 45(a), 49(3) to (8), 51 to 55, 60, 68(2), 71(1) to (3), 104(2) to (4), 105(2), 106(3), 107(3), 109 and 112(1)(*a*), and the Second, the Third, the Fourth, the Fifth, the Eighth, the Eighth (B), the Ninth and the Twelfth Schedules thereof were deleted; and

(15) all references therein to "electoral divisions", "candidates", "transfer of votes" and "first preference"

were deleted.

Application of Ordinance.

3. The Ordinance shall apply to referenda as if articles 41 to 52 and 58 to 62 thereof were deleted and references therein to "election" and "election of a Member of the House" were references to "referendum".".