



Towards Higher Standards in Public Life

*Proposals to Modernise the Provisions
of the Constitution on Parliament,
the Judiciary and Public Administration*

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Glossary

Appointment on transfer	As proposed in this report: a lateral move from one job to another within public administration.
Appointment on trust	The engagement of a person without a call for applications, usually but not always (according to current practice) for service in a minister's private secretariat.
Backbench MP	A member of Parliament who is not a minister or a parliamentary secretary.
Constitutional commissions	The Electoral Commission, the Public Service Commission, the Broadcasting Authority and the Employment Commission.
Disciplined forces	The Armed Forces of Malta, the Malta Police Force and the Correctional Service.
Head of department	A public officer in charge of one of the government departments that are listed in the second schedule of the Public Administration Act (chapter 595 of the laws of Malta).
Government agency	A type of public entity that can be established by means of a legal notice under the Public Administration Act.
Independent bodies within the Parliamentary Service	As proposed in this report: the National Audit Office, the Office of the Ombudsman, and the Office of the Commissioner for Standards in Public Life.
Judicial Service	As proposed in this report: the service of the judiciary. To be separate from the Public Service and to consist of officers of the Courts.
Officers of the Courts	As proposed in this report: members of staff of the Courts of Justice (not including judges and magistrates).
Officers of Parliament	As proposed in this report: members of staff of the House of Representatives, together with the Auditor General, the Ombudsman, the Commissioner for Standards in Public Life and their respective staffs.
Officially appointed bodies	Government-appointed boards, committees, commissions, councils or panels, including the governing boards of public entities.
Parliament	Used interchangeably with "House of Representatives" in this report, although the Constitution defines Parliament as the President of Malta and the House of Representatives.

Parliamentary Service	The service of the legislature. No longer part of the Public Service.
Permanent Secretary	The most senior public officer in a ministry.
Person of trust	A political appointee, or a person holding an appointment on trust. Official government terminology distinguishes between “persons of trust”, persons in “positions of trust”, and persons holding “contracts of service”. In this report the term “person of trust” includes all of these.
Public entities	Statutory authorities and corporations, government agencies, government-owned companies and foundations, and any other bodies that belong to or are controlled by the government but are legally separate from it. Does not include ministries and departments, which are part of the government. Most public entities are employers in their own right and their employees are not government employees.
Public employee	As proposed in this report: an employee of the government or any other body in public administration, including Parliament, the Courts of Justice, disciplined forces and public entities. Does not include ministers, members of Parliament, judges and magistrates, and members of officially appointed bodies.
Public office	A job in the Public Service.
Public officer	A government employee in a civil capacity, that is to say excluding members of the Armed Forces of Malta.
Public Service	The service of the government in a civil capacity. Made up of public officers.

Executive Summary

This report sets out detailed proposals for constitutional reform that are aimed at improving standards in public life by strengthening Parliament and the judiciary, reinforcing the principle of merit in appointments, and putting public administration on a more solid footing.

Among other things, this report proposes that members of Parliament should be disqualified from the House of Representatives if they accept contracts of any kind from the government or from public entities. The Constitution already provides for the disqualification of MPs who accept government contracts to carry out works or supply goods. This disqualification is inadequate and needs to be broadened if Parliament is to be made more independent from the executive.

It is also proposed that persons of trust and members of boards, committees and other officially appointed bodies should be disqualified from serving as MPs. These appointments are at the discretion of the government, so again the appointment of MPs to such posts undermines the independence of Parliament.

This report proposes that judges and magistrates should be selected on merit following public calls for expressions of interest aimed at filling specific vacancies in the judiciary. This would ensure that the best person for each vacancy is appointed, as opposed to the current system which eliminates unacceptable candidates but gives the government unfettered discretion to choose from among the remainder. The revised system should apply to all judicial appointments, and to adjudicators in tribunals and other quasi-judicial bodies. The government should retain the power to overrule the selection process in exceptional instances, but any such cases should be publicised and justified.

This report also proposes that all employees in public administration should be classified in six categories: public officers; officers of Parliament; officers of the courts; members of disciplined forces; employees of public entities; and persons of trust. As this indicates, the report proposes that the Constitution should cater for appointments on trust, but only in ministers' secretariats. Appointments elsewhere in public administration should as a general rule be made according to the principle of merit.

The principle of merit should be clearly defined. The Public Service Commission should be empowered to enforce its application throughout public administration, not only in the Public Service as is currently the case. In reflection of this the Commission should be retitled Public Services Commission (in the plural).

In addition, certain appointments should be made by the President on the basis of a parliamentary resolution supported by at least two thirds of MPs. The Auditor General, the Ombudsman and the Commissioner for Standards in Public Life are already appointed by means of this mechanism, although it is only in the case of the Auditor

General that the mechanism is enshrined in the Constitution. The report proposes that the Constitution should provide for the appointment and functions of all three officials. Furthermore, the same mechanism of appointment should apply to the chairpersons of the Public Services Commission and other constitutional commissions, as well as the heads of the Armed Forces, the Police and the Security Service.

The report proposes that Permanent Secretaries, who are the most senior public officers in ministries, should be appointed by the President on the basis of merit, but the Prime Minister should have the right to object to any particular appointment. If the President accepts the Prime Minister's objection, another selection process would be held to fill the post in question. This system is based on that used to select top civil servants in the United Kingdom and New Zealand. It would make Permanent Secretaries better able to fulfil their obligation to uphold legal and ethical standards in the management of the departments and entities under their supervision.

Annex 2 in this report sets out draft constitutional amendments that are based on these proposals. This is intended to give those responsible for vetting submissions on constitutional reform a better understanding of the proposals in this report, and to show how the proposals can be incorporated in the text of a revised Constitution.

1 Introduction

1.1 The Constitution and ethical standards

1.1.1 The Standards in Public Life Act (chapter 570 of the laws of Malta) was brought into force on 30 October 2018, and the first Commissioner for Standards in Public Life took his oath of office on 12 November 2018. The aim of the Commissioner is to improve ethical standards in Maltese politics and government. Since his appointment he has repeatedly encountered constitutional issues in his work.

1.1.2 Malta's Constitution, like that of any other country, does more than establish the country's governing institutions. The Constitution underpins ethical standards in public life. The Constitution does not spell out these standards in detail, but it shapes them and shores them up by means of the general principles that it sets out and the safeguards by which it seeks to uphold those principles. Clear principles and strong safeguards lead to higher standards. Unclear principles and weak safeguards lead to lower standards. Malta's Constitution needs to be strengthened in these respects.

1.1.3 For example, it has emerged from a case investigated by this office that all backbench members of Parliament on the government side work for the government in one capacity or another: as consultants, as members of officially appointed bodies, or as persons of trust in ministers' secretariats.¹ Such appointments blur the distinction between the executive and the legislature and place MPs in a conflict of interests. Democratic principles require that Parliament should be capable of holding the government to account, but Parliament cannot fulfil this role effectively if backbench MPs are financially dependent on the government.

1.1.4 The Constitution does contain provisions aimed at maintaining the independence of the legislature, but they are inadequate. The Constitution debar members of Parliament from accepting government contracts for works or the supply of merchandise to be used in the service of the public. But it does not mention contracts for the provision of services. Furthermore, the prohibition applies only to contracts with the government. Public entities – bodies in the wider public sector, such as statutory authorities, government agencies, and government-owned companies and foundations – are legally distinct from the government. There is nothing to stop the government from placing contracts with MPs through such entities.

1.1.5 In its report on Malta of December 2018, the Venice Commission expressly addressed the issue of conflicts of interests on the part of members of Parliament. The Commission recommended that the relevant constitutional provisions should be

¹ Case report K/002, dated 5 July 2019. Available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K002-EN.pdf>.

strengthened and the rules governing the engagement of MPs by the government or other public bodies should be tightened. The Commission said that “The newly appointed Commissioner of Standards could act as a catalyst in this regard.”²

1.1.6 The authors of this report accordingly feel a responsibility to contribute to amendments to the Constitution that will help improve standards in public life. For this reason they welcomed the President’s call for submissions on constitutional reform and were keen to respond. They have sought to do so in a comprehensive manner by means of this report.

1.1.7 The remit of this office according to the Standards in Public Life Act is limited to ministers, parliamentary secretaries, members of Parliament, and persons of trust as defined by the Act. However, measures to improve standards in public life should encompass other state actors. The judiciary, like the legislature, must be freed from undue dependence on the executive. Judges and magistrates do not depend on the government for their livelihood as many MPs do, and they have security of tenure, but they are still chosen by the government.

1.1.8 Constitutional amendments in 2016 sought to limit the discretion of the government in judicial appointments, but to very limited effect. There is no requirement for appointments to be based on merit in the sense that the best available candidate is chosen for each judicial vacancy. Even worse from the point of view of judicial independence, promotions within the judiciary – from magistrate to judge and from judge to Chief Justice – remain entirely at the discretion of the government.

1.2 Ethical standards in public administration

1.2.1 The provisions of the Constitution on public administration have a direct bearing on ethical matters. This report has already noted how the provision barring MPs from accepting certain contracts with the government is weakened through disregard of the wider public sector. To take another example, the Constitution seeks to strengthen the independence of watchdog bodies like the Broadcasting Authority by stipulating that public officers (non-military government employees) cannot be appointed as members. Once again the Constitution places no such restriction on the employees of public entities.

1.2.2 The wider public sector was still in its infancy at Independence, so it is no surprise that it is not properly recognised by the Constitution. But statutory bodies and government-owned companies, foundations and agencies now represent important components of Maltese public administration. This should be reflected in a revised and modernised Constitution.

² Venice Commission (European Commission for Democracy Through Law), *Malta: Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement* (Strasbourg: Council of Europe, 17 December 2018), p. 20.

1.2.3 Another issue arising from the constitutional provisions on public administration is that of persons of trust. This is a contentious matter that needs to be addressed with urgency.

1.2.4 Many persons of trust are governed by the Standards in Public Life Act and subject to investigation by this office, but only in so far as their *conduct* is concerned. Their *appointment* is not regulated by law. Indeed there is a widespread view, which this office shares, that appointments on trust are unconstitutional.

1.2.5 There is undoubtedly a legitimate need for ministers to staff their own secretariats with people they trust. The Constitution should cater for appointments on trust, but within strict limits. MPs should not be eligible for such appointments. Nor should posts in government departments and public entities be filled on the basis of trust, because this would undermine the political impartiality of Maltese public administration.

1.2.6 This office was therefore encouraged to find, during its investigations on a case involving a person of trust, that government policy precludes persons of trust from carrying out executive functions.³ Later on, however, it emerged that there is a new category of appointments on trust known as “contracts of service”. Those appointed in this category are not precluded from carrying out executive functions. To compound the issue, this category too includes members of Parliament.⁴ This highlights the need to properly regulate appointments on trust and to strengthen the provisions of the Constitution that require public employees to be appointed on the basis of merit.

1.2.7 It is difficult to consider the application of the merit principle to the appointment of rank-and-file public employees without also considering Permanent Secretaries and other top officials, many of whom are currently appointed at the discretion of the government of the day. Permanent Secretaries are expected to uphold the law and ethical standards in the management of the departments and entities under their supervision. This might mean objecting to instructions from above that are illegal or unethical. However, their ability to fulfil this role is constrained by the fact that they owe their appointments directly to the government of the day. If top officials do not withstand pressures to act in irregular or unethical ways, neither will their subordinates.

1.3 The structure of public administration

1.3.1 These issues have prompted the authors of this report to consider whether the basic structure of public administration as set out in the Constitution is adequate for present-day circumstances. Another issue pointing in the same direction is this office’s

³ Case report K/003, dated 12 April 2019. Available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K003.pdf>.

⁴ Case report K/002 (see footnote 1 above), pp. 14–15.

own ambiguous situation in that the Commissioner for Standards in Public Life reports to the House of Representatives, like the Auditor General and the Ombudsman, but unlike them he is not designated by law as an officer of Parliament.

1.3.2 When one considers the structure of public administration, a number of anomalies in the relevant provisions of the Constitution are brought to light. For instance:

- The Constitution provides for the establishment of a Parliamentary Service as the service of the legislature, separate from the Public Service which is the service of the executive. But although the Ombudsman and the Auditor General are officers of Parliament, they are not part of the Parliamentary Service and neither are their staff.
- The Ombudsman and the Auditor General are designated officers of Parliament to emphasise their independence from the government. Yet the Auditor General is concurrently designated a public officer (or an employee in the service of the government).
- Article 124(2) of the Constitution similarly classifies judges and magistrates as public officers. This is clearly inappropriate.
- Given that there is a separate service for employees of the legislature, should there not also be a Judicial Service for the employees of the judicial branch of the state?
- The jurisdiction of the Public Service Commission, an independent body established by the Constitution to uphold the principle of merit in staffing, is limited to public officers. Here too, the Constitution does not cater for the wider public sector.
- Persons of trust are not considered government employees even though they are employed by the government. This is a matter of convention rather than law since, as already noted, the Constitution does not cater for appointments on trust. However, a revised Constitution should resolve this as well as the other anomalies listed here.

1.3.3 Resolving these anomalies requires the structure of public administration to be rethought from first principles. Fundamental questions need to be asked about how to organise the machinery of the state, how to classify public employees, and how to regulate appointments in public administration. This report embodies an attempt at such a rethinking.

1.3.4 This report draws on the personal experience of the Commissioner for Standards and the Director General in his office. In its scope the report extends beyond the Commissioner's legal jurisdiction: it can do so since it is not the outcome of a formal investigation under the Standards in Public Life Act. However, this report does not present an all-encompassing blueprint for change to Malta's Constitution. It does not address key issues such as how the President should be chosen or whether the

President's role should be expanded. It touches on the latter issue only in connection with top appointments in public administration.

1.4 How this report is organised

1.4.1 This report is structured as follows.

- **Chapter 2** deals with Parliament. It proposes to strengthen the constitutional safeguards against conflicts of interest and ethical misconduct with respect to members of Parliament. It also proposes that the National Audit Office, the Office of the Ombudsman and the Office of the Commissioner for Standards in Public Life should be formally recognised as independent bodies within the Parliamentary Service.
- **Chapter 3** deals with the judiciary. It proposes that the mechanism by which judges and magistrates are appointed should be genuinely based on merit and it should apply to all judicial appointments. This chapter also proposes the establishment of a Judicial Service in parallel with the Parliamentary Service.
- **Chapter 4** proposes a definition of the term “public employee” that covers all staff in public administration. This facilitates the application of relevant provisions in the Constitution (for example, provisions on ethics) to all such employees where necessary. This chapter also deals with limitations on political involvement by public employees.
- **Chapter 5** addresses the principle of merit in staffing. This chapter presents proposals to better define the merit principle, to make it applicable throughout public administration (with the exception of persons of trust), and to ensure that it is upheld. This chapter also deals with lateral appointments within public administration.
- **Chapter 6** covers appointments to senior positions. This chapter proposes that the heads of independent watchdog bodies, the chairpersons of constitutional commissions and the heads of bodies concerned with security and public order should be appointed by the President on the basis of a two-thirds majority resolution of Parliament. This chapter also proposes that other senior appointments should be made on merit.
- **Chapter 7** deals with appointments on trust. It shows how the Constitution can explicitly cater for such appointments while, at the same time, setting clearly defined limits within which persons on trust can operate.

1.4.2 The proposals in this paper are reproduced together in **Annex 1**, which also cross-references them to the amendments presented in Annex 2.

1.4.3 Presenting proposals for constitutional change is one thing. Converting them into legal provisions capable of being incorporated in a revised Constitution is another. **Annex 2** presents draft constitutional amendments based on the proposals in this

report. The amendments have been drafted to show how these proposals can be given legal form, and to give those responsible for vetting submissions to the President on constitutional reform a fuller, more detailed understanding of what is being proposed in this report. If any of these proposals are accepted, the drafters of a revised Constitution would have a ready point of reference when preparing legal provisions based on them.

1.4.4 Annex 2 also includes several minor amendments to the Constitution that are consequential to or follow on from the proposals in the report proper. These have been included to make a complete package of the draft amendments, but they are not discussed in the report proper so as not to weigh it down with detail. They are explained as necessary in Annex 2 itself.

1.4.5 Parts of this report draw on a 25-page research paper prepared four years ago by the Director General of this office in a previous capacity. The research paper gave the authors of this report a foundation on which to build once a decision was taken to present submissions on constitutional reform. The proposals in the original paper have been reviewed, updated in the light of recent developments, and in some cases extensively changed. New material has been added to address issues encountered by this office during the investigation of cases. These revised proposals then served as the basis for the drafting of the constitutional amendments that are presented in Annex 2.

2 Strengthening the Independence of Parliament

2.1 The award of government contracts to members of Parliament

2.1.1 Articles 53 and 54 of the Constitution set out qualifications for membership of Parliament. Among other things, article 54 states that individuals are not eligible for election to the House of Representatives if –

- (a) they are party to contracts with the government to carry out works or supply goods to be used in the service of the public; or
- (b) they are partners with unlimited liability in a partnership, or directors and managers of a company, which has such a contract.

2.1.2 Article 55 applies the same disqualifications to sitting members of Parliament, meaning that MPs can lose their seats if they are in breach of the provisions in question.

2.1.3 Candidates for election to Parliament and sitting MPs who directly or indirectly hold a government contract as described above can be exempted from disqualification if they disclose details of the contract and their interest in it. Candidates gain exemption if they publish this information as a notice in the Government Gazette before the election. Serving MPs must disclose the necessary information to the Speaker, whereupon Parliament can pass a resolution to exempt them from disqualification on account of the contract.

2.1.4 Articles 54 and 55 of the Constitution are intended to prevent backbench MPs from becoming financially dependent on the executive, because this would compromise the independence of Parliament and undermine its ability to hold the government to account. Since the government, by definition, has a majority in Parliament, the ability of Parliament to hold any government to account is critically dependent on the willingness of backbench MPs on the government side to follow their conscience rather than the party whip on matters of principle.

2.1.5 However, articles 54 and 55 have a number of shortcomings. As mentioned in the introduction to this report, the disqualification does not extend to contracts for the provision of services. Members of Parliament are far more likely to be awarded contracts for services than contracts for works or the supply of goods.

2.1.6 The Independence Constitution prohibited members of Parliament from accepting any type of government contract, whether directly or through partnerships or companies. But on 6 December 1976 the House of Representatives passed a motion exempting Paul Xuereb MP from the disqualification so that he could be appointed chairman of Mid-Med Bank Ltd, which had various commercial dealings with the government. On the same day the House amended the Constitution by means of Act XXXVIII of 1976, which introduced the current wording to the disqualification on

contracts. The rationale for this amendment was that there would have been no need to exempt Mr Xuereb had it already been in place.⁵

2.1.7 In addition, this disqualification refers only to contracts awarded by the government. It makes no mention of contracts awarded by statutory authorities, government-owned companies and other public entities, which are legally distinct from the government.

2.1.8 If the disqualification relating to contracts is too narrow in these respects, it is also too wide in another respect. It applies to both directors and managers of limited liability companies. This is understandable in the case of directors and chief executives, but “manager” is too broad and imprecise a term. A manager in a large company might be disqualified from election to Parliament on account of a contract that he or she was not involved in or even aware of.

2.1.9 It is therefore proposed that –

- (a) persons who hold any type of contract with the government, not just contracts of works or contracts for the supply of goods, should be disqualified from being elected to and serving in Parliament, unless they disclose information about the contract before being elected or, in the case of serving MPs, unless they are exempted from the disqualification by a parliamentary resolution;
- (b) this disqualification should, in addition, extend to contracts with public entities; and
- (c) the disqualification should apply also to partners with unlimited liability in partnerships that hold such contracts, and to directors or chief executives of companies that hold such contracts, but not to lower-level managers.

2.2 The eligibility of members of Parliament for appointments in public administration

2.2.1 The argument that backbench MPs should not be financially dependent on the government also applies to the appointment of MPs to posts in public administration. Here, however, a distinction should be made between regular employment with the government or a public entity on the one hand, and appointments on trust or appointments as members of officially appointed bodies on the other.

2.2.2 Articles 54 and 55 of the Constitution preclude public officers (government employees in a civil capacity) or members of the Armed Forces of Malta from being elected to Parliament and serving as MPs. However, this disqualification allows Parliament to introduce exceptions by law. Parliament has done so by means of the Members of Parliament (Public Employment) Act of 2004 (chapter 472 of the laws of

⁵ Case report K/002 (see footnote 1), pp. 13–14.

Malta). Under this Act public officers can be elected to Parliament if they are in salary scale 6 or lower.⁶

2.2.3 The Members of Parliament (Public Employment) Act does not apply to members of the Armed Forces or other disciplined forces such as the Police, meaning that such persons remain disqualified from Parliament whatever their rank or salary. Still, the Act is arguably so broad that it turns the exception permitted by the Constitution into the rule. But it is in keeping with the letter if not the spirit of the Constitution.

2.2.4 The disqualification relating to employment makes no reference to public entities, meaning that there is nothing to prevent employees of such entities from being elected and serving as MPs. Such entities account for around one third of total public sector employment and several of them function in sensitive areas where it is particularly important for officials to be, and to be seen to be, politically impartial. The case for such officials to be disqualified from election to Parliament is just as strong as it is with respect to government employees proper.

2.2.5 This does not mean that all public employees should be disqualified from Parliament. Total employment in government and the wider public sector amounts to approximately a quarter of the labour force in Malta. Such a large number of people should not be deprived *en masse* of their right to contest general elections and serve in Parliament. Thus while restrictions on election to Parliament should apply to public officers and employees in the wider public sector alike, the restrictions should be applied selectively in both areas. Employees should face restrictions only where this is necessary because of the nature of their duties or the functions of their organisation. This ties in with articles 41 and 42 of the Constitution regarding freedom of expression and freedom of association, and is further elaborated on in section 4.4 of this report.

2.2.6 Members of Parliament should also be precluded from accepting appointments as chairpersons and members of boards, committees and other officially appointed bodies, including the governing boards of statutory authorities and other public entities. Often, a reason why state functions are entrusted to officially appointed bodies is to place the discharge of those functions at arm's length from the government. But besides making MPs financially dependent on the government, such appointments politicise the bodies in question and diminish their autonomy from the government.⁷

2.2.7 While the Constitution does not disqualify MPs from serving on officially appointed bodies, it was common practice to include a provision to this effect in the legislation establishing each such body. However, Act X of 2013 amended a number of

⁶ Public officers are classified in a 20-scale salary structure in which scale 1 is the highest and scale 20 the lowest, so the Members of Parliament (Public Employment) Act applies to public officers in salary scales 6 to 20 while those in scales 1 to 5 remain disqualified from Parliament.

⁷ Case report K/002, p. 17.

laws governing officially appointed bodies to make possible the appointment of MPs as chairpersons or members of the bodies in question. The basis on which it was decided to permit the appointment of MPs to particular bodies is at best unclear.

2.2.8 As noted in the introduction, persons appointed on the basis of trust are not regarded as government employees even though they hold contracts of employment. The provision of the Constitution whereby public officers are disqualified from serving as members of Parliament is thus widely interpreted as not referring to persons of trust. For this reason, it bears specifying that members of Parliament should be precluded from accepting appointments on trust.

2.2.9 The most likely reason why members of Parliament are engaged by the government as members of officially appointed bodies or as persons of trust, as well as through contracts for services, is as a form of consolation for MPs who are not made ministers, or simply to supplement the salary of backbench MPs, which is widely regarded as being too low. This office has already expressed the view that one way of addressing the issue of MPs' salaries and making a career in politics more attractive would be to give MPs the option of serving on a full-time basis, with a salary commensurate with their status and responsibilities.⁸ However, this is not a matter of constitutional reform. The relevant issue from the viewpoint of constitutional reform is that the executive should not be able to award contracts or appointments to backbench MPs because this practice undermines the independence of Parliament.

2.2.10 The argument that all persons of trust and members of officially appointed bodies should be disqualified from serving as MPs might, at first glance, appear to contradict the earlier argument that regular public employees should be disqualified from Parliament only on a selective basis. The key difference is that while appointments to boards and committees and appointments on trust are at the discretion of the executive, and thus create a sense of obligation on the part of those so appointed, other posts in government and the wider public sector are (or should be) filled on merit. Appointments on merit do not create the same sense of obligation on the part of appointees because the appointees obtain such appointments on the strength of their own skills and abilities. Proposals to reinforce and extend the merit principle are set out in chapter 5 of this report.

2.2.11 This does not mean that no conflicts of interest can arise if a person employed in public administration on the basis of merit is elected to Parliament. For instance, the employee's superiors might grant him or her greater disciplinary latitude than other employees out of a fear of antagonising an MP who might one day become their minister. Or the employee might become his or her party's spokesperson on the sector in which he or she works, raising questions about possible misuse of sensitive information on his or her part. On balance, however, these considerations are not sufficient to justify disqualifying persons employed in public administration on the basis

⁸ Case report K/002, p. 18.

of merit from election to Parliament unless those persons are required to be politically impartial by the nature of their duties or the functions of their organisation.

2.2.12 With these considerations in mind, it is proposed that –

- (a) persons of trust and members of officially appointed bodies should be disqualified from Parliament; and
- (b) public employees who are appointed on merit should be disqualified from Parliament if the duties of their posts, or the functions of their employing organisation, justify restrictions on political participation.

2.2.13 The disqualification deriving from membership of officially appointed bodies should not apply in cases where the law requires MPs to be appointed to such bodies as representatives of the government and the opposition. MPs currently serve in such a capacity on the boards of the Planning Authority and the Lands Authority.⁹

2.2.14 The Constitution lacks a term such as “public employee” which can be used where appropriate as a shorthand reference to all employees in public administration. The addition of such a term would counteract the Constitution’s excessive focus on public officers and its tendency to disregard the wider public sector. This issue is taken up in chapter 4.

2.3 Disqualification from Parliament for misconduct

2.3.1 Under article 55 of the Constitution a serving member of Parliament can lose his or her seat due to misconduct, but only in a very restricted set of circumstances. Essentially, MPs can lose their seats if:

- (a) they are absent from the House of Representatives for the length of time prescribed by the Standing Orders of the House;
- (b) they are found by the Constitutional Court to have given false information about their election expenses or to have spent more than the amount allowed by law;
- (c) they are convicted of an election-related offence; or
- (d) they are sentenced to prison for any other crime.

2.3.2 In connection with the first point, Standing Order 157 states that an MP who is absent from Parliament for two months without the Speaker’s authorisation loses his or her seat.

⁹ See article 63(2)(d) of the Development Planning Act (chapter 552 of the laws of Malta) and article 10(1) of the Lands Authority Act (chapter 563).

2.3.3 Under Standing Order 64, an MP can be suspended on a motion of Parliament for disregarding the Speaker's authority or persistent misconduct in the House. Such a suspension would last for a week in the first instance, a fortnight in the second instance and a month in subsequent instances. MPs cannot be suspended for longer than a month.

2.3.4 The Standards in Public Life Act (chapter 570 of the laws of Malta) obliges members of Parliament to abide by a code of ethics. The Commissioner for Standards in Public Life can refer breaches of the code to a standing committee that is made up of two MPs from each side of the House and chaired by the Speaker. An MP who is found by the committee to be in breach of the code can be required to apologise, to pay the cost of any resources improperly used, or otherwise to rectify the breach. The committee can also recommend to Parliament that it should take "any other measure it may deem fit" in connection with that MP.¹⁰

2.3.5 Neither the Standing Orders nor the Standards in Public Life Act provide for an MP to lose his or her seat as a result of misconduct, and in any case they cannot do so unless the Constitution is amended to allow for the same possibility. As the law currently stands, Parliament would find itself in difficulty if a case of ethical misconduct is referred to it under the Standards in Public Life Act and the case is so serious that it is not enough for the MP to apologise or rectify the breach of ethics. Removal from Parliament should be possible as an ultimate sanction for gross misconduct, in addition to the current provisions of article 55.

2.3.6 It is accordingly proposed that the Constitution should provide for the possibility of MPs losing their seats if they are found to have committed misconduct serious enough to warrant such action. It should be up to Parliament to establish by law the mechanism by which this should be done, as long as the mechanism is independent. The disqualification of an MP for misconduct should depend only on the nature of the misconduct. It should not require a decision in Parliament, as is currently the case with suspensions under the Standing Orders, since this would make disqualification dependent on the political balance of forces in Parliament.

2.4 Officers of Parliament and the Parliamentary Service

2.4.1 Until 2016 the staff of Parliament were designated public officers, or Public Service employees. This was notwithstanding the fact that article 124(1) of the Constitution defines the Public Service as "the service of the Government of Malta in a civil capacity", which suggests that public officers serve only the executive branch of the state.

¹⁰ Article 28(d)(v) of the Standards in Public Life Act.

2.4.2 In the 1990s the concept of “officer of Parliament” emerged. This designation was first applied to the Ombudsman in 1995 by means of article 3 of the Ombudsman Act (chapter 385).

2.4.3 In 2010 the Ombudsman Act was amended to provide for the appointment of “commissioners” as investigators in specialised areas. There are at present three such commissioners covering health, environment and planning, and education. Like the Ombudsman, the commissioners are designated officers of Parliament.

2.4.4 In 1997 article 108 of the Constitution was amended to suppress the post of Director of Audit and establish in its place the posts of Auditor General and Deputy Auditor General. These two officials were designated “officers of the House of Representatives” to emphasise their independence from the executive. At the same time, however, they retained the designation of public officer that had previously applied to the Director of Audit.

2.4.5 In 2016 the Parliamentary Service Act (chapter 562) established a Parliamentary Service headed by the Speaker and consisting of the Clerk of the House of Representatives and other officers and employees of Parliament. The Act designated the Clerk and other parliamentary staff as “officers of the Service”. The Act also amended article 64 of the Constitution so parliamentary staff ceased to be designated public officers.

2.4.6 The concept of a separate service for staff of the legislative branch is now well established. However, it needs rationalisation. The existence of three separate terms to describe the same concept – officer of Parliament, officer of the House of Representatives and officer of the Parliamentary Service – is confusing. So is the fact that the concept applies to all staff in the House of Representatives but only to the topmost officials in the National Audit Office and the Office of the Ombudsman. This leaves the status of lower-level staff in these two bodies unclear.

2.4.7 It is therefore proposed that the term “officer of Parliament” should apply to all staff in the House of Representatives, the National Audit Office and the Office of the Ombudsman. All officers of Parliament should form part of the Parliamentary Service under the headship of the Speaker, although this should not infringe the autonomy of the Office of the Ombudsman and the National Audit Office. In addition, the Auditor General and Deputy Auditor General should no longer be designated public officers.

2.4.8 The Standards in Public Life Act of 2017 (chapter 570) established the post of Commissioner for Standards in Public Life. Among other things the Commissioner is charged with upholding a code of conduct for members of Parliament, and he reports to a standing parliamentary committee. He is an officer of Parliament in all but name, yet he does not formally bear this designation. This is an anomaly that should be resolved.

2.4.9 It is therefore proposed that the designation of officer of Parliament should apply also to the Commissioner for Standards in Public Life and the staff of his office. This presupposes that the Constitution should include provisions on the Commissioner, a matter addressed in the next section of this chapter.

2.5 Independent bodies within the Parliamentary Service

2.5.1 In 2007 the Constitution was amended through the addition of article 64A, which deals with the Ombudsman. This article says simply that there should be an Ombudsman to investigate actions taken by the government and state authorities, and leaves it to Parliament to make more detailed provision through ordinary law. The Office of the Ombudsman has published a document arguing that the role and powers of the Ombudsman should be better entrenched in the Constitution.¹¹

2.5.2 The Office of the Ombudsman proposes that the Constitution itself should provide for the method of appointment, the term of office, the security of tenure and the conditions of service of the Ombudsman, as well as the funding of his office, as it already does with respect to the Auditor General. The Ombudsman's Office also proposes among other things that the provisions on the Ombudsman and the Auditor General should be grouped together in a separate section of the Constitution immediately after the provisions regulating Parliament.

2.5.3 This report endorses both proposals. It is also of the view that this new section of the Constitution should cater for the Commissioner for Standards in Public Life.

2.5.4 It is therefore proposed that:

- (a) Chapter VI of the Constitution, which deals with Parliament, should include a new section entitled "Independent Offices of Parliament" dealing with the Ombudsman, the Auditor General and Deputy Auditor General, and the Commissioner for Standards in Public Life, along with their respective offices;
- (b) this section should set out the functions, the term of appointment and the conditions of service of each officer;
- (c) this section should also provide for the establishment of the Office of the Ombudsman, the National Audit Office and the Office of the Commissioner for Standards in Public Life as independent bodies within the Parliamentary Service.

2.5.5 The Ombudsman, the Auditor General, the Deputy Auditor General and the Commissioner for Standards in Public Life are all appointed by the President on the basis

¹¹ *On the Strengthening of the Ombudsman Institution: A Proposal by the Office of the Parliamentary Ombudsman* (Office of the Ombudsman, January 2014), pp. 13–15. Available at <https://www.ombudsman.org.mt/wp-content/uploads/2014/03/On-the-strengthening-of-the-Ombudsman-Institution.pdf>.

of a parliamentary resolution backed by at least two thirds of the members of the House of Representatives. All four officers are also subject to the same mechanism for the protection of their tenure. There should be a single standardised set of provisions applying to the appointment and tenure of all four officers. This issue is addressed in chapter 6 of this report, since the same provisions merit being applied to other posts.

2.6 Administrative autonomy of the Parliamentary Service

2.6.1 Article 64(2) of the Constitution grants the Speaker power to determine the staff complement of the Parliamentary Service (which, as currently defined, includes only staff of the House of Representatives), to appoint staff to the Service, and to set their terms and conditions of employment. This depends on approval of the staff complement by the Minister for Finance and the provision of funds, but is otherwise not subject to government control.

2.6.2 Article 108(10) grants the Auditor General broadly similar powers with respect to the National Audit Office. The Ombudsman and the Commissioner for Standards in Public Life have similar powers with respect to their own offices by virtue of the Ombudsman Act and the Standards in Public Life Act respectively. These powers are subject to the availability of funds as approved in the budget.

2.6.3 It is proposed that, in place of articles 64(2) and 108(10), there should be a single provision in the Constitution granting powers to appoint staff and to set terms and conditions of employment to the Speaker with respect to the House of Representatives, and to the heads of the independent bodies within the Parliamentary Service with respect to their own staff. These powers should be exercisable without any requirement for government approval, provided that available funds as approved by Parliament for each body are not exceeded.

3 Strengthening the Judiciary

3.1 The appointment of judges and magistrates

3.1.1 In March 2013 the government appointed a Judicial Reform Commission to review the functioning of the courts of justice. Among the matters considered by the Commission was how judges and magistrates should be appointed. The Commission proposed that there should be a Judicial Services Appointment Authority whose members should be appointed by the President, and which should be responsible for the selection of judges and magistrates.

3.1.2 The Commission proposed that the Authority should conduct a selection process on the basis of merit following a call for expressions of interest open to lawyers with the number of years of professional practice required by the Constitution. The selection process should be based on criteria such as integrity, knowledge of the law, diligence, and practice in court, and it should also include an assessment of any court submissions, decisions or reports prepared by candidates in the course of their professional work.

3.1.3 The Commission proposed that the Judicial Services Appointment Authority should make recommendations to the Minister for Justice for the appointment of judges and magistrates on the basis of the selection process. The government should have the right to disagree with a recommendation as long as it states why and as long as it has valid reasons, in which case it can request the Authority to reconsider.

3.1.4 The aim behind these proposals was to make the selection of judges and magistrates more transparent and to minimise the discretion of the government in judicial appointments. This would in turn strengthen the principle of separation of powers and make the executive more accountable.

3.1.5 The Judicial Reform Commission proposed that the same mechanism should apply to the appointment of adjudicators to tribunals such as the Small Claims Tribunal, as well as European and international courts and tribunals.¹²

3.1.6 Amendments to the Constitution in 2016 provided for the establishment of a Judicial Appointments Committee made up of the Chief Justice, the Attorney General, the Auditor General, the Ombudsman and the President of the Chamber of Advocates. The role of the Committee is to receive expressions of interest from individuals who would like to become judges or magistrates, to determine whether they are suitable for appointment, and to advise the Prime Minister accordingly. The Prime Minister can

¹² Kummissjoni għal Riforma Holistika fil-Qasam tal-Ġustizzja, *Rapport Finali* (30 November 2013), pp. 38–43. Available at <https://www.parlament.mt/media/75718/01985.pdf>.

disregard the Committee's advice, but in such a case he must publish a declaration in the Government Gazette and make a statement in the House of Representatives to say why he has done so.

3.1.7 These amendments represent a step forward by comparison with the previous system of almost unfettered executive discretion in judicial appointments. But they fall short in critical respects when set against the proposals made by the Judicial Reform Committee in 2013.

3.1.8 The system of evaluation adopted by the Judicial Appointments Committee is not tied to specific vacancies (actual or upcoming) within the judiciary, and it is not a competitive selection process. Each candidate is assessed in isolation, which makes it difficult for the Committee to set demanding standards for candidates to meet. The result is to present the government with a wide range of candidates from which to choose. If the government wishes to appoint an individual who is not yet on the Committee's list of approved candidates, it can simply prompt him or her to submit an expression of interest to the Committee, and in the case of approval by the Committee that individual could be appointed in preference to other candidates already approved and possibly better qualified. As things stand it makes no sense for a lawyer to express an interest in a judicial appointment unless that individual has the government's prior assurance of appointment.

3.1.9 The flaw in the system is also evident in the case of the appointment of serving magistrates as judges. The Committee can assess the suitability of magistrates for appointment as judge only if so requested by the Prime Minister. Serving magistrates cannot present their own names for consideration by the Committee. Magistrates who wish to become judges therefore remain entirely dependent on the executive for what is commonly perceived as a promotion.

3.1.10 Furthermore, the mechanism of scrutiny by the Judicial Appointments Committee does not apply to the appointment of the Chief Justice, which also remains within the Prime Minister's prerogative. Here again, judges who wish to be considered for the post of Chief Justice remain dependent on the executive. The system introduced in 2016 does not achieve the aim of greater separation of powers.

3.1.11 The system does not even make sense from the point of view of a legal practitioner who aspires to join the judiciary. It takes time for a lawyer to wind up his or her practice in order to become available for appointment as judge or magistrate. However, passing the evaluation by the Judicial Appointments Committee offers no guarantee of such an appointment, still less any indication of when it can be expected and if at all. Open-ended uncertainty is the only predictable outcome.

3.1.12 It is therefore proposed that:

- (a) the Judicial Appointments Committee should conduct its evaluation of candidates in relation to specific vacancies in the judiciary, whether actual or anticipated;

- (b) the Committee should issue a public call for expressions of interest for those specific vacancies, and its evaluation should be limited to candidates who respond to that call and who meet the eligibility requirements;
- (c) the aim of the evaluation should be to identify and recommend the candidates who are the most suitable for appointment to specific judicial vacancies on the basis of a ranking order according to merit;
- (d) although this is not a matter for the Constitution, the evaluation should draw on whatever techniques would best serve to assess candidates' suitability, possibly including the setting of written assignments and the use of psychometric tests.

3.1.13 It is also proposed that the Prime Minister should retain the option of not accepting the Committee's recommendation, in which case he should remain obliged to declare his reasons for doing so. However:

- (a) the system of evaluation on the basis of calls for expressions of interest as proposed above should apply to all judicial appointments, including the appointment of the Chief Justice and the appointment of serving magistrates to higher judicial office;
- (b) the system should also apply to adjudicators serving on any tribunals or other adjudicating authorities within the meaning of article 39 of the Constitution, except for those with respect to which the Constitution itself sets out a different method of appointment.

3.1.14 With respect to the first point, it is acknowledged that the Chief Justice sits on the Judicial Appointments Committee and would therefore play a part in choosing his or her successor. However, this is not seen as representing a conflict of interest since the Chief Justice would have no material interest in the outcome. Furthermore, the outgoing Chief Justice is only one of five members of the Committee.

3.1.15 The four members of the Judicial Appointments Committee who are officers of the state have security of tenure, while the remaining member is elected by lawyers rather than chosen by the government. This strengthens the independence of the Committee.

3.1.16 The Constitution provides for the substitution of members should they be unable to function as a result of abstention, challenge or any other reason. However, should one of the officers of the state who sit on the Committee be unable to carry out his or her functions as a result of abstention, challenge, or any other reason, the substitute would not necessarily have the same security of tenure. It is therefore proposed that the first choice as substitute member should be the Commissioner for Standards in Public Life, who also has security of tenure.

3.2 The status of judges and magistrates

3.2.1 Article 124(2) of the Constitution designates judges and magistrates as public officers. This is a relic of the times when the Public Service was seen as the service of all three branches of the state. But this conception of the Public Service is outdated now that, as discussed in chapter 2, staff of Parliament form part of a separate service. Members of the judiciary should no longer be classified as government employees.

3.2.2 Article 124(3) excludes ministers and members of Parliament from the definition of the term “public officer”. As a result they are not considered employees at all, even though they draw a state salary (this is known as an honorarium in the case of MPs). It is proposed that the same should apply to judges and magistrates.

3.2.3 This will draw a clear distinction between members of the judiciary and the staff of the judiciary, or officers of the Courts, who are the subject of the next section of this chapter. Officers of the Courts should be at the service of members of the judiciary in the same way that officers of Parliament are at the service of members of Parliament.

3.3 Establishing a Judicial Service

3.3.1 The Judicial Reform Commission recommended the establishment of an autonomous Judicial Service which would no longer form part of the Public Service.¹³ The Commission did not propose to bring this about through changes to the Constitution. Instead it recommended that a public authority should be established by law to manage the Judicial Service and take charge of the administration of the courts.

3.3.2 This recommendation was put into effect in modified form on 9 August 2019, when a Court Services Agency was established under the Public Administration Act.¹⁴ However, this approach appears anomalous when compared to the fact that the Constitution itself establishes a Parliamentary Service. For this reason it is considered preferable to establish a Judicial Service by means of constitutional amendments on lines broadly similar to the Parliamentary Service.

3.3.3 It is therefore proposed that:

- (a) the Constitution should establish a Judicial Service consisting of the staff of the Courts of Justice and any other bodies that might be established within the Judicial Service by law (for example, tribunals or other adjudicating authorities within the meaning of article 39 of the Constitution);
- (b) the staff of the Courts of Justice and any other bodies established within the Judicial Service should be designated “officers of the Courts”;

¹³ Kummissjoni għal Riforma Holistika fil-Qasam tal-Ġustizzja, *Rapport Finali* (previous footnote), pp. 109–112.

¹⁴ See the Court Services (Establishment as an Agency) Order (SL 595.34).

- (c) the Chief Justice should be the head of the Judicial Service, although staffing and discipline, being potentially contentious matters, should be in the hands of the Director General of the Courts of Justice so as not to involve the Chief Justice as a party in any legal proceedings that might arise from them; and
- (d) the Director General of the Courts of Justice should have the same latitude in appointing staff and setting terms and conditions of employment, always subject to the availability of approved funds, as that proposed for the Parliamentary Service in section 2.6 of this report.

4 Public Administration

4.1 The Public Service

4.1.1 As already noted in this report, article 124(1) of the Constitution defines the Public Service as “the service of the Government of Malta in a civil capacity”. The establishment of a separate Judicial Service in parallel with the Parliamentary Service, as proposed in the previous chapter, would result in the Public Service being reconceptualised in accordance with article 124(1).

4.1.2 A question that arises is whether a separate service should be established incorporating staff in the Office of the President, who are currently public officers. However, current arrangements appear appropriate since article 78(1) of the Constitution vests the executive authority of Malta in the President.

4.2 Disciplined forces

4.2.1 Chapter IV of the Constitution, which deals with fundamental human rights, includes a number of references to disciplined forces which indicate that – as the name implies, and as is proper – members of such forces may be subject to more stringent discipline than ordinary employees. Article 47 defines “disciplined force” to mean, in effect, the Armed Forces of Malta, the Malta Police Force and the Correctional Service. This definition does not cater for additions, except for “any other police force established by law in Malta”.

4.2.2 The Constitution considers the Armed Forces to be separate from the Public Service. This emerges from the reference to service “in a civil capacity” in article 124(1). However, article 124(2) specifies that members of the Police Force are part of the Public Service, even though police officers do not regard themselves as “civilians” – this being a term they apply to non-uniformed personnel who are attached to the Force. The Constitution is silent with respect to the Correctional Service, but this body was considered part of the Public Service until 2 July 2019, when it was given the status of an agency under the Public Administration Act.¹⁵

4.2.3 It would appear to make more sense to treat members of disciplined forces as a distinct category of employees in their own right as opposed to being partly in and partly out of the Public Service, particularly now that the Police Force is the only disciplined force remaining in the Public Service. It is preferable for this issue to be resolved directly by the Constitution, rather than subsidiary legislation as in the case of the Correctional Service.

¹⁵ See the Correctional Services Agency (Establishment) Order (SL 595.32).

4.2.4 Furthermore, the Constitution should cater for the possibility of other disciplined forces being established or designated by law. Two bodies that might be given such a designation in future are the Detention Service and the Assistance and Rescue Force within the Department of Civil Protection. Both bodies already have characteristics of a disciplined force.¹⁶

4.2.5 It is therefore proposed that –

- (a) members of disciplined forces should be treated as a category of employees in their own right, distinct from the Public Service; and
- (b) the definition of “disciplined force” should cater for the possibility of new such forces being established by law in addition to the Armed Forces, the Police and the Correctional Service.

4.3 The classification of public employees

4.3.1 This report envisages that all employees in public administration should fall into one of the following categories:

- (a) public officers, or staff in the service of the President and the government of Malta other than members of disciplined forces and persons of trust;
- (b) officers of Parliament, including the staff of independent bodies within the Parliamentary Service;
- (c) officers of the Courts, including the staff of any bodies that might be set up within the Judicial Service;
- (d) members of disciplined forces;
- (e) employees of public entities, that is to say statutory authorities, government agencies, government-owned companies and other bodies that belong to but are separate from the government; and
- (f) persons of trust, who are the subject of chapter 7 of this report.

4.3.2 As already noted in this report, defining the term “public employee” to encompass these categories would counteract the current Constitution’s excessive focus on public officers and facilitate the application of relevant provisions to employees in all categories. It also resolves all the anomalies mentioned in section 1.3 of this report, with the exception of that concerning the jurisdiction of the Public Service Commission. This is addressed in the next chapter.

4.3.3 It is accordingly proposed that the Constitution should incorporate a definition of “public employee” consisting of the above-mentioned categories. Ministers,

¹⁶ See the Detention Service Regulations (SL 217.19) and article 8 of the Civil Protection Act (chapter 411).

members of Parliament and members of officially appointed bodies should continue not to be regarded as employees. Nor should members of the judiciary.

4.3.4 This sixfold categorisation of public employees might raise concerns that artificial boundaries are being erected between different parts of the public sector. To counteract this, chapter 5 proposes a mechanism whereby employees can be appointed on transfer from one service or body in public administration to another, subject to appropriate safeguards.

4.4 Limitations on public comment and political involvement by public employees

4.4.1 Article 41 of the Constitution protects the right to freedom of expression. Article 42 protects the right to freedom of association, that is to say the right to peacefully associate with others. Both articles allow for restrictions on the rights of public officers, provided that the restrictions are “reasonably justifiable in a democratic society”.

4.4.2 These restrictions derive from the Westminster model of public administration, which Malta follows. The Westminster model envisages a career public service in which officials keep their posts when governments change, and they are accordingly obliged to serve any elected government with the same loyalty. Senior officials must command public confidence (and the confidence of politicians) in their political impartiality, so they cannot involve themselves in politics. It is this that justifies restrictions on their rights of free expression and association.

4.4.3 Directive 5,¹⁷ issued by the Principal Permanent Secretary under the Public Administration Act, distinguishes between posts in the Public Service that are “politically free” and those that are “politically restricted”. Politically restricted posts, which include most senior management posts, are listed in a schedule to the directive. Employees in such posts are required to “maintain a reserve” in political matters, and they cannot contest elections.

4.4.4 As noted in chapter 2 of this report, political impartiality is just as important for employees of many entities in the wider public sector as it is for government employees proper. In reflection of this, Directive 5 applies also to public entities. Every such entity is required to draw up its own list of politically restricted posts. As they currently stand, however, articles 41 and 42 of the Constitution do not cater for restrictions on public comment and political activity by employees in the wider public sector.

¹⁷ Issued on 24 February 2011 and amended on 4 February 2015 under the Public Administration Act of 2009 (chapter 497) and continuing in force under the successor Act of 2019 (chapter 595). Available at <https://publicservice.gov.mt/en/people/Pages/Directives.aspx>.

4.4.5 It is therefore proposed that articles 41 and 42 of the Constitution should permit restrictions on public comment and political activity by all public employees. The restrictions should be aimed at maintaining public confidence in the impartiality of public administration. The requirement for such restrictions to be reasonably justifiable in a democratic society should naturally be retained. Restrictions should continue to be applied selectively as proposed in section 2.2 of this report and in keeping with the approach taken by Directive 5.

4.4.6 The disqualification whereby a public employee cannot become a member of Parliament, as discussed in section 2.2, should be tied specifically to posts that are subject to restrictions on public comment and political activity under articles 41 and 42 of the Constitution. This is intended to limit the disqualification to posts that are classified as politically restricted under Directive 5 or any other instrument that might succeed it.

5 Strengthening the Merit Principle

5.1 The role of the Public Service Commission

5.1.1 Article 110(1) of the Constitution vests power to appoint public officers, to exercise discipline over them and to remove them from office in the Prime Minister, acting on the recommendation of the Public Service Commission. The Constitution thus makes the Commission directly responsible for selection processes in the Public Service.

5.1.2 Given the size of the Public Service, it is not practical for the Commission to directly manage selection processes. Selection processes are handled by selection boards composed of serving or former public officers nominated by ministries and departments. Until recently, the role of the Commission was to vet the result drawn up by each selection board and publish it before submitting a recommendation to the Prime Minister for the appointment of the first-placed candidate.

5.1.3 This approach emphasised compliance with procedures at the expense of efficiency and the proper allocation of responsibility. The need for the Commission to approve each and every selection result gave rise to bottlenecks and delays in appointments, as well as game-playing by departments which would blame the Commission even for delays of their own making. Ironically, the Commission had very limited grounds on which to vet selection results, other than making sure that the selection board had followed the approved selection criteria and added up candidates' marks correctly. Furthermore, the Commission was assuming responsibility for selection processes conducted by selection boards in ministries and departments. If a candidate complained about the outcome of a selection process, it meant that the Commission would have to re-examine a result after already having approved it.

5.1.4 Article 110(1) of the Constitution permits the Prime Minister to delegate his powers on the recommendation of the Public Service Commission. Appointments under delegated authority can be made without reference to the Commission. This offered a solution to the above-mentioned procedural problems. Calls to delegate responsibility for appointments across the Public Service date back to the late 1980s.¹⁸ However, concerns about the risk of politicisation meant that this did not occur until 1 February 2016, when power to make most appointments in the Public Service was delegated to Permanent Secretaries.¹⁹

¹⁸ See Public Service Reform Commission, *A New Public Service for Malta: A Report on the Organisation of the Public Service* (DOI, 1989), pp. 32–33.

¹⁹ The instrument of delegation was published as government notice no. 928 in the *Government Gazette* of 25 September 2015.

5.1.5 Delegation did not mean giving Permanent Secretaries a free hand in appointments. Regulations issued under article 121 of the Constitution²⁰ set out clear requirements to be followed in appointments. The assessment of job applicants remains the responsibility of selection boards. A selection board cannot include members of the minister's private secretariat, members of local councils, members of the national or European Parliament, or persons who were candidates in the most recent election to any of these bodies. The selection board has to assess candidates on the basis of merit, and in doing so it is not subject to direction from any person or authority except the Commission.

5.1.6 The regulations also specify that the vacancy must be advertised in such a manner as to afford those eligible a reasonable chance to apply. In addition, the eligibility requirements and the selection criteria must be based solely on the duties of the post and the needs of the Public Service.

5.1.7 Under this system the Public Service Commission does not have to accept responsibility for the outcome of the selection process. Nor does it have to dissipate its energies in vetting each and every selection result. Its role is mainly that of setting standards, conducting audits, and hearing appeals by applicants who feel that they were not fairly treated by a selection board. The regulations empower the Commission to take whatever remedial action it considers necessary if it finds that the merit principle has been breached, including the annulment of selection results and the revocation of appointments.

5.1.8 This means, however, that the actual role of the Public Service Commission with respect to most appointments in the Public Service is not as described by article 110 of the Constitution but as described by an instrument of delegation. The role of the Commission should be defined by the Constitution itself rather than by a subsidiary instrument.

5.1.9 It is proposed that the Constitution should assign the Public Service Commission a twofold role with respect to staffing:

- (a) regulating the application of the merit principle; and
- (b) conducting investigations and hearing complaints.

5.1.10 As a general rule the Commission should not be directly involved in selection processes or appointments. It should intervene only if it finds that the merit principle has been breached, and in this case it should continue to have the power to take whatever remedial action it considers necessary.

²⁰ Public Service Commission Appointments Regulations (SL Const 05), issued in October 2015 and brought into force on 1 February 2016.

5.1.11 In keeping with the preceding proposal, appointments should cease to require a recommendation by the Commission. Except in specific cases where the Constitution provides otherwise, appointments in the Public Service should be made by the Principal Permanent Secretary, who should be able to delegate his powers.

5.1.12 The instrument of delegation currently governing most appointments in the Public Service provides for the suspension or withdrawal of delegated powers at the instigation of the Commission. This represents a potential safeguard against the misuse of delegated powers that would be lost if the Commission's role is recast as proposed here. It is therefore proposed, as an alternative, that the Public Service Commission should have the power to interdict any person from exercising functions relating to the selection and appointment of public employees, either indefinitely or for a specific term. The Commission should also be able to give such directions as it may deem fit concerning the exercise of those functions while the interdiction is in force.

5.2 Defining merit

5.2.1 The fundamental aim of the Commission with respect to staffing is to uphold the principle of merit. But this emerges by inference: it is not actually spelt out in the Constitution. Such references to merit as exist were introduced through constitutional amendments in 1974.

5.2.2 The 1974 amendments introduced two provisions dealing with merit: article 110(2)(c) and article 110(6). Article 110(2)(c) applies to external recruitment in the Public Service under delegated authority. Article 110(6) applies to external recruitment in public entities. Both provisions require that recruitment should be made "after a public examination" or "through an employment service provided out of public funds which ensures that no distinction, exclusion or preference is made or given in favour or against any person by reason of his political opinion and which provides opportunity for employment solely in the best interests of the public service and of the nation generally."

5.2.3 There are two problems with these provisions. Firstly, they are limited in scope. Neither provision applies to internal promotions. Moreover, the Public Service Commission itself is not obliged to abide by the merit principle when recommending appointments to the Prime Minister under article 110(1).

5.2.4 Secondly, both provisions are restrictive in that they equate merit with the use of particular selection mechanisms. Each mechanism is problematic. Does the term "public examination" cover only traditional written examinations, or does it also include selection interviews? In practice most vacancies are filled through interviews. This is as it should be since interviews are the quickest and most practical way to assess candidates. But the wording of the Constitution introduces an unnecessary element of uncertainty with respect to the legal correctness of current practice.

5.2.5 The other mechanism, the public employment service, is problematic in that the Constitution puts more weight on it than it can bear. The role of Jobsplus (formerly the Employment and Training Corporation) is to find jobs for the unemployed, not to ensure that jobs go to the most deserving candidates. Typically, Jobsplus forwards to the employing body the names of all those in its registers who appear qualified for the vacancy to be filled. It is then up to the employing body to winnow these names down to one, and the process by which this is done can be opaque. Recourse to the public employment service does not guarantee that the merit principle will be upheld.

5.2.6 It is proposed that articles 110(2)(c) and 110(6) of the Constitution should be replaced by a definition of the merit principle which requires that –

- (a) the vacancy should be advertised in such a manner as to afford those eligible a reasonable chance to apply;
- (b) there should be an impartial selection process based on eligibility requirements and selection criteria that reflect solely the duties of the vacant post and the legitimate needs of the employing body;
- (c) the person appointed should be the most suitable from among eligible and available candidates, as determined by the aforementioned selection process; and
- (d) the selection and appointment process should meet such other standards as the Public Service Commission may set for it.

5.2.7 This definition of merit is based on that in the Public Service Commission Appointments Regulations. It is not tied to any particular selection mechanism, thus enabling any selection mechanism to be used as long as it truly reflects merit. Any mechanism that does not would be open to challenge: no mechanism should automatically be assumed to be satisfactory.

5.2.8 The new definition of the merit principle should –

- (a) apply to internal promotions as well as to external recruitment;
- (b) extend throughout public administration, subject to such exceptions as the Constitution itself may permit;
- (c) allow for situations in which all those who meet the requirements for particular posts stand to be appointed, that is to say no selection process is necessary; and
- (d) enable the Public Service Commission to permit direct appointments without recourse to a competitive selection process in other cases where the Commission finds it justified in the public interest to do so (for example, the re-employment of former public employees in their old posts where such posts have remained vacant), provided that every year the Commission should publish a report saying how many waivers it has granted and why it has granted each one.

5.2.9 These proposals imply an extension of the jurisdiction of the Public Service Commission to encompass the wider public sector. This issue is dealt with next.

5.3 Monitoring the application of the merit principle in the wider public sector

5.3.1 While staffing in the Public Service is overseen by an independent constitutional body, no such mechanism exists to oversee staffing in the wider public sector. This anomaly has become more pronounced over the years as public entities have assumed an increasingly important role in Maltese public administration.

5.3.2 The Public Administration Act of 2009 (chapter 497) sought to address this anomaly by establishing a Merit Protection Commission to oversee staffing in public entities. Rather than create a new body, the Act assigned the role of Merit Protection Commission to the Public Service Commission. However, the relevant provisions of the Act were never brought into force.

5.3.3 The Public Administration Act of 2019 (chapter 595), which has superseded the earlier Act, retains the concept of a Merit Protection Commission for the wider public sector, but as a separate body. The relevant provisions have still to be brought into force.

5.3.4 There should preferably be a single body acting as the guardian of merit in both the Public Service and the wider public sector. This was recognised during the parliamentary debate preceding the enactment of the current Public Administration Act. It was stated that the Merit Protection Commission was being established as a separate body because of legal advice that the Public Service Commission could not be assigned additional functions through ordinary legislation, and the unification of the two roles would require constitutional reform.²¹

5.3.5 It is accordingly proposed that the Constitution should recast the Public Service Commission as the guardian of merit throughout public administration, that is to say including public entities, disciplined forces, the Parliamentary Service and the proposed new Judicial Service. To this end the Commission should be retitled Public Services Commission (in the plural). This title is being proposed because it represents a minimal change, thus emphasising continuity as well as change in Maltese constitutional development.

5.4 Removals from office and discipline

5.4.1 The role of the Commission should also change with respect to disciplinary cases and dismissals.

²¹ Speech by Parliamentary Secretary Julia Farrugia Portelli during the second reading debate on the Public Administration Bill (Bill no. 63), 10 December 2018.

5.4.2 Most disciplinary powers in the Public Service were delegated to Permanent Secretaries, Directors General and Directors in 2000. Only disciplinary cases arising from criminal convictions and cases that can lead to dismissal are heard in the first instance by the Commission. The role of the Commission in other cases is limited to hearing appeals. But the Commission's decision in every case it hears continues to take the form of a recommendation to the Prime Minister under article 110(1) of the Constitution. This is problematic for two reasons.

5.4.3 Firstly, the Commission's recommendation does not come into effect until the Prime Minister signs it. This means that until then the Commission cannot even communicate its conclusions to the parties in the case.

5.4.4 Secondly, the Prime Minister can refer a recommendation back to the Commission for reconsideration under article 86 of the Constitution. Such a referral puts the Commission in an awkward situation. On the one hand it is obliged under article 86 to genuinely review its decision. On the other hand its independence might appear suspect if it were to change its mind at the Prime Minister's behest.

5.4.5 It is proposed that, as in the case of selection processes, the Public Services Commission should assume a regulatory and appellate role in disciplinary cases and dismissals. The decisions taken by the Commission in fulfilment of this role should take effect directly by virtue of its own authority and should no longer assume the form of a recommendation to the Prime Minister. As a general rule, the officer or authority with the power to make appointments should also have the power to remove staff from office and to exercise discipline over them.

5.4.6 Accordingly, it is proposed that the jurisdiction of the Public Services Commission with respect to removals from office and discipline should be as follows:

- (a) the Commission should regulate the disciplinary process and hear appeals arising from disciplinary cases in the Public Service, the Parliamentary Service (including independent bodies within the Parliamentary Service) and the Judicial Service; and
- (b) the Commission should hear appeals against removals from office, on disciplinary or other grounds, by employees of any body in public administration.

5.4.7 As in the case of appointments, this proposed recasting of the Commission's role with respect to removals from office and discipline eliminates the possibility of withdrawing delegated powers as a safeguard against abuse. It is therefore proposed that the Commission should have the power to interdict any person from exercising functions relating to discipline and the removal of employees from office, either indefinitely or for a specific term, and to give such directions as it may deem fit concerning the exercise of those functions while the interdiction is in force.

5.5 Strengthening the independence of the Public Services Commission (and other constitutional commissions)

5.5.1 According to article 109 of the Constitution the Public Service Commission may consist of between three and five members. Members are appointed by the President on the advice of the Prime Minister, who is obliged to consult the Leader of the Opposition before giving his advice to the President. However, it has become established practice to appoint a five-member Commission, with two members being nominated by the Leader of the Opposition.

5.5.2 The appointment of the chairpersons of constitutional commissions is dealt with in chapter 6 of this report. This section therefore deals only with the appointment of ordinary members. The arrangement whereby ordinary members of the Public Service Commission are appointed on a bipartisan basis should be formalised.

5.5.3 It is accordingly proposed that:

- (a) the membership of the Public Services Commission should be fixed at five; and
- (b) the President should appoint two of the four members of the Commission other than the Chairperson on the advice of the Prime Minister, and the remaining two on the advice of the Leader of the Opposition.

5.5.4 The proposed arrangements already apply to the Electoral Commission, which was established by means of amendments to the Constitution in 1974. Similar arrangements are merited with respect to the other two constitutional commissions – the Electoral Commission and the Broadcasting Authority.

5.5.5 It is therefore proposed that:

- (a) the Electoral Commission and the Broadcasting Authority should have an even number of members excluding the chairperson; and
- (b) the President should appoint half the ordinary members of each body on the advice of the Prime Minister and half on the advice of the Leader of the Opposition.

5.5.6 Also needing to be addressed are the disqualifications for appointment to constitutional commissions.

5.5.7 The Constitution disqualifies public officers from appointment to all four bodies, except for the Chief Electoral Commissioner who chairs the Electoral Commission and who is a public officer. The reason for the disqualification is that, as government employees, public officers may be susceptible to influence. Moreover, the appointment of serving government employees as members of a constitutional commission could give the impression that they are functioning on an *ex officio* basis, meaning that the government can give them directions not just as employees but as members of the commission. This would compromise the independence of the commission, in perception if not in reality.

5.5.8 As noted in the introduction to this report, this safeguard suffers from a weakness in that it makes no mention of employees in the wider public sector.

5.5.9 One might ask why the same disqualification does not apply to the Chief Electoral Commissioner as chairperson of the Electoral Commission. However, this report does not propose to apply the disqualification. The mechanism that is proposed in chapter 6 for the appointment of the Chief Electoral Commissioner, among others, should safeguard his or her independence.

5.5.10 The Constitution disqualifies ministers, parliamentary secretaries, and members of or candidates for election to Parliament from appointment to all four bodies. The Public Service Commission, the Broadcasting Authority and the Employment Commission are kept at a further remove from politics than the Electoral Commission in that even local councillors (but not local election candidates) are excluded from membership of the first three bodies. This presumably reflects the more technical role of these bodies as compared to that of the Electoral Commission. However, account needs to be taken of the current political environment, which includes elections to the European Parliament as well as local councils.

5.5.11 In addition, former members of the Public Service Commission, the Broadcasting Authority and the Employment Commission remain ineligible for appointment to public offices (that is to say posts in government employment) for three years after they cease to be members. This is intended to prevent posts being offered to commission members as inducements, particularly if they are approaching the end of their term. Here too, public entities need to be taken into account.

5.5.12 It is therefore proposed that –

- (a) the disqualification whereby public officers cannot be appointed as members of the four constitutional commissions (except for the Chief Electoral Commissioner) should be extended to all public employees;
- (b) the disqualifications for membership of the Public Services Commission, the Broadcasting Authority and the Employment Commission should extend to members of and candidates for election to the European Parliament and candidates for election to local government bodies in Malta; and
- (c) the provision whereby former members of the Public Services Commission, the Broadcasting Authority and the Employment Commission are ineligible for government employment for three years after they cease to be members should be extended to any employment in public administration.

5.6 The Public Services Commission and judicial review

5.6.1 A final issue with respect to the Public Service Commission concerns article 115 of the Constitution, which exempts the Commission from judicial review. This provision is all but a dead letter: successive court judgements have gradually whittled it away and

the Commission is now effectively as subject to judicial review as any other government body.²² Invoking article 115 serves only to make the Commission look like it is trying to avoid scrutiny.

5.6.2 It is proposed that the Public Services Commission should be made subject to judicial review and article 115 of the Constitution should be repealed.

5.7 Appointments on transfer

5.7.1 Staffing requirements in any organisation fluctuate as needs and circumstances change. Within public administration as a whole, situations may easily arise in which one body has surplus staff in a particular category while another has vacancies in the same category. Leaving aside persons of trust, who should be employed for strictly limited purposes as proposed in chapter 7, it should be possible for public employees to be redeployed from one body to another to meet staffing needs without adding to the overall employee head-count in public administration.

5.7.2 Mechanisms have been introduced through ordinary legislation to facilitate such redeployments. In 2005 article 15 of the Employment and Training Services Act (chapter 343)²³ was amended to state that if the government or a public entity employs a person who is already a public officer or an employee of another entity, such employment will be deemed to have been made through Jobsplus. This amendment effectively exempts public entities from the obligation to recruit staff through a public examination or a publicly-funded employment service, as set out in article 110(6) of the Constitution, when they are engaging staff who are already in public employment.

5.7.3 In 2006 article 15A was added to the Employment and Training Services Act, empowering the Prime Minister to redeploy redundant staff from one public entity to another. Such redeployments would also be deemed to have been made through Jobsplus.

5.7.4 These provisions represent attempts to address gaps in the Constitution through ordinary legislation. But it is not clear that they are compatible with it since article 110(6) does not allow for exceptions. Constitutional reform should clear up any such uncertainties.

5.7.5 Furthermore, these provisions are limited to public entities. As the Constitution currently stands, the redeployment of staff from a public entity to a ministry or department of government – that is to say the employment of surplus staff from public

²² For a brief summary of relevant case law see *Dr D Grixti Soler et v. Public Service Commission et.*, Civil Court, 10 April 2015, p. 12.

²³ To be superseded by the Employment and Training Services Act of 2018 (chapter 594) once it is brought into force. Articles 15 and 15A (renumbered 16) have been retained in the new Act.

entities as public officers – would require a recommendation by the Public Service Commission under article 110.

5.7.6 This is significant from more than a legal perspective. Were it possible to redeploy staff from entities to ministries or departments under the current Constitution, this would effectively open a loophole through which the safeguards applying to appointments in the Public Service could be circumvented. But the problem is solved if the merit principle, and the role of the Public Service Commission in enforcing it, is extended to the wider public sector as proposed in this chapter.

5.7.7 Bearing this in mind, it is proposed that the Constitution should empower the Principal Permanent Secretary to redeploy staff from one employer to another throughout public administration by means of an appointment on transfer without recourse to a selection process, provided that –

- (a) the employee rose to his or her current level on the basis of merit;
- (b) the appointment on transfer does not amount to a promotion;
- (c) appointments on transfer to or from the House of Representatives, an independent body within the Parliamentary Service, or the Courts of Justice should require the approval of the Speaker, the head of that independent body, or the Director General of the Courts of Justice respectively; and
- (d) appointments on transfer to a disciplined force, in so far as the special requirements of service in that force allow for such appointments, should require the consent of its head.

5.7.8 Paragraph (a) above is a safeguard to ensure that appointments on transfer do not become a loophole through which persons of trust can be given permanent jobs.

5.7.9 It is also proposed that the Public Services Commission should have ultimate authority to decide whether or not an appointment on transfer amounts to a promotion, and it should have the power to rescind that appointment on transfer if necessary.

5.7.10 To safeguard the merit principle, these proposals are limited to appointments on transfer between posts that offer comparable levels of remuneration. However, similar posts in different public bodies may not necessarily attract the same pay. Hence situations may arise in which redeployments, though necessary in the public interest (e.g. to retain surplus staff in employment), may amount to promotions. Such redeployments can be authorised by the Public Services Commission by means of a waiver as proposed in paragraph 5.2.8 of this chapter.

5.7.11 The term “appointment on transfer” is used here, rather than “redeployment”, to make it clear that these proposals do not envisage a simple secondment but a change of employer. The term “appointment on transfer” already appears in article 124(5) of the Constitution.

5.7.12 Since appointments on transfer amount to changes of employment, they can only occur if an employee agrees to the change or if he or she becomes surplus to requirements. Loss of employment due to redundancy is catered for by article 124(8) of the Constitution. An appointment on transfer for any other reason would amount to removal from office if it took place against the employee's will. In such a case the employee would be able to appeal to the Public Services Commission, as proposed in paragraph 5.4.6 of this chapter.

5.7.13 Appointments on transfer should not lead to ambiguous situations where an employee is simultaneously a member of different services, or serving with one body but subject to rules of conduct and disciplinary procedures set by another. It is proposed that the relevant provisions in the Constitution should make this clear, but if it so wishes an employer should be able to grant the right of reversion to a former employee who has been appointed on transfer elsewhere.

6 Mechanisms for Senior Appointments

6.1 Appointments by the President on the basis of a parliamentary resolution with two-thirds majority support

6.1.1 Article 108(2) of the Constitution provides for the appointment of the Auditor General by the President, acting in accordance with a parliamentary resolution supported by at least two thirds of all members of Parliament.

6.1.2 Under article 108(4), the Auditor General can be removed or suspended by the President if at least two thirds of all members of Parliament request the Auditor General's removal on the grounds of proven inability to perform the functions of his or her office or misbehaviour. The President can suspend the Auditor General for the same reasons without reference to Parliament if it is not in session, but such a suspension cannot remain in effect beyond two months after the start of Parliament's next session. These provisions protect Auditor General from arbitrary removal.

6.1.3 Article 108(9) applies the same provisions to the Deputy Auditor General.

6.1.4 The same provisions are also replicated in articles 3 and 6 of the Ombudsman Act (chapter 385) with respect to the Ombudsman, and articles 4 and 7 of the Standards in Public Life Act (chapter 570) with respect to the Commissioner for Standards in Public Life.

6.1.5 Section 2.5 of this report proposes that provisions on the Ombudsman and the Commissioner for Standards in Public Life corresponding to those on the Auditor General should be added to the Constitution. This creates the opportunity to frame a single set of provisions on appointment and tenure that are common to all three officers and can also be applied to other posts.

6.1.6 Appointments by the President on the basis of a parliamentary resolution with a two-thirds majority represent a successful experiment. It has led to appointments that are widely acknowledged as non-partisan and that have strengthened the system of checks and balances in Maltese government. This system is capable of wider extension. Indeed the time has come to apply it to the chairpersons of constitutional commissions and the heads of bodies concerned with public order and security in Malta.

6.1.7 It is accordingly proposed that:

- (a) the Constitution should provide for the appointment of the Ombudsman and the Commissioner for Standards in Public Life by the President on the basis of a parliamentary resolution with the support of at least two thirds of all members of Parliament, as in the case of the Auditor General and Deputy Auditor General;

- (b) the Constitution should provide for the possibility of removal of the above-mentioned officers by means of the same mechanism on the grounds of proven misconduct or inability to perform the functions of one's office, as well as suspension by the President if Parliament is not in session;
- (c) there should be a single set of provisions governing the appointment, suspension and removal of all four officers and extending also to the Chief Electoral Commissioner and the chairpersons of the Public Services Commission, the Broadcasting Authority and the Employment Commission; and
- (d) the same provisions should also extend to the Commissioner of Police, the Commander of the Armed Forces of Malta, and the Head of the Security Service.

6.1.8 Proposals along these lines have already been made in the past, notably by political parties.²⁴ However, constitutional reform should be considered in a non-partisan spirit and concepts should be judged on their merits regardless of their source.

6.1.9 The mechanism of appointments by the President on the basis of a parliamentary resolution with a two-thirds majority has been in use since 1995, when the first Ombudsman was appointed. In all this time there has never been a situation where Parliament could not agree on a candidate for appointment under this mechanism. However, it would be wise to cater for such a situation.

6.1.10 It would be a mistake to revert to appointments by the government or on the basis of a simple parliamentary majority if a two-thirds majority cannot be mustered in favour of any candidate for a post.²⁵ This would nullify the two-thirds majority mechanism and enable the government of the day to force through the appointment of its own preferred candidate, no matter how controversial, if it so wished.

6.1.11 It is therefore proposed that, should Parliament prove unable to pass a two-thirds majority resolution within one month from the date when an appointment under this system becomes due, the President would be entitled to make the appointment according to his or her own judgement.

²⁴ See TVM, "PD: Members of autonomous bodies should be decided by two thirds Parliamentary vote", news report dated 31 May 2017. Available at <https://www.tvm.com.mt/en/news/il-pd-entitajiet-pd-members-of-autonomous-bodies-should-be-decided-by-two-thirds-parliamentary-vote-għandhom-jintgħazlu-bdecizjoni-ta-zewg-terzi-tal-parlament/>. See also Partit Nazzjonalista, *Restoring Trust in Politics: Proposals for Good Governance* (5 December 2015), p. 26. Available at https://issuu.com/partitnazzjonalista/docs/pn_goodgov_document_dec15_v4f_lr.

²⁵ This proposal appears in *Restoring Trust in Politics* (previous footnote), p. 26.

6.2 The appointment of Permanent Secretaries

6.2.1 Permanent Secretaries are the most senior public officers in ministries. They are appointed and can be removed by the President on the advice of the Prime Minister, who must consult the Public Service Commission before tendering his advice to the President. Only serving public officers are eligible for appointment as Permanent Secretaries.

6.2.2 The Venice Commission regards the current mechanism of appointment as problematic. It recommends that:

These high-ranking officials should be selected upon merit by an Independent Civil Service Commission and not by the Prime Minister. Permanent Secretaries should not be political appointees, but independent and permanent, high level, civil servants, who should be able to serve any Government. As a consequence, they should have security of tenure, until retirement or dismissal for good specified reasons.²⁶

6.2.3 There are two facets to the role of Permanent Secretaries. On the one hand, Permanent Secretaries are expected to exercise a restraining effect on ministers who want to act in ways that are irregular or against the law. In this sense a career Public Service can be considered part of the constitutional system of checks and balances, as the Venice Commission does. In reflection of this role, the Public Administration Act (chapter 595) charges Permanent Secretaries with ensuring that government departments and public entities are managed according to law and ethical standards. The Public Finance Management Act (chapter 601) gives Permanent Secretaries a similar guardianship role with respect to financial management and control.

6.2.4 On the other hand, however, Permanent Secretaries must work closely with and be responsive to ministers. A Permanent Secretary's primary duty is to realise the policy agenda of his or her minister and the government as a whole.

6.2.5 For this reason, even countries which attempt to distance the appointment of Permanent Secretaries from politics grant ministers a limited role in the selection process. In the United Kingdom, Permanent Secretaries are chosen by a panel chaired by the First Civil Service Commissioner (equivalent to the chairperson of Malta's Public Service Commission) and usually including the head of the civil service, another Permanent Secretary, and an external stakeholder. The relevant minister's approval is needed for the job description, the person specification and the composition of the selection panel itself, to ensure that there is sufficient "external challenge". The minister is also entitled to brief the selection panel on his or her expectations for the post to be filled. The minister is allowed to meet shortlisted candidates and report his or her views about them to the selection panel before the panel conducts final interviews.

²⁶ Venice Commission (see footnote 2), p. 24.

6.2.6 After holding final interviews the panel makes its choice known to the Prime Minister, who can either appoint or veto the chosen candidate. If the Prime Minister vetoes the panel's choice a fresh selection process is held. This ensures that the Prime Minister cannot veto successive candidates in the panel's ranking order until his or her preferred candidate is next in line.²⁷

6.2.7 In New Zealand departmental chief executives, who are equivalent to Permanent Secretaries in the UK and Malta, are chosen by a panel chaired by the State Services Commissioner (equivalent to the chairperson of Malta's Public Service Commission). The responsible minister must be consulted for his or her views on the requirements of the job and the type of person who should be appointed, as in the UK. The minister can propose one person as a member of the selection panel, which is set up by the State Services Commissioner. The cabinet can veto the appointment of the person chosen by the panel and order the appointment of another person to fill the vacancy.²⁸

6.2.8 It is proposed that a similar, through simpler, mechanism should apply to the appointment of Permanent Secretaries in Malta. Thus:

- (a) Permanent Secretaries should be appointed by the President on the recommendation of a Committee on Presidential Appointments;
- (b) the Committee should be chaired by the chairperson of the Public Services Commission and should in addition consist of the Principal Permanent Secretary and one other Permanent Secretary chosen by the President;
- (c) the Committee should make its recommendation to the President after advertising the post to be filled and holding a selection process based on merit;
- (d) before advertising the post, the Committee should obtain the views of the responsible minister on the requirements of the post and the qualities and attributes needed by the person chosen to fill it;
- (e) on receiving the Committee's recommendation, the President should notify the Prime Minister, who may object to the appointment; and
- (f) if the President considers the Prime Minister's objections to be justified in the public interest, he or she should direct the Committee to re-advertise the post and hold a fresh selection process.

²⁷ Akash Paun and Josh Harris, *Permanent Secretary Appointments and the Role of Ministers* (London: Institute for Government, 2013), pp. 22–24. Available at <https://www.instituteforgovernment.org.uk/publications/permanent-secretary-appointments-and-role-ministers>.

²⁸ Paun and Harris (previous footnote), p. 31; see also New Zealand State Services Commission web page at <http://www.ssc.govt.nz/resources/appt-process/> and section 35 of the State Sector Act of 1988, available at <http://legislation.govt.nz/>.

6.2.9 This mechanism provides for political inputs in the selection process through the minister's briefing of the Committee concerning the needs of the post and the qualities needed by applicants, the Principal Permanent Secretary's membership on the Committee, and finally the Prime Minister's possible veto. However, political inputs are not a determining factor in the selection process unless the Prime Minister exercises his or her veto. In this case the selection process restarts, as in the UK.

6.2.10 With this mechanism in place, the requirement for Permanent Secretaries to invariably be serving public officers can be dropped. It is highly desirable for Permanent Secretaries to have experience in the Public Service at a senior level. But particular posts may in addition require specialist expertise, and if no serving officials meet this requirement a trade-off would have to be made. The option to select a Permanent Secretary from outside the Public Service should be available to the Committee on Presidential Appointments if it is felt that the specialised needs of a particular post outweigh the need for experience in public administration.

6.3 Heads of disciplined forces and the Director General of the Courts of Justice

6.3.1 It is proposed that the mechanism for the appointment of Permanent Secretaries should also apply to the heads of disciplined forces, except for those whose appointment is catered for by other provisions of the Constitution. This caters for the head of the Correctional Service and any new disciplined forces that might be established in future.

6.3.2 The same mechanism should also apply to the Director General of the Courts of Justice. As argued in paragraph 3.3.3 of this report, the Chief Justice should not make appointments. However, the Chief Justice should be consulted by the Presidential Advisory Committee in the same manner as ministers with respect to the requirements of the post and the attributes needed by applicants.

6.4 The removal from office of Permanent Secretaries

6.4.1 Under article 92(3) of the Constitution, the Prime Minister can at any time advise the President to remove a Permanent Secretary from office. The only constraint on the Prime Minister is a requirement to consult the Public Service Commission beforehand.

6.4.2 As already noted, Permanent Secretaries must strike a difficult balance between being responsive to ministers and acting as a check on them. This chapter has already proposed shifting the balance between these two facets of the role of Permanent Secretaries by introducing a mechanism to distance their appointment from politics. Granting Permanent Secretaries security of tenure, as recommended by the Venice Commission, risks shifting the balance too far. It might give rise to situations

where Permanent Secretaries, and by extension the Public Service, come to be seen as a constraint on the ability of governments to realise their policy objectives.

6.4.3 Such a situation could arise because a Permanent Secretary is not performing well enough, even if there are insufficient grounds for disciplinary proceedings. It could also arise simply because of a conflict of personalities between the Permanent Secretary and his or her minister. In both cases it should be possible for a democratically-elected government to have the Permanent Secretary removed, given the importance of his or her role in the management of the ministry. The issue of compensation should be settled according to the terms of the Permanent Secretary's appointment.

6.4.4 Under the proposals set out in section 6.2 of this chapter, governments would be able to veto the appointment of a particular Permanent Secretary but would no longer be able to choose Permanent Secretaries themselves. A government would have no incentive to abuse its power to remove Permanent Secretaries from office if it cannot hand-pick their replacements.

6.4.5 It is therefore proposed that Permanent Secretaries should remain subject to the possibility of removal by the President on the advice of the Prime Minister, who should consult the Public Services Commission before advising the President.

6.4.6 As a limited safeguard, the Prime Minister should be required to tell the Public Services Commission why he or she wants to remove a Permanent Secretary. However, loss of confidence by the Prime Minister in a Permanent Secretary should be sufficient grounds for his or her removal.

6.5 Heads of government departments

6.5.1 According to article 92(4) of the Constitution, heads of government departments are appointed by the Prime Minister after consultation with the Public Service Commission. The Commission's advice is not binding. The only constraint on the Prime Minister's discretion is that those appointed should already be senior public officers.

6.5.2 The Constitution does not define the term "government department". However, the second schedule of the Public Administration Act of 2019 (chapter 595) lists government departments and sets out the position titles of their heads. There are 30 departments under 27 heads.²⁹

²⁹ Under the Commissioner for Revenue Act (chapter 517), the Inland Revenue Department, the Value Added Tax Department and the Department of Customs are all headed by the Commissioner for Revenue. This is reflected in the second schedule of the Public Administration Act, which also lists the Office of the Commissioner for Revenue as a department in its own right.

6.5.3 The majority of these headships are classified as positions of Director or Director General. Twelve heads of department are Directors General and six are Directors. The remaining nine have unique titles such as Accountant General or Superintendent of Public Health.

6.5.4 The number of departments has diminished over the years. In its original incarnation as part of the Public Administration Act of 2009 (chapter 497), the second schedule listed 45 departments. Some departments have been removed from the Public Service and converted to public entities: to mention a recent example, the Social Welfare Standards Department became a statutory authority in 2018 by virtue of the Social Care Standards Authority Act (chapter 582). Others have simply lost their status as departments, meaning that they have remained in the Public Service but have been absorbed by their parent ministries. An example is the former Department of Industrial and Employment Relations.

6.5.5 In the meantime, the total number of Directors and Directors General in the Public Service has increased. According to publicly available information there are 49 Directors General and 158 Directors.³⁰ This means that only a quarter of Directors General are designated heads of department, as are just four per cent of Directors.

6.5.6 Directors General who are not heads of department are in charge of divisions within ministries – for example, the Budget Affairs Division within the Ministry for Finance, which is responsible for national budgeting. As this example shows, divisions in ministries can play just as important a role in public administration as any department.

6.5.7 Ministries can also be subdivided into directorates, as can large departments headed by Directors General. This accounts for the large number of Directors in the Public Service.

6.5.8 Directors General and Directors who are not heads of department are appointed under article 110(1) of the Constitution, like most other public officers. Article 110(1) permits external appointments, unlike article 92(4). The requirement to appoint only senior public officers to positions of head of department can thus be circumvented by removing departments from the schedule in the Public Administration Act and absorbing them within ministries.

6.5.9 Occasions can arise when no public officers with suitable qualifications, skills or experience are available to fill a departmental headship. But the structure of government is distorted when departments are removed from the schedule to permit external appointments. Ministries are by their nature unstable organisations, liable to being chopped and changed at every ministerial reshuffle. Departments, as stand-alone bodies, have greater stability. They are better suited for the administration of permanent government functions and the delivery of services to the public. This is the

³⁰ Data available from www.publicservice.gov.mt, accessed on 24 October 2019.

rationale for the distinction between ministries and departments. It implies that the designation of departments should depend solely on the nature of their functions.

6.5.10 Furthermore, the absorption of departments by ministries can create inconsistencies between the Public Administration Act and other laws. A case in point is the Employment and Industrial Relations Act (chapter 452), of which article 43(1) still refers to the “department responsible for employment and industrial relations”.

6.5.11 Given that article 92(4) of the Constitution applies to such a small number of positions, its present-day relevance is doubtful. Most positions of head of department are in fact advertised through internal calls for applications open to senior public officers and filled through a selection process conducted by the Senior Appointments Advisory Committee. This body is governed by article 10 of the Public Administration Act, and it is chaired by the Principal Permanent Secretary or another Permanent Secretary as his or her delegate.

6.5.12 The Senior Appointments Advisory Committee also acts as the selection board for positions of Director General and Director in the Public Service that are not departmental headships. As a matter of practice such positions too are usually limited to senior public officers. It is only occasionally that a particular position is opened to external applicants.

6.5.13 In practice, therefore, heads of departments are chosen through the same mechanism as Directors General and Directors who are not designated as heads of department. The Senior Appointments Advisory Committee submits nominations for appointment to the Prime Minister or the Public Service Commission depending on whether the position to be filled falls under article 92(4) or article 110(1) of the Constitution.

6.5.14 Eliminating article 92(4) would mean applying the merit principle to the appointment of heads of department. In addition, it would no longer be necessary to remove a department from the second schedule of the Public Administration Act in order to appoint a non-public officer as its head.

6.5.15 It is therefore proposed that article 92(4) should be omitted from a revised Constitution. Heads of government departments should be appointed under the same provisions as most other public officers, that is to say on the basis of merit and under the jurisdiction of the Public Services Commission.

6.5.16 It is worth recalling that, as proposed in section 6.1 of this chapter, the chairperson of the Public Services Commission should be appointed by the President on the basis of a parliamentary resolution with a two-thirds majority. This should strengthen the independence of the Commission and improve confidence in its ability to uphold the merit principle.

7 Regulating Appointments on Trust

7.1 The Constitution and appointments on trust

7.1.1 By longstanding practice, staff in ministers' secretariats are recruited on the basis of trust. As noted in the introduction to this report, however, the Constitution makes no provision for such appointments. Article 124 defines non-military posts in government employment, with specific exceptions, as public offices, or posts in the Public Service. These posts – again with specific exceptions – are filled through appointments under the jurisdiction of the Public Service Commission in terms of article 110. None of the exceptions in either article caters for persons of trust.

7.1.2 It has been argued that appointments on trust do not amount to employment for the purposes of the Constitution because they are made on the basis of fixed-term contracts.³¹ But articles 110 and 124 of the Constitution make no distinction between permanent and fixed-term appointments. Only acting appointments (short-term interim appointments, at the end of which the appointee reverts to his or her previous post) are exempted from article 110, and only if they are of two months or less in duration.

7.2 The scope of appointments on trust

7.2.1 Appointments on trust are not limited to ministers' secretariats. A circular issued by the then Principal Permanent Secretary in 2011 included “managerial positions (e.g. CEO, Senior Manager, etc)” and “technical positions (e.g. Manager News and Registered Editor, Biomedical Engineer)” as examples of posts that could be filled on the basis of trust.³² It should be noted for the sake of accuracy that the circular called for appointments on trust to be limited to exceptional cases, but this is not consistent with the wide range of examples given in the circular itself.

7.2.2 In its annual report for the same year, the Public Service Commission stated that it had come across “a number of instances in which appointments on trust were used to fill administrative, managerial or technical positions” and expressed a concern that “appointments on trust could be used to avoid issuing calls for applications for vacancies that should be filled on the basis of merit.”³³

³¹ Office of the Principal Permanent Secretary, *Governance: Action on the Parliamentary Ombudsman's Annual Report 2017* (November 2018), p. 8. Available at https://publicservice.gov.mt/en/Documents/Governance_Action_on_the_Parliamentary_Ombudsman_Annual_Report_2017.pdf.

³² OPM Circular no. 21/2011, issued on 14 December 2011.

³³ Public Service Commission, *Annual Report 2011*, pp. 20–21. Available at <https://psc.gov.mt/en/Documents/Annual-Reports/Annual-Report-2011.pdf>.

7.2.3 As noted in the introduction to this report, government policy currently states that persons of trust “will not enjoy executive powers on government matters and personnel”. But this does not apply to a particular category of appointments on trust known as “contracts for service”.³⁴

7.2.4 According to information disclosed by the government under the Freedom of Information Act, 683 persons held appointments on trust on 31 October 2017. Posts filled on the basis of trust included those of customer care officer, security guard, maintenance officer, and crane and forklift operator.³⁵

7.2.5 Ministers are entitled to have staff in their secretariats whom they personally trust. However, such appointments should have a basis in the Constitution. Clear boundaries also need to be set for appointments on trust, so they are not used to fill posts to which the merit principle should apply.

7.2.6 It is therefore proposed that:

- (a) the Constitution should explicitly permit appointments on the basis of trust in the secretariats of the Prime Minister, ministers and parliamentary secretaries, up to a maximum number set by the Prime Minister;
- (b) the Constitution should designate persons of trust as a distinct category of public employees in their own right; and
- (c) persons of trust should be precluded from exercising any powers conferred by law on ministers or other authorities or giving directions to other public employees, except for employees performing duty in the minister’s secretariat.

7.2.7 It should be borne in mind that, as proposed in paragraph 5.2.8 of this report, the Public Services Commission would be able to waive the application of the merit principle if it considers this justified in the public interest. This means that a vacancy to which the merit principle normally applies could be filled by direct nomination if a legitimate need arises.

7.3 The term of employment of persons of trust

7.3.1 Another issue that needs to be addressed is the term of employment of persons appointed on trust. The established practice is that such persons are appointed on fixed-

³⁴ Case report K/003 (footnote 3), p. 5; case report K/002 (footnote 1), pp. 14–15. See also “Who Are Persons of Trust? A Guidance Note”, Office of the Commissioner for Standards in Public Life, 17 October 2019, available at <https://standardscommissioner.com/wp-content/uploads/persons-of-trust-guidance-note.pdf>.

³⁵ *The Malta Independent*, “Around 700 People Employed on a Trust Basis or as Consultants by Government”, 4 March 2018. Available at <http://www.independent.com.mt/articles/2018-03-04/local-news/Around-700-people-employed-on-a-trust-basis-or-as-consultants-by-government-6736185647>.

term contracts under which they cannot become entitled to indefinite status (permanent employment), no matter how long they serve. This is as it should be: appointments on trust are by their nature temporary appointments and those so appointed should not become permanent additions to the public administration workforce.

7.3.2 However, regulations issued under the Employment and Industrial Relations Act entitle an employee on a fixed-term contract to indefinite status after four years unless a provision to the contrary is included in the contract.³⁶ The regulations themselves contain a safeguard to prevent persons of trust in from gaining permanent employment in government if the necessary provision is omitted (accidentally or otherwise) from their contracts.³⁷ This safeguard is important enough to merit inclusion in the Constitution.

7.3.3 It is therefore proposed that:

- (a) the Constitution should specify that any appointment on trust expires when the minister who made the appointment ceases to hold office in that capacity, subject to the possibility of a limited period of grace during which the appointee can seek alternative employment; and
- (b) the Constitution should also specify that this provision overrides any law to the contrary and any provisions in the appointee's contract that are inconsistent with it.

³⁶ See regulation 7(6) of the Contracts of Service for a Fixed Term Regulations (SL 452.81).

³⁷ Regulation 7(10).

8 Conclusion

8.1.1 The proposals presented in this document may appear extensive, not to say radical in some respects.

8.1.2 In actual fact, these proposals have been crafted in such a way as to maintain continuity with the past wherever possible. Change for change's sake has been avoided.

8.1.3 However, the circumstances of today are very different from those prevailing when Malta became independent 55 years ago. As this report has hopefully shown, the provisions of the Constitution on Parliament, the judiciary and public administration need holistic review if they are to cater adequately for the present and the future.

8.1.4 The ultimate aim of this exercise is to enable the system of government in Malta to withstand external scrutiny and, more importantly, to meet the needs and expectations of a developed European state in the 21st century. The proposals in this report represent the minimum that is considered necessary to achieve this aim.

Annex 1: Summary of Proposals

This annex reproduces the proposals in the main body of this report. It also links each proposal to the corresponding provision in the draft constitutional amendments set out in the second column of the table in Annex 2.

As explained in Annex 2, proposed new provisions have been put in a temporary sequence starting with N to avoid prematurely renumbering existing provisions.

<i>Proposal</i>	<i>Relevant provision</i>
The award of government contracts to members of Parliament	
It is proposed that –	54(1)(e), 55(1)(c)
(a) persons who hold any type of contract with the government, not just contracts of works or contracts for the supply of goods, should be disqualified from being elected to and serving in Parliament, unless they disclose information about the contract and (in the case of serving MPs) are exempted from the disqualification by a parliamentary resolution;	
(b) this disqualification should, in addition, extend to contracts with public entities; and	
(c) the disqualification should apply also to partners with unlimited liability in partnerships that hold such contracts, and to directors or chief executives of companies that hold such contracts, but not to lower-level managers.	
The eligibility of MPs for appointments in public administration	
Persons of trust should be disqualified from Parliament, as should members of officially appointed bodies except in cases where the law requires MPs to be appointed to such bodies as representatives of the government and the opposition.	54(1)(d)
Public officers and employees in the wider public sector who are appointed on merit should be disqualified from Parliament if the duties of their posts, or the functions of their employing organisation, justify restrictions on political participation.	54(1)(c)
Disqualification from Parliament for misconduct	
The Constitution should provide for the possibility of MPs losing their seats if they are found to have committed misconduct serious enough to warrant such action. It should be up to Parliament to establish by law the mechanism by which this should be done, as long as the mechanism is independent.	55(1)(n1)

<i>Proposal</i>	<i>Relevant provision</i>
Officers of Parliament and the Parliamentary Service	
The term “officer of Parliament” should apply to all staff in the House of Representatives, the National Audit Office and the Office of the Ombudsman.	N9(1); see also N1(5), N3(1), N4(1) and N5(2)
All officers of Parliament should form part of the Parliamentary Service under the headship of the Speaker, although this should not infringe the autonomy of the Office of the Ombudsman and the National Audit Office.	N9(2), N9(3)
The Auditor General and Deputy Auditor General should no longer be designated public officers.	N3(1) and N4(1), superseding 108(1) and (9)(a)
The designation of officer of Parliament should apply also to the Commissioner for Standards in Public Life and the staff of his office.	N2(5)
Independent bodies within the Parliamentary Service	
Chapter VI of the Constitution, which deals with Parliament, should include a new section entitled “Independent Offices of Parliament” dealing with the Ombudsman, the Auditor General and Deputy Auditor General, and the Commissioner for Standards in Public Life, along with their respective offices.	Chapter VI Part 4
This section should set out the functions, the term of appointment and the conditions of service of each officer.	N1, N2, N3, N4, superseding 108
This section should also provide for the establishment of the Office of the Ombudsman, the National Audit Office and the Office of the Commissioner for Standards in Public Life as independent bodies within the Parliamentary Service.	N1(5), N2(5) and N5(1)
Administrative autonomy of the Parliamentary Service	
In place of article 64(2) of the Constitution, there should be a single provision granting powers to appoint staff and to set terms and conditions of employment to the Speaker with respect to the House of Representatives, and to the heads of the independent bodies within the Parliamentary Service. These powers should be exercisable without any requirement for government approval, provided that available funds as approved by Parliament for each body are not exceeded.	N9(3), N17

<i>Proposal</i>	<i>Relevant provision</i>
The appointment of judges and magistrates	
It is proposed that:	96A
(a) the Judicial Appointments Committee should conduct its evaluation of candidates in relation to specific vacancies in the judiciary, whether actual or anticipated;	
(b) the Committee should issue a public call for expressions of interest for those specific vacancies, and its evaluation should be limited to candidates who respond and who meet the eligibility requirements; and	
(c) the aim of the evaluation should be to enable the Committee to identify and recommend the candidates who are the most suitable for appointment to specific judicial vacancies on the basis of a ranking order according to merit.	
The system of evaluation on the basis of calls for expressions of interest as proposed above should apply to all judicial appointments, including the appointment of the Chief Justice and the appointment of serving magistrates to higher judicial office.	96(3), 96A(6)
The system should also apply to adjudicators serving on any tribunals or other adjudicating authorities within the meaning of article 39 of the Constitution, except for those with respect to which the Constitution itself sets out a different method of appointment.	96A(6), N6
The first choice as substitute member on the Judicial Appointments Committee should be the Commissioner for Standards in Public Life.	96A(3)(d)
Members of the judiciary should no longer be considered public officers or public employees.	124(2)(c)
Establishing a Judicial Service	
The Constitution should establish a Judicial Service consisting of the staff of the Courts of Justice and any other bodies that might be established within the Judicial Service by law (for example, tribunals or other adjudicating authorities within the meaning of article 39 of the Constitution).	N10
The staff of the Courts of Justice and any other bodies established within the Judicial Service should be designated “officers of the Courts”.	N10(1)
The Chief Justice should be the head of the Judicial Service, although staffing and discipline, being potentially contentious matters, should be in the hands of the Director General of the Courts of Justice so as not to involve the Chief Justice as a party in any legal proceedings that might arise from them.	N10(2) and N10(3)
The Director General of the Courts of Justice should have the same latitude in appointing staff and setting terms and conditions of employment, always subject to the availability of funds, as that proposed for the Parliamentary Service.	N17

<i>Proposal</i>	<i>Relevant provision</i>
Disciplined forces	
It is proposed that –	N7(d), superseding definition at 47(1); N11
(a) members of disciplined forces should be treated as a category of employees in their own right, distinct from the Public Service; and	
(b) the definition of “disciplined force” should cater for the possibility of new such forces being established by law in addition to the Armed Forces, the Police and the Correctional Service.	
The classification of public employees	
The Constitution should incorporate a definition of “public employee” consisting of:	N7
(a) public officers, or staff in the service of the President and the government of Malta other than members of disciplined forces and persons of trust;	
(b) officers of Parliament, including staff of independent bodies within the Parliamentary Service;	
(c) officers of the Courts, including staff of any bodies that might be set up within the Judicial Service;	
(d) members of disciplined forces;	
(e) employees of public entities, that is to say statutory authorities, government agencies, government-owned companies and other bodies that belong to but are separate from the government; and	
(f) persons of trust.	
Ministers, members of Parliament, members of the judiciary, and members of officially appointed bodies should continue not to be regarded as employees. Nor should members of the judiciary.	124(2)(c)
Limitations on public comment and political involvement by public employees	
Articles 41 and 42 of the Constitution should permit restrictions on public comment and political activity by all public employees. The restrictions should be aimed at maintaining public confidence in the impartiality of public administration. The requirement for such restrictions to be reasonably justifiable in a democratic society should be retained and restrictions should continue to be applied selectively.	41(2)(b), 42(2)(b)
The disqualification whereby a public employee cannot become a member of Parliament should be tied specifically to posts that are subject to restrictions on public comment and political activity under articles 41 and 42 of the Constitution.	54(1)(c)

<i>Proposal</i>	<i>Relevant provision</i>
The role of the Public Service Commission	
The Constitution should assign the Public Service Commission a twofold role with respect to staffing: (a) regulating the application of the merit principle; and (b) conducting investigations and hearing complaints.	N14(3) and (4), N15(2) and (6), 110(1)
As a general rule the Commission should not be directly involved in selection processes or appointments. It should intervene only if it finds that the merit principle has not been breached, and in this case it should continue to have the power to take whatever remedial action it considers necessary.	N14(3) and (4), 110(2)
Appointments should cease to require a recommendation by the Commission. Except where the Constitution provides otherwise, appointments in the Public Service should be made by the Principal Permanent Secretary, who should be able to delegate his powers.	N8(3)
The Public Service Commission should have the power to interdict any person from exercising functions relating to the selection and appointment of public employees, either indefinitely or for a specific term, and to give such directions as it may deem fit concerning the exercise of those functions while the interdiction is in force.	110(2)(g)
Defining merit	
Articles 110(2)(c) and 110(6) of the Constitution should be replaced by a definition of the merit principle which requires that – (a) the vacancy should be advertised in such a manner as to afford those eligible a reasonable chance to apply; (b) there should be an impartial selection process based on eligibility requirements and selection criteria that reflect solely the duties of the vacant post and the legitimate needs of the employing body; (c) the person appointed should be the most suitable from among eligible and available candidates, as determined by the aforementioned selection process; and (d) the selection and appointment process should meet such other standards as the Public Service Commission may set for it.	N14(1) and (2), superseding 110(2), 110(6) and 112

<i>Proposal</i>	<i>Relevant provision</i>
<p>The new definition of the merit principle should –</p> <ul style="list-style-type: none"> (a) apply to internal promotions as well as to external recruitment; (b) extend throughout public administration, subject to such exceptions as the Constitution itself may permit; (c) allow for situations in which all those who meet the requirements for particular posts stand to be appointed, that is to say no selection process is necessary; and (d) enable the Public Service Commission to permit direct appointments without recourse to a competitive selection process in other cases where the Commission finds it justified in the public interest to do so (for example, the re-employment of former public employees in their old posts where such posts have remained vacant), provided that every year the Commission should publish a report saying how many waivers it has granted and why it has granted each one. 	N14(1), N14(4), N14(5)(a)
Monitoring the application of the merit principle in the wider public sector	
The Constitution should recast the Public Service Commission as the guardian of merit throughout public administration, that is to say including public entities, disciplined forces, the Parliamentary Service and the proposed new Parliamentary and Judicial Services.	N14(1) and (3), 110(1)
To this end the Commission should be retitled Public Services Commission (in the plural).	109(1)
Removals from office and discipline	
The Public Services Commission should assume a regulatory and appellate role in disciplinary cases and dismissals. The decisions taken by the Commission in fulfilment of this role should take effect directly by virtue of its own authority and should no longer assume the form of a recommendation to the Prime Minister. As a general rule, the officer or authority with the power to make appointments should also have the power to remove staff from office or and exercise discipline over them.	N16
The jurisdiction of the Public Services Commission with respect to removals from office and discipline should be as follows:	N16(2), N16(3), 110(1)(b) and (c)
<ul style="list-style-type: none"> (a) the Commission should regulate the disciplinary process and hear appeals arising from disciplinary cases in the Public Service, the Parliamentary Service (including independent bodies within the Parliamentary Service) and the Judicial Service; and (b) the Commission should hear appeals against removals from office, (on disciplinary or other grounds,) by employees of any body in public administration. 	

<i>Proposal</i>	<i>Relevant provision</i>
The Commission should have the power to interdict any person from exercising functions relating to discipline and removals from office, either indefinitely or for a specific term, and to give such directions as it may deem fit concerning the exercise of those functions while the interdiction is in force.	110(2)(g)
Strengthening the independence of the Public Services Commission (and other constitutional commissions)	
It is proposed that:	109(1), 109(2)
(a) the membership of the Public Services Commission should be fixed at five; and	
(b) the President should appoint two of the members of the Commission other than the Chairperson on the advice of the Prime Minister and the remaining two on the advice of the Leader of the Opposition.	
It is proposed that:	60(2), 60(3), 118(1), 118(2)
(a) the Electoral Commission and the Broadcasting Authority should have an even number of members excluding the chairperson; and	
(b) the President should appoint half the ordinary members of each body on the advice of the Prime Minister and half on the advice of the Leader of the Opposition.	
The disqualification whereby public officers cannot be appointed as members of the four constitutional commissions (except for the Chief Electoral Commissioner) should be extended to all public employees.	60(4), 109(3), 118(3), 120(3)
The disqualifications for membership of the Public Services Commission, the Broadcasting Authority and the Employment Commission should extend to members of and candidates for election to the European Parliament and local government bodies in Malta.	109(3), 118(3), 120(3)
The provision whereby former members of the Public Services Commission, the Broadcasting Authority and the Employment Commission are ineligible for government employment for three years after they cease to be members should be extended to any employment in public administration.	109(4), 118(4), 120(4)
The Public Services Commission and judicial review	
The Public Services Commission should be made subject to judicial review and article 115 of the Constitution should be repealed.	Deletion of 115

<i>Proposal</i>	<i>Relevant provision</i>
Appointments on transfer	
<p>The Constitution should empower the Principal Permanent Secretary to redeploy staff from one employer to another throughout the public administration by means of an appointment on transfer without recourse to a selection process, provided that –</p> <p>(a) the employee rose to his or her current level on the basis of merit;</p> <p>(b) the appointment on transfer does not amount to a promotion;</p> <p>(c) appointments on transfer to or from the House of Representatives, an independent body within the Parliamentary Service, or the Courts of Justice should require the approval of the Speaker, the head of that independent body, or the Director General of the Courts of Justice respectively; and</p> <p>(d) appointments on transfer to a disciplined force, in so far as the special requirements of service in that force allow for such appointments, should require the consent of its head.</p>	N15
<p>The Public Services Commission should have ultimate authority to decide whether or not an appointment on transfer amounts to a promotion, and it should have the power to rescind that appointment on transfer if necessary.</p>	N15(2)
<p>Appointments on transfer should not lead to ambiguous situations where an employee is simultaneously a member of different services, or serving with one body but subject to rules of conduct and disciplinary procedures set by another. The relevant provisions in the Constitution should make this clear, but if it so wishes an employer should be able to grant the right of reversion to a former employee who has been appointed on transfer elsewhere.</p>	N15(6)
Appointments by the President on the basis of a parliamentary resolution with two-thirds majority support	
<p>The Constitution should provide for the appointment of the Ombudsman and the Commissioner for Standards in Public Life by the President on the basis of a parliamentary resolution with the support of at least two thirds of all members of Parliament, as in the case of the Auditor General and Deputy Auditor General.</p>	N12
<p>The Constitution should provide for the possibility of removal of the above-mentioned officers by means of the same mechanism on the grounds of proven misconduct or inability to perform the functions of one's office, as well as suspension by the President if Parliament is not in session.</p>	N12(2) and (3)
<p>There should be a single set of provisions governing the appointment, suspension and removal of all four officers and extending also to the chairpersons of the Electoral Commission, the Public Services Commission, the Broadcasting Authority and the Employment Commission.</p>	N12(5)

<i>Proposal</i>	<i>Relevant provision</i>
The same provisions should also extend to the Commissioner of Police, the Commander of the Armed Forces of Malta, and the Head of the Security Service.	N12(5)
Should Parliament prove unable to pass a two-thirds majority resolution within one month from the date when an appointment under this system becomes due, the President would be entitled to make the appointment according to his or her own judgement.	N12(1), second proviso
The appointment of Permanent Secretaries	
It is proposed that:	N13,
(a) Permanent Secretaries should be appointed by the President on the recommendation of a Committee on Presidential Appointments;	superseding 92(3)
(b) the Committee should be chaired by the chairperson of the Public Services Commission and should in addition consist of the Principal Permanent Secretary and one other Permanent Secretary chosen by the President;	
(c) the Committee should make its recommendation to the President after advertising the post to be filled and holding a selection process based on merit;	
(d) before advertising the post, the Committee should obtain the views of the responsible minister on the requirements of the post and the qualities and attributes needed by the person chosen to fill it;	
(e) on receiving the Committee's recommendation, the President should notify the Prime Minister, who may object to the appointment; and	
(f) if the President considers the Prime Minister's objections to be justified in the public interest, he or she should direct the Committee to re-advertise the post and hold a fresh selection process.	
The option to select a Permanent Secretary from outside the Public Service should be available to the Committee on Presidential Appointments if it is felt that the specialised needs of a particular post outweigh the need for experience in public administration.	Deletion of 92(3)
Heads of disciplined forces and the Director General of the Courts of Justice	
The mechanism for the appointment of Permanent Secretaries should also apply to the heads of disciplined forces, except for those whose appointment is catered for by other provisions of the Constitution.	N13(10)(b)
The same mechanism should also apply to the Director General of the Courts of Justice. However, the Chief Justice should be consulted by the Presidential Advisory Committee in the same manner as ministers with respect to the requirements of the post and the attributes needed by applicants.	N13(10)(c), N13(12)(c)

<i>Proposal</i>	<i>Relevant provision</i>
The removal from office of Permanent Secretaries	
Permanent Secretaries should remain subject to the possibility of removal by the President on the advice of the Prime Minister, who should consult the Public Services Commission before advising the President. As a limited safeguard, the Prime Minister should be required to tell the Public Services Commission why he or she wants to remove a Permanent Secretary, but loss of confidence by the Prime Minister in a Permanent Secretary should be sufficient grounds for his or her removal.	N16(5)
Heads of government departments	
Article 92(4) should be omitted from a revised Constitution. Heads of government departments should be appointed under the same provisions as most other public officers, that is to say on the basis of merit and under the jurisdiction of the Public Services Commission.	Deletion of 92(4), resulting in application of N8(3) and N14
Regulating appointments on trust	
The Constitution should explicitly permit appointments on the basis of trust in the secretariats of the Prime Minister, ministers and parliamentary secretaries, up to a maximum number set by the Prime Minister.	N18(1)
The Constitution should designate persons of trust as a distinct category of public employees in their own right.	N7(f), N18(2)
Persons of trust should be precluded from exercising any powers conferred by law on ministers or other authorities or giving directions to other public employees, except for employees performing duty in the minister's secretariat.	N18(3)
The Constitution should specify that any appointment on trust expires when the minister who made the appointment ceases to hold office in that capacity, subject to the possibility of a limited period of grace during which the appointee can seek alternative employment.	N18(4)
The Constitution should specify that this provision overrides any law to the contrary and any provisions in the appointee's contract that are inconsistent with it.	N18(5)

Annex 2: Proposed Amendments to the Constitution

List of provisions included in these proposals

Proposed new provisions have been put in a temporary numbering sequence starting with N to avoid renumbering existing provisions, since renumbering at this early stage would create unnecessary complications for the drafters of a revised Constitution.

Chapter IV – Fundamental Rights and Freedoms

- 41 Protection of freedom of expression
- 42 Protection of freedom of assembly and association
- 45 Protection from discrimination on the grounds of race, etc.
- 47 Interpretation of Chapter IV

Chapter VI – Parliament

- 54 Disqualifications for membership of the House of Representatives
- 55 Tenure of office of members
- 60 Establishment of Electoral Commission
- 64 Clerk to House of Representatives and his staff (proposed for deletion)
- N1 Ombudsman (to replace article 64A)
- N2 Commissioner for Standards in Public Life
- N3 Auditor General (to partly replace article 108)
- N4 Deputy Auditor General (to partly replace article 108)
- N5 National Audit Office (to partly replace article 108)

Chapter VII – The Executive

- 82 Allocation of portfolios to Ministers
- 92 Permanent Secretaries and heads of government departments (retitled “Direction and supervision of bodies in public administration”)
- 94 Secretary to the Cabinet (retitled “Principal Permanent Secretary and Secretary to the Cabinet”)

Chapter VIII – The Judiciary

- 96 Appointment of judges
- 96A Judicial Appointments Committee
- 100 Magistrates
- N6 Other courts and adjudicating authorities

Chapter IX – Finance

- 107 Remuneration in respect of certain offices

Chapter X – The Public Service (retitled “Public Administration”)

- N7 Public employees
- N8 The Public Service
- N9 The Parliamentary Service
- N10 The Judicial Service
- N11 Disciplined forces
- N12 Appointments and removals from office by the President on the basis of a resolution of the House of Representatives
- N13 Other senior appointments in public administration
- N14 Principle of merit in appointments
- N15 Appointments on transfer from one body or service to another
- N16 Removals from office and discipline
- N17 Administrative autonomy of the Parliamentary Service, the Judicial Service, and independent bodies therein
- N18 Persons of trust
- 109 Public Service Commission (retitled “Appointment of the Public Services Commission”)
- 110 Appointment, etc., of public officers (retitled “Functions of the Public Services Commission”)
- 112 Appointment on transfer in respect of certain offices (proposed for deletion)
- 115 Protection of the Public Service Commission from legal proceedings (proposed for deletion)

Chapter XI – Miscellaneous

- 118 Broadcasting Authority
- 120 Employment Commission
- 121 Powers and procedure of Commissions

124 Interpretation

New definitions added to article 124(1)

“Body in public administration” (ministries, departments, the House of Representatives, , the Courts of Justice, other bodies in the Parliamentary and Judicial Services, disciplined forces, public entities)

“Disciplined force” (AFM, Police and other forces established by law and operating under special discipline – definition transposed from article 47)

“Judicial Service” (officers of the Courts)

“Member” (member of a disciplined force – definition transposed from article 47)

“Officer of Parliament” (staff of the House of Representatives and independent bodies in the Parliamentary Service)

“Officer of the Courts” (staff of the Courts of Justice and any other bodies that may be established within the Judicial Service)

“Officially appointed body” (boards and commissions)

“Parliamentary Service” (officers of Parliament)

“Person of trust” (staff in ministers’ secretariats)

“Public employee” (all employees in public administration, being public officers, officers of Parliament, officers of the Courts, members of disciplined forces, employees of public entities and persons of trust)

“Public entity” (statutory authorities and bodies controlled by the state or a statutory authority)

“State” (the President, the Government of Malta, Parliament, the Courts of Justice, other bodies in the Parliamentary and Judicial Services, and the employees thereof).

The proposed amendments

The table below sets out relevant provisions in the current Constitution side by side with the proposed amendments (second column) for ease of comparison. A third column contains explanatory notes.

The changes in the second column transpose the proposals set out in the main text of this report. They also include several additional minor changes that are consequential to the proposals. These have been included here to make the draft amendments a complete package, but they have not been mentioned in the main body of this report in the interests of brevity. Explanations are given as necessary in the third column of the table.

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Protection of freedom of expression.</i></p> <p>41. [...] (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that the law in question makes provision –</p> <p>[...]</p>	<p>No change (see below).</p>	
<p>(b) that imposes restrictions upon public officers,</p>	<p>(b) for the imposition of restrictions on public employees with a view to maintaining public confidence in the impartiality of the public administration,</p>	<p>Enables restrictions on the expression of political views to be applied (where reasonably justified – see continuation in next row) beyond the Public Service. See definition of “public employee” in article 124(1).</p>
<p>and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.</p>	<p>No change.</p>	
<p><i>Protection of freedom of assembly and association.</i></p> <p>42. [...] (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision –</p> <p>[...]</p>	<p>No change (see below).</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
(b) that imposes restrictions upon public officers,	(b) for the imposition of restrictions on public employees with a view to maintaining public confidence in the impartiality of the public administration,	Enables restrictions on political participation to be applied (where reasonably justified – see continuation in next row) beyond the Public Service. See definition of “public employee” in article 124(1).
and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.	No change.	
<p><i>Protection from discrimination on the grounds of race, etc.</i></p> <p>45. [...] (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that it makes provision:</p> <p>(a) with respect to qualifications for service or conditions of service in any disciplined force; or</p>	No change (see below).	
(b) with respect to qualifications (not being qualifications specifically relating to sex, sexual orientation or gender identity) for service as a public officer or for service of a local government authority or a body corporate established for public purposes by any law.	(b) with respect to qualifications (not being qualifications specifically relating to sex, sexual orientation or gender identity) for service as a public employee or for service with a local government authority.	Reference to public employees replaces references to public officers and bodies corporate since “public employee” includes both public officers and employees of public entities.

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Interpretation of Chapter IV.</i></p> <p>47. (1) In this Chapter, save where the context otherwise requires, the following expressions shall have the following meanings respectively, that is to say –</p> <p>[...]</p>	No change (see below).	
<p>“disciplined force” means –</p> <p>(a) a naval, military or air force of the Government of Malta;</p> <p>(b) the Malta Police Force;</p> <p>(c) any other police force established by law in Malta;</p> <p>(d) the Malta prison service;</p>	Delete.	See new definition in article 124(1).
<p>“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.</p>	Delete.	Definition moved to article 124(1).
<p><i>Disqualifications for membership of House of Representatives.</i></p> <p>54. (1) No person shall be qualified to be elected as a member of the House of Representatives –</p> <p>[...]</p>	No change (see below).	
<p>(b) save as otherwise provided by Parliament, if he holds or is acting in any public office</p>	<p>(b) if he is a judge or a magistrate, a member of a disciplined force, or a person of trust;</p>	Reference to judge or magistrate necessary since they are excluded from

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>or is a member of the armed forces of the Government of Malta;</p>	<p>(c) if he holds or is acting in any other office of employment in public administration which is subject to restrictions under article 41(2)(b) or 42(2)(b) of this Constitution;</p>	<p>the definition of “public employee”. Persons of trust excluded so as to remove the government’s discretion to appoint backbench MPs in this capacity.</p> <p>Para (c) is limited to posts which are subject to restrictions on public comment or political participation.</p>
	<p>(d) if he is the chairperson or other member of any officially appointed body, except for such bodies in which the law provides for the appointment of members of Parliament as official representatives of the government and the opposition;</p>	<p>Overall guiding principle is that a public employee can get elected to Parliament (provided he/she is not in a post that is subject to restrictions on political activity), but the government should not appoint serving MPs to posts in public administration since this would make MPs dependent on the government and weaken the legislature.</p>
<p>(c) if he is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, a contract with the Government of Malta being a contract of works or a contract for the supply of merchandise to be used in the service of the public and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract, and his interest, or the interest of any such partnership or company, therein;</p>	<p>(e) if he is –</p> <p>(i) a party to, or</p> <p>(ii) a partner with unlimited liability in a partnership or a director or chief executive of a company which is a party to,</p> <p>a contract with the Government of Malta or a public entity, and has not, at least one month before the date of election, published in the Gazette a notice setting out the nature of any such contract and his interest, or the interest of any such partnership or</p>	<p>Reference to “director or manager” (of a company) substituted with “director or chief executive” since “manager” is too broad a term and most managers do not have the same interest in and control over companies as directors or CEOs. Reference to “contracts” broadened through omission of qualifying provision. Reference to public entities (see definitions in article 124) added to widen the scope of this provision and</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	company, therein;	eliminate loopholes whereby govt could give contracts to MPs through such bodies. "Within one month" also changed to "at least one month" for clarity.
[Paragraphs (d) to (i)]	Renumber as (f) to (k), otherwise no change.	
<p>(3) A person shall not be treated as holding, or acting in, a public office for the purpose of paragraph (b) of sub-article (1) of this article –</p> <p>(a) if he is on leave of absence pending relinquishment of a public office;</p>	<p>(3) A person shall not be treated as a member of a disciplined force or as holding or acting in any other office of employment in public administration for the purpose of sub-article (1) if he is on leave of absence pending departure from such an office or disciplined force.</p>	
<p>(b) if he is a teacher at the University of Malta who is not by the terms of his employment prevented from the private practice of his profession or called upon to place his whole time at the disposal of the Government of Malta.</p>	Delete.	Paragraph (b) becomes superfluous in the light of article 54(1)(c) as amended, since lecturers are not subject to restrictions on public comment or political participation.
<p><i>Tenure of office of members.</i></p> <p>55. (1) The seat of a member of Parliament shall become vacant –</p> <p>[...]</p>	No change (see below).	
<p>(c) if he becomes a party to a contract with the Government of Malta being a contract of works or a contract for the supply of merchandise to be</p>	<p>(c) if he becomes a party to a contract with the Government of Malta or a public entity, or if any partnership in which he is a partner with unlimited</p>	Amended in keeping with article 54(1)(e) as amended.

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>used in the service of the public, or if any partnership in which he is a partner with unlimited liability or a company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner with unlimited liability in a partnership or a director or manager of a company that is a party to any such contract:</p>	<p>liability or a company of which he is a director or chief executive becomes a party to any such contract, or if he becomes a partner with unlimited liability in a partnership or a director or chief executive of a company that is a party to any such contract:</p>	
<p>Provided that he shall not vacate his seat under the provisions of this paragraph if before becoming a party to the contract or before, or as soon as practicable after, becoming otherwise interested in the contract (whether as a partner with unlimited liability in a partnership or as a director or manager of a company) he discloses to the Speaker the nature of the contract and his interest or the interest of the partnership or company therein and the House of Representatives by resolution exempts him from the provisions of this paragraph;</p> <p>[...]</p>	<p>Provided that he shall not vacate his seat under the provisions of this paragraph if –</p> <p>(i) before becoming a party to the contract, or</p> <p>(ii) before, or as soon as practicable after, becoming interested in the contract as a partner with unlimited liability in a partnership or as a director or chief executive of a company,</p> <p>he discloses to the Speaker the nature of the contract and his interest or the interest of the partnership or company therein, and the House of Representatives by resolution exempts him from the provisions of this paragraph;</p>	<p>Amended in keeping with article 54(1)(e) as amended.</p>
	<p>(n1) if he is found, by a body independent of the Government of Malta and the House of Representatives that has been established or designated for this purpose by Act of Parliament, to have committed misconduct serious enough to warrant the loss of his seat;</p>	<p>New paragraph added to art 55(1) providing for the possibility of MPs being removed for serious misconduct. It is left to Parliament to establish the mechanism for such removals, provided that the mechanism is independent.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Establishment of Electoral Commission.</i></p> <p>60. (1) There shall be an Electoral Commission for Malta.</p>	<p>No change (see below).</p>	
<p>(2) The Electoral Commission shall consist of a Chairman, who shall be the person for the time being holding the office of Chief Electoral Commissioner and who shall be appointed to that office from the public service, and such number of members not being less than four as may be prescribed by any law for the time being in force in Malta.</p>	<p>(2) The Electoral Commission shall consist of the Chief Electoral Commissioner, who shall be a public officer and who shall be appointed and may be suspended or removed in accordance with article N12 of this Constitution, and such a number of other members, being an even number not less than four, as may be prescribed by any law for the time being in force in Malta.</p>	<p>Article N12 provides for appointments by the President on the basis of a two-thirds majority resolution in the House of Representatives. Given this, the requirement for the Chief Electoral Commissioner to be a <i>servi</i>ng public officer has been dropped.</p>
<p>(3) The members of the Electoral Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.</p>	<p>(3) Half of the members of the Electoral Commission other than the chairperson shall be appointed by the President on the advice of the Prime Minister, and half shall be appointed by the President on the advice of the Leader of the Opposition.</p>	<p>Amended to provide for the nomination of members by the government and opposition, on the model of the Employment Commission. Also worded to make it clear that the chairperson is a member of the Commission. See subarticle (4).</p>
<p>(4) A person shall not be qualified to hold office as a member of the Electoral Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives or a public officer.</p>	<p>(4) A person shall not be qualified to hold office as a member of the Electoral Commission if he is a Minister, a Parliamentary Secretary, a member of or a candidate for election to the House of Representatives, or (except in the case of the Chief Electoral Commissioner) a public employee.</p>	<p>Disqualifies all employees in public administration, not just public officers, from serving as members of the Electoral Commission, since the risk of being subject to undue influence applies to all such employees.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Clerk to House of Representatives and his staff.</i></p> <p>64. (1) There shall be a Clerk to the House of Representatives.</p>	Delete.	See new article N9 on the Parliamentary Service.
<p>(2) Without prejudice to the provisions of sub-article (6) of article 110 of this Constitution and to any other law applicable to employment in the public sector, and without prejudice to the provisions of sub-article (1) of this article, the Speaker may appoint such officials and employees as may be required for the fulfilment of functions, powers and duties under the Parliamentary Service Act. The said power of appointment includes the power to approve the number of persons who may be appointed under this article both with reference to the total number and with reference to specific duties, salaries and conditions of employment:</p> <p>Provided that once the number of posts in the Parliamentary Service has been approved by the Minister for Finance and funds are made available, no further administrative approvals shall be required for the Parliamentary Service to conclude contracts of employment in accordance with those approvals.</p>	Delete.	See new article N17 concerning administrative autonomy.

Provisions in current Constitution	Proposed changes or new provisions	Notes
	CHAPTER VI – PARLIAMENT [...] Part 4 – Independent Officers of Parliament	New part added to the chapter on Parliament covering the Ombudsman, the Commissioner for Standards in Public Life, the Auditor General and the Deputy Auditor General.
<p><i>Office of Ombudsman.</i></p> <p>64A. (1) There shall be a Commissioner for Administrative Investigations to be called the Ombudsman who shall have the function to investigate actions taken by or on behalf of the Government, or by such other authority, body or person as may be provided by law (including an authority, body or office established by this Constitution), being actions taken in the exercise of their administrative functions.</p>	<p><i>Ombudsman.</i></p> <p>N1. (1) There shall be a Commissioner for Administrative Investigations, to be called the Ombudsman, whose function it shall be to investigate actions taken by or on behalf of the Government, or by such other authority, body or person as may be provided by law (including an authority, body or office established by this Constitution), being actions taken in the exercise of their administrative functions.</p>	<p>Minor change to improve wording.</p> <p>Article to be renumbered as appropriate as part of a revised Constitution.</p>
<p>(2) The manner of appointment, the term of office, and the manner of removal or suspension from office of the Ombudsman together with any other matter ancillary or incidental thereto or considered necessary or expedient for the carrying out of the function referred to in sub-article (1) shall be provided for by an Act of Parliament.</p>	<p>(2) The Ombudsman shall be appointed, and may be suspended or removed, in accordance with article N12 of this Constitution.</p> <p>(3) The Ombudsman shall be appointed for a term of five years, and shall be eligible for reappointment for a further term of five years.</p>	<p>Basic provisions concerning the Ombudsman should not be left to ordinary law.</p> <p>Article N12 provides for appointments by the President on the basis of a two-thirds majority resolution in the House of Representatives.</p>
	<p>(4) There shall be paid to the Ombudsman such a salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts.</p>	<p>Modelled on current article 108(6)(a) regarding the Auditor General. To be read in conjunction with art 107(4) as amended.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	<p>(5) The Office of the Ombudsman shall be an independent body within the Parliamentary Service headed by the Ombudsman, and the Ombudsman and his staff shall be officers of Parliament.</p>	<p>Enshrines in the Constitution the Ombudsman’s designation as officer of Parliament and extends it to his staff. The formal designation of the Ombudsman as head of his office links to article N9(3), which provides for the appointment of staff.</p>
	<p>(6) Further provision concerning the appointment and functions of the Ombudsman, the funding and administration of his office, and any related matters shall be made by an Act of Parliament.</p>	<p>The reference to “appointment” is meant to cover qualifications for appointment. Article N12 provides for temporary substitute appointments.</p>
	<p><i>Commissioner for Standards in Public Life.</i></p> <p>N2. (1) There shall be a Commissioner for Standards in Public Life whose function it shall be to investigate the conduct of Ministers, Parliamentary Secretaries, other members of the House of Representatives, and persons of trust.</p> <p>(2) The Commissioner for Standards in Public Life shall be appointed, and may be suspended or removed, in accordance with article N12 of this Constitution.</p> <p>(3) The Commissioner for Standards in Public Life shall be appointed for a term of five years, and shall not be eligible for reappointment.</p>	<p>New article to entrench in the Constitution the office of Commissioner for Standards in Public Life. The provisions of this article correspond closely to those on the Ombudsman (see above).</p> <p>“Persons of trust” are defined in article 124(1) and regulated by article N18.</p> <p>Article N12 provides for appointments by the President on the basis of a two-thirds majority resolution in the House of Representatives.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	(4) There shall be paid to the Commissioner for Standards in Public Life such a salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts.	Modelled on current article 108(6)(a) regarding the Auditor General. To be read in conjunction with article 107(4) as amended.
	(5) The Office of the Commissioner for Standards in Public Life shall be an independent body within the Parliamentary Service headed by the Commissioner, and the Commissioner and his staff shall be officers of Parliament.	The formal designation of the Commissioner as head of his office links with article N9(3), which provides for the appointment of staff.
	(6) Further provision concerning the appointment and functions of the Commissioner for Standards in Public Life, the funding and administration of his office, and any related matters shall be made by an Act of Parliament, which may also assign new functions to the Commissioner or extend his jurisdiction.	The reference to “appointment” is meant to cover qualifications for appointment. Temporary substitute appointments are provided for in article N12. Also permits Parliament to extend the Commissioner’s functions by law. This allows for the recommendations of international bodies such as GRECO to be put into effect.
<p><i>Auditor General.</i></p> <p>108. (1) There shall be an Auditor General whose office shall be a public office who shall have the functions as provided in the following provisions of this article.</p>	<p><i>Auditor General.</i></p> <p>N3. (1) There shall be an Auditor General, who shall be an officer of Parliament.</p>	<p>The designation of the Auditor General as a public officer is anomalous in terms of the present-day Constitution and has been omitted.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(2) The Auditor General shall be an officer of the House of Representatives and shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members in the House:</p> <p>Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives, he shall not be treated as a member of the House for the purpose of establishing the majority required by this sub-article.</p>	<p>(2) The Auditor General shall be appointed, and may be suspended or removed, in accordance with article N12 of this Constitution.</p>	<p>Article N12 provides for appointments by the President on the basis of a two-thirds majority resolution in the House of Representatives.</p>
<p>(3) (a) Subject to the provisions of sub-article (4) of this article the Auditor General shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment for one further period of five years.</p>	<p>(3) (a) Subject to the provisions of article N12, the Auditor General shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment for one further period of five years.</p>	<p>Reference to subarticle (4) substituted with reference to article N12.</p>
<p>(b) Where the Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in sub-article (6).</p>	<p>Delete.</p>	<p>No longer necessary in the light of practice as it has evolved. Furthermore, if the Auditor General has the prospect of returning to the Public Service he may be susceptible to influence.</p>
<p>(c) It shall not be lawful for the Auditor General, during his tenure of such office, to hold any other office of profit or otherwise with the Government of Malta or with any commercial or professional venture whatsoever.</p>	<p>Re-number as paragraph (b).</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(4) (a) The Auditor General may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members in the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of the proviso to sub-article (2) of this article shall also apply for the purpose of establishing the majority required under this sub-article.</p>	Delete.	This is catered for by article N12.
<p>(b) At any time when Parliament is not in session, the Auditor General may be suspended from his office by the President, acting in accordance with his own deliberate judgement, for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next session of Parliament.</p>	Delete.	This is catered for by article N12.
<p>(5) The accounts –</p> <p>(a) of all departments and offices of the Government of Malta, including the office of the Public Service Commission, and the office of the Clerk of the House of Representatives and of all Superior and Inferior Courts of Malta, and</p>	<p>(4) The accounts of –</p> <p>(a) all ministries, departments and other offices of the Government of Malta, including the office of the Public Service Commission,</p> <p>(b) the House of Representatives and any other bodies within the Parliamentary Service,</p> <p>(c) the Courts of Justice and any other</p>	Expanded to refer to all three branches of the state and to disciplined forces, in accordance with the classification of public bodies in Chapter X as revised.

Provisions in current Constitution	Proposed changes or new provisions	Notes
	bodies within the Judicial Service, (d) disciplined forces, and	
(b) of such other public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law for the time being in force in Malta,	(e) public entities or other bodies administering, holding or using funds belonging directly and indirectly to the state of Malta, as may be prescribed by or under any law for the time being in force in Malta,	See definitions of “public entity” and “state” in article 124(1).
shall be audited and reported upon annually by the Auditor General to the House of Representatives and for that purpose the Auditor General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.	No change.	
(6) (a) There shall be paid to the Auditor General such salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts.	Renumber as subarticle (5).	
(b) Such salary and allowances shall be a charge on the Consolidated Fund and the provisions of sub-article (3) of article 107 of the Constitution shall apply to such salary.	Delete.	Catered for by means of an amendment to article 107(4).
(7) The Auditor General shall not enter upon the duties of his office unless he has taken and subscribed before the President the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.	Renumber as subarticle (6).	

Provisions in current Constitution	Proposed changes or new provisions	Notes
(8) Parliament may by law from time to time provide for the manner in which the reports of the Auditor General shall be made.	Renumber as subarticle (7).	
	(8) In the exercise of his functions under this Constitution, the Auditor General shall not be subject to the authority or control of any person.	Replaces current subarticle 108(12). See subarticle N4(4) re Deputy Auditor General.
	(9) Nothing in this Constitution shall be construed as precluding the grant of any other functions or powers to the Auditor General or the National Audit Office by or under any law from time to time in force.	Replaces current subarticle 108(11).
<i>Deputy Auditor General.</i> (9) (a) There shall also be a Deputy Auditor General whose office shall be a public office and who shall have such functions as the Auditor General may from time to time delegate to him and who shall, whenever the office of Auditor General is temporarily vacant, and until a new Auditor General is appointed, and whenever the holder of the office is absent from Malta or on vacation or is for any reason unable to perform the functions of his office, perform the functions of Auditor General.	<i>Deputy Auditor General.</i> N4. (1) There shall be a Deputy Auditor General, who shall be an officer of Parliament, and who shall – (a) have such functions as the Auditor General may from time to time delegate to him; and (b) perform the functions of Auditor General whenever the office of Auditor General is temporarily vacant, and until a new Auditor General is appointed, and whenever the holder of the office is for any reason unable to perform the functions of his office.	Reframed as separate article in its own right. Reference to absence from Malta and vacations have been deleted. It is only necessary to formally nominate an absent office-holder if he or she is not reachable by email or has to carry out functions that require his/her physical presence in the office.
(b) The provisions of sub-article (2), paragraphs (a) and (c) of sub-article (3), sub-article (4), paragraph (b) of sub-article (6) and sub-article (7) of this	(2) The provisions of sub-articles (2), (3) and (6) of article N3 of this Constitution shall apply to the Deputy Auditor General.	Reference to current para 6(b) eliminated in favour of direct addition to article 107(4).

Provisions in current Constitution	Proposed changes or new provisions	Notes
article shall apply to the Deputy Auditor General.		
(c) There shall be paid to the Deputy Auditor General such salary and such allowances as may from time to time be prescribed or allowed to a Magistrate of the Inferior Courts.	Renumber as subarticle (3).	
(d) Where the Deputy Auditor General has been appointed from among public officers and at the end of his appointment is below the retiring age in the public service, the person so appointed shall revert to the public service and shall continue to enjoy the salary and allowances referred to in this sub-article.	Delete.	No longer necessary in the light of practice as it has evolved. Furthermore, if the Deputy Auditor General has the prospect of returning to the Public Service he may be susceptible to influence.
	(4) In the exercise of his functions under this Constitution the Deputy Auditor General shall not be subject to the authority or control of any person save the Auditor General.	Replaces current subarticle 108(12).
<p><i>National Audit Office.</i></p> <p>(10) (a) There shall be a National Audit Office consisting of the Auditor General, who shall be the head of that office, the Deputy Auditor General and such other officers, appointed by the Auditor General, as the Auditor General may consider necessary to assist him in the proper discharge of his office, and the provisions of article 110 of this Constitution shall not apply to the officers appointed to the National Audit Office.</p>	<p><i>National Audit Office.</i></p> <p>N5. (1) There shall be a National Audit Office, which shall be an independent body within the Parliamentary Service.</p> <p>(2) The National Audit Office shall consist of the Auditor General, who shall be the head of that office, the Deputy Auditor General, and such other officers, being officers of Parliament, as the Auditor General may consider necessary to assist him in the proper discharge of his office.</p>	Reframed as separate article in its own right. No provision for the appointment of staff is made here since this is catered for by article N9(3). See also article N17 on administrative autonomy.

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(b) Parliament may from time to time by law provide for the manner in which funds shall be allocated to the National Audit Office and in the manner whereby the accounts of the National Audit Office shall be audited and reported upon.</p>	<p>(3) Parliament may from time to time by law provide for the manner in which funds shall be allocated to the National Audit Office and the manner whereby the accounts of the National Audit Office shall be audited and reported upon.</p>	<p>Renumbered and minor correction made.</p>
<p>(11) Nothing in this article shall be construed as precluding the grant of any other functions or powers on the Auditor General or the National Audit Office by or under any law for the time being in force.</p>	<p>Delete.</p>	<p>See article N3(9).</p>
<p>(12) In the exercise of their functions under the Constitution the Auditor General and the Deputy Auditor General shall not be subject to the authority or control of any person.</p>	<p>Delete.</p>	<p>See articles N3(8) and N4(4).</p>
<p><i>Allocation of portfolios to Ministers.</i></p> <p>82. (1) Subject to the provisions of this Constitution, the President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Malta including the administration of any department of government.</p>	<p><i>Allocation of portfolios to Ministers.</i></p> <p>82. (1) Subject to the provisions of this Constitution, the President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the state of Malta, including the operations of any body in public administration.</p>	<p>Broadened to reflect the fact that ministers may legitimately be assigned responsibility for parliamentary affairs and justice. Subarticle (2) makes it clear that assigning such responsibilities to ministers does not mean undermining the autonomy of independent bodies. See also article 92(1).</p> <p>See definition of “body in public administration” in article 124(1).</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(2) Nothing in this article shall empower the President to confer on any Minister authority to exercise any power or to discharge any duty that is conferred or imposed by this Constitution or any other law on any person or authority other than that Minister.</p>	<p>No change.</p>	
<p><i>Permanent Secretaries and heads of government departments.</i></p> <p>92. (1) Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department may be under the supervision of a Permanent Secretary:</p> <p>Provided that two or more departments of government may be placed under the supervision of one Permanent Secretary.</p> <p>(2) The Prime Minister shall be responsible for assigning departments of government to Permanent Secretaries.</p>	<p><i>Direction and supervision of bodies in public administration.</i></p> <p>92. (1) Where any Minister has been charged with responsibility for any body in public administration, he shall exercise general direction and control over that body, except in so far as his powers thereof are limited by law.</p> <p>(2) The Permanent Secretary in a ministry shall –</p> <p>(a) manage the ministry, subject to the Minister’s authority;</p> <p>(b) supervise, on the Minister’s behalf, the bodies under the responsibility of the Minister, except in so far as the Minister’s powers of general direction and control over any such body are limited by law:</p> <p>Provided that more than one Permanent Secretary may be placed under the same Minister, and in such a case the Prime Minister shall determine the scope of the responsibilities of each Permanent Secretary.</p>	<p>Article title has been changed to better reflect its contents as amended. See definition of “body in public administration” in article 124(1).</p> <p>Subarticle (1) has been extended beyond government departments, with the addition of a safeguard concerning autonomous public bodies in keeping with current article 82(2).</p> <p>Subarticle (2) reflects the responsibilities of Permanent Secretaries as they have evolved over time, while catering for situations where there is more than one Permanent Secretary in a ministry.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(3) Power to appoint public officers to hold or act in the office of Permanent Secretary and to remove from office persons holding or acting in such office shall vest in the President acting in accordance with the advice of the Prime Minister given after the Prime Minister has consulted with the Public Service Commission.</p>	Delete.	See article N13 regarding the appointment of Permanent Secretaries and N16(5) regarding their removal.
<p>(4) Heads of departments of government other than those whose manner of appointment is specifically provided for in this Constitution shall be appointed from amongst senior public officers by the Prime Minister acting after consultation with the Public Service Commission.</p>	Delete.	Only a small minority of Directors General and Directors in the Public Service are designated heads of department. Eliminating this subarticle means appointing heads of department in the same manner as other DGs and Directors and most other public officers, that is to say on merit under article N14.
<p>(5) The Principal Permanent Secretary shall be appointed in the same manner as a Permanent Secretary from amongst persons having the qualifications to be so appointed in terms of sub-articles (1), (2) and (3):</p>	Delete.	The role and appointment of the Principal Permanent Secretary merit inclusion in a separate article. See article 94 (below) as amended.
<p>Provided that the functions of the Principal Permanent Secretary together with any other matter ancillary or incidental or considered necessary or expedient for the carrying out of the functions of the Principal Permanent Secretary shall be provided for by an Act of Parliament.</p>	Delete.	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Secretary to the Cabinet.</i></p> <p>94. (1) The Principal Permanent Secretary shall be the most senior public officer and shall act as Secretary to the Cabinet:</p> <p>Provided that the Prime Minister may appoint a different person to act as Secretary to the Cabinet, and in such case the Secretary to the Cabinet shall be appointed in the same manner as a Permanent Secretary from amongst persons having the qualifications to be so appointed in terms of article 92.</p>	<p><i>Principal Permanent Secretary and Secretary to the Cabinet.</i></p> <p>94. (1) The Principal Permanent Secretary shall be the most senior public officer.</p> <p>(2) Power to appoint a public officer to the office of Principal Permanent Secretary, and to remove that person from office, shall vest in the President, acting in accordance with advice given by the Prime Minister after the Prime Minister has consulted the Public Services Commission.</p> <p>(3) The Principal Permanent Secretary shall act as Secretary to the Cabinet unless the Prime Minister decides that a different person should hold the latter office, in which case a public officer shall be appointed to, and may be removed from, the office of Secretary to Cabinet in the same manner as the Principal Permanent Secretary under subarticle (2).</p>	<p>Designation of PPS as head of the Public Service appears in article N8(2).</p> <p>New subart (2) retains the current mechanism of appointment to the office of Principal Permanent Secretary, as introduced in article 92(5) of the current Constitution by virtue of Act III of 2019.</p>
<p>(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct.</p>	<p>Renumber as subarticle (4).</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p><i>Appointment of judges.</i></p> <p>96. (1) The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.</p>	<p><i>Appointment of judges.</i></p> <p>96. (1) The judges of the Superior Courts shall be appointed by the President on the advice of the Prime Minister, who shall act in accordance with sub-articles (3) or (4).</p>	<p>Amended to incorporate a reference to the role of the Judicial Appointments Committee.</p>
<p>(2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.</p>	<p>No change.</p>	
<p>(3) Without prejudice to the provisions of sub-article (4), before the Prime Minister gives his advice in accordance with subarticle (1) in respect of the appointment of a judge of the Superior Courts, (other than the Chief Justice) the evaluation by the Judicial Appointments Committee established by article 96A of this Constitution as provided in paragraphs (c), (d) or (e) of sub-article (6) of the said article 96A shall have been made.</p>	<p>(3) Without prejudice to the provisions of sub-article (4), the Prime Minister shall give his advice to the President on the appointment of the Chief Justice or any other judge of the Superior Courts in accordance with the evaluation conducted by the Judicial Appointments Committee as provided in sub-article (6) of article 96A of this Constitution.</p>	<p>Remit of the Judicial Appointments Committee extended to the appointment of the Chief Justice.</p>
<p>(4) Notwithstanding the provisions of sub-article (3), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (3):</p> <p>Provided that after the Prime Minister shall have</p>	<p>(4) Notwithstanding the provisions of sub-article (3), the Prime Minister may elect not to comply with the result of the evaluation referred to in sub-article (3):</p> <p>Provided that if the Prime Minister avails himself of the power conferred upon him by this sub-article, the</p>	<p>Second proviso, which excludes the Chief Justice, eliminated in keeping with amendment to subarticle (3).</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:</p> <p>(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and</p> <p>(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with subarticle (1):</p> <p>Provided further that the provisions of the first proviso to this sub-article shall not apply in the case of appointment to the office of Chief Justice.</p>	<p>Prime Minister or the Minister responsible for justice shall:</p> <p>(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and</p> <p>(b) make a statement in the House of Representatives about the said decision, explaining the reasons upon which the decision was based, by not later than the second sitting of the House to be held after the advice was given to the President in accordance with subarticle (1).</p>	
<p><i>Judicial Appointments Committee.</i></p> <p>96A. (1) There shall be a Judicial Appointments Committee, hereinafter in this article referred to as “the Committee”, which shall be a subcommittee of the Commission for the Administration of Justice established by article 101A of this Constitution and which shall be composed as follows:</p> <p>(a) the Chief Justice;</p> <p>(b) the Attorney General;</p> <p>(c) the Auditor General;</p>	<p>No change.</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(d) the Commissioner for Administrative Investigations (Ombudsman); and</p> <p>(e) the President of the Chamber of Advocates:</p> <p>Provided that the President of the Chamber of Advocates shall not, before the expiration of a period of two years starting from the day on which he last occupied a post on the Committee or he was last a Committee member, be eligible to be appointed a member of the judiciary.</p>		
<p>(2) The Committee shall be chaired by the Chief Justice or, in his absence, by the judge who substitutes him in accordance with paragraph (d) of sub-article (3).</p>	No change.	
<p>(3) (a) A person shall not be qualified to be appointed or to continue to hold office as a member of the Committee if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives, a member of a local government or an official or a candidate of a political party:</p> <p>Provided that where the President of the Chamber of Advocates is not qualified to be appointed or to hold office as aforesaid the Chamber of Advocates shall nominate another advocate to sit on the Committee in his stead.</p>	<p>(3) (a) A person shall not be qualified to be appointed or to continue to hold office as a member of the Committee if he is a Minister, a Parliamentary Secretary, a member of the House of Representatives, a member of the European Parliament, a member of a local government authority or an official or a candidate of a political party:</p> <p>Provided that where the President of the Chamber of Advocates is not qualified to be appointed or to hold office as aforesaid, the Chamber of Advocates shall nominate another advocate to sit on the Committee in his stead.</p>	Reference to MEPs added.
<p>(b) The office of a member of the Committee shall become vacant if any circumstances arise that, if the person were not a member of the Committee,</p>	No change.	

Provisions in current Constitution	Proposed changes or new provisions	Notes
the person would not qualify for membership thereof.		
<p>(c) A member of the Committee may abstain or be challenged in the same circumstances as a judge of the Superior Courts.</p>	<p>(c) A member of the Committee shall abstain from the consideration of expressions of interest for any particular office in terms of subarticle (6) if he has submitted an expression of interest for that office, and in addition he may abstain or be challenged in the same circumstances as a judge of the Superior Courts.</p>	<p>Amended to cater for situations where a member of the Committee wants to be considered for appointment to a particular judicial vacancy.</p>
<p>(d) Where a member of the Committee abstains or is challenged, in the case of the Chief Justice he shall be substituted by a judge who shall be the next most senior judge in office, in the case of the Attorney General he shall be substituted by the next most senior advocate according to office in the Office of the Attorney General, in the case of the Auditor General he shall be substituted by the next most senior officer according to office in the National Audit Office, in the case of the Commissioner for Administrative Investigations he shall be substituted by the next most senior officer according to office in the Office of the Ombudsman and in the case of the President of the Chamber of Advocates he shall be replaced by the next most senior advocate according to office in the committee of the Chamber of Advocates.</p>	<p>(d) If a member of the Committee abstains or is successfully challenged, he shall be substituted by the Commissioner for Standards in Public Life and, if a further substitution becomes necessary, it shall be made as follows:</p> <ul style="list-style-type: none"> (i) the Chief Justice shall be substituted by the next most senior judge in office; (ii) the Attorney General shall be substituted by the next most senior advocate according to office in the Office of the Attorney General; (iii) the Auditor General shall be substituted by the next most senior officer according to office in the National Audit Office; (iv) the Commissioner for Administrative Investigations shall be substituted by the next most senior officer according to office in the Office of the 	<p>Amended to include requirement for challenge to be successful (otherwise this paragraph would come into effect as soon as a challenge is made, even if it is rejected), and broken up into sub-paragraphs for convenience.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	<p>Ombudsman; and</p> <p>(v) the President of the Chamber of Advocates shall be substituted by the next most senior advocate according to office in the committee of the Chamber of Advocates.</p>	
<p>(4) In the exercise of their functions the members of the Committee shall act on their individual judgement and shall not be subject to the direction or control of any person or authority.</p>	<p>No change.</p>	
<p>(5) There shall be a Secretary to the Committee who shall be appointed by the Minister responsible for justice.</p>	<p>(5) There shall be a Secretary to the Committee who shall be appointed by the Director General of the Courts of Justice.</p>	<p>The Committee should be supported by the Judicial Service rather than the government. See article N10(3).</p>
<p>(6) The functions of the Committee shall be:</p> <p>(a) to receive and examine expressions of interest from persons interested in being appointed to the office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts, except from persons to whom paragraph (e) applies;</p> <p>(b) to keep a permanent register of expressions of interest mentioned in paragraph (a) and to the acts relative thereto, which register shall be kept secret and shall be accessible only to the members of the Committee, to the Prime Minister and to the Minister responsible for justice;</p> <p>(c) to conduct interviews and evaluations of</p>	<p>(6) The functions of the Committee shall be:</p> <p>(a) to issue public calls for expressions of interest for vacant offices of judge of the Superior Courts, magistrate of the Inferior Courts, and persons presiding over or sitting as adjudicators on other courts or adjudicating authorities, whether those vacancies are actual or anticipated;</p> <p>(b) to receive expressions of interest from individuals in response to such calls;</p> <p>(c) to conduct interviews and evaluations of eligible candidates on the basis of merit with a view to ranking candidates for each vacant office in order of suitability;</p>	<p>Reframed to provide for a competitive selection process for each vacant judicial post. Also reframed to cover appointments to the office of Chief Justice, the appointment of serving magistrates as judges, and the appointment of adjudicators on tribunals and other quasi-judicial bodies.</p> <p>See article N6 below regarding “other courts or adjudicating authorities” in para (a).</p> <p>Reference to “any other judicial office” in current para (f), renumbered (e) in proposed changes, deleted since article</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>candidates for the above-mentioned offices in such manner as it deems appropriate and for this purpose to request information from any public authority as it considers to be reasonably required;</p> <p>(d) to give advice to the Prime Minister through the Minister responsible for justice about its evaluation on the eligibility and merit of the candidates for appointment to the above-mentioned offices;</p> <p>(e) when requested by the Prime Minister, to give advice on the eligibility and merit of persons who already occupy the offices of Attorney General, Auditor General, Commissioner for Administrative Investigations (Ombudsman) or of magistrate of the Inferior Courts to be appointed to an office in the judiciary;</p> <p>(f) to give advice on appointment to any other judicial office or office in the courts as the Minister responsible for justice may from time to time request:</p> <p>Provided that the evaluation referred to in paragraph (d) shall be made by not later than sixty days from when the Committee receives the expression of interest and the advice mentioned in paragraphs (e) and (f) shall be given by not later than thirty days from when it was requested, or within such other time limits as the Minister responsible for justice may, with the agreement of the Committee, by order in the Gazette establish.</p>	<p>(d) to give advice to the Prime Minister, through the Minister responsible for justice, as to who is the best available candidate for appointment to a particular office on the basis of its ranking order; and</p> <p>(e) to give advice on appointment to any other office in the courts as the Minister responsible for justice may from time to time request:</p> <p>Provided that the evaluation referred to in paragraph (c) shall be made by not later than ninety days from the closing date of the call for expressions of interest, or within such other time limits as the Minister responsible for justice may, with the agreement of the Committee, by order in the Gazette establish:</p> <p>Provided further that the Committee may shortlist candidates using objective criteria, and limit its evaluation to the shortlisted candidates, in order to arrive at an early conclusion to the evaluation process:</p> <p>Provided further that the Committee shall not advise the appointment of any candidate if, in its opinion, no candidates have the skills, abilities and attributes necessary to fill that office.</p>	<p>96A as amended applies to all judicial offices.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(7) The proceedings of the Committee shall be confidential and shall be held <i>in camera</i> and no member or secretary of the Committee may be called to give evidence before any court or other body with regard to any document received by or any matter discussed or communicated to or by the Committee.</p>	<p>(7) The Committee shall inform candidates why they have been found ineligible, why they have not been shortlisted, or what is their position in the ranking order, as the case may be, and candidates who have undergone the Committee's evaluation shall be entitled to an explanation of the result they obtained therein; but the proceedings of the Committee shall otherwise be confidential and shall be held <i>in camera</i>, and no member nor the secretary of the Committee may be called to give evidence before any court or other body with regard to any document received by or any matter discussed or communicated to or by the Committee.</p>	
<p>(8) The Committee shall regulate its own procedure and shall be obliged to publish, with the concurrence of the Minister responsible for justice, the criteria on which its evaluations are made.</p>	<p>No change.</p>	
<p><i>Magistrates.</i></p> <p>100. (1) Magistrates of the inferior courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.</p>	<p><i>Magistrates.</i></p> <p>100. (1) Magistrates of the inferior courts shall be appointed by the President on the advice of the Prime Minister, who shall act in accordance with sub-articles (5) or (6).</p>	
<p>(2) A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.</p>	<p>No change.</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(3) Subject to the provisions of sub-article (4) of this article, a magistrate of the inferior courts shall vacate his office when he attains the age of sixty-five years.</p>	<p>No change.</p>	
<p>(4) The provisions of sub-articles (2) and (3) of article 97 of this Constitution shall apply to magistrates of the inferior courts.</p>	<p>No change.</p>	
<p>(5) Without prejudice to the provisions of sub-article (6), before the Prime Minister gives his advice in accordance with subarticle (1) in respect of the appointment of a magistrate of the Inferior Courts the evaluation by the Judicial Appointments Committee established by article 96A of this Constitution as provided in paragraphs (c), (d) or (e) of sub-article (6) of the said article 96A shall have been made.</p>	<p>(5) Without prejudice to the provisions of sub-article (6), the Prime Minister shall give his advice to the President on the appointment of magistrates of the Inferior Courts in accordance with the evaluation conducted by the Judicial Appointments Committee as provided in sub-article (6) of article 96A of this Constitution.</p>	
<p>(6) Notwithstanding the provisions of sub-article (5), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (5):</p> <p>Provided that after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:</p> <p>(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and</p>	<p>(6) Notwithstanding the provisions of sub-article (5), the Prime Minister may elect not to comply with the result of the evaluation referred to in sub-article (5):</p> <p>Provided that if the Prime Minister avails himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:</p> <p>(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and</p> <p>(b) make a statement in the House of</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with subarticle (1).</p>	<p>Representatives about the said decision, explaining the reasons upon which the decision was based, by not later than the second sitting of the House to be held after the advice was given to the President in accordance with subarticle (1).</p>	
	<p><i>Other courts and adjudicating authorities.</i></p> <p>N6. (1) Subject to subarticle (2), the appointment of persons to preside over or sit as adjudicators on any court or other adjudicating authority to which article 39 of this Constitution applies, except for the Superior Courts, the inferior courts and other adjudicating authorities established by this Constitution, shall be made in accordance with an evaluation conducted by the Judicial Appointments Committee as provided in subarticle (6) of article 96A.</p>	<p>Applies the Judicial Appointments Committee evaluation mechanism to tribunals and other quasi-judicial bodies. The exception relating to bodies established by the Constitution refers to the Public Services Commission among others. The PSC has been recognised by case law as an adjudicating body for the purposes of article 39.</p>
	<p>(2) The person or authority in whom is vested power to make an appointment to which subarticle (1) applies may decide not to comply with the result of the evaluation by the Judicial Appointments Committee, in which case the responsible Minister shall –</p> <p>(a) publish within five days a declaration in the Gazette announcing the decision and giving the reasons that led to it; and</p> <p>(b) make a statement in the House of Representatives about the said decision, explaining</p>	<p>Aims to minimise the need for changes to ordinary legislation by not interfering with the allocation of responsibility for the appointment of adjudicators. Whoever is responsible for the appointment under ordinary legislation becomes responsible for following subarticle (1) or (2), depending on which applies. See also subarticle (3).</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	the reasons upon which it was based, by not later than the second sitting of the House to be held after the decision was taken.	
	(3) Where an appointment to which subarticle (1) refers is made by one person or authority on the advice of another, and such advice is binding, the person or authority who gives the advice shall be responsible for acting as required by subarticle (1) or as permitted by subarticle (2); and if such person or authority is not a Minister, the responsible Minister for the purposes of subarticle (2) shall be the Minister responsible for such person or authority.	Caters for situations such as the Administrative Review Tribunal, which is made up of chairpersons appointed by the President on the advice of the Prime Minister.
<p><i>Remuneration in respect of certain offices.</i></p> <p>107. (1) Without prejudice to the provisions of articles 101A and 101B, there shall be paid to the holders of the offices to which this article applies such salaries as may be prescribed by or under any law.</p> <p>(2) The salaries and any allowances payable to the holders of the offices to which this article applies shall be a charge on the Consolidated Fund.</p> <p>[...]</p>	No change.	
(4) This article applies to the offices referred to in articles 48, 91, 95(6), 100, 109, 118 and 120 of the Constitution.	(4) This article applies to the offices referred to in articles 48, N1, N2, N3, N4, 91, 95(6), 100, 108, 109, 118 and 120 of the Constitution.	Amended to include the new articles on the Ombudsman, Commissioner for Standards in Public Life, Auditor General and Deputy Auditor General.

Provisions in current Constitution	Proposed changes or new provisions	Notes
CHAPTER X – THE PUBLIC SERVICE	CHAPTER X – PUBLIC ADMINISTRATION	Retitled in keeping with the new provisions proposed below.
	<p><i>Public employees.</i></p> <p>N7. Public employees shall consist of –</p> <ul style="list-style-type: none"> (a) public officers, being all persons employed in the service of the President and the Government of Malta other than members of disciplined forces and persons of trust; (b) officers of Parliament; (c) officers of the Courts; (d) members of disciplined forces, being the Armed Forces of Malta, the Malta Police Force and such other forces operating under special discipline as Parliament may establish by law; (e) employees of public entities, being bodies corporate established by or under any law and carrying out functions on behalf of the state, or bodies in which the state, or any body as aforesaid, has a controlling interest or over which it has effective control; and (f) persons of trust, being persons appointed under article N18. 	<p>Replaces the current concept of the public service (being the service of the Government of Malta in a civil capacity, yet including judges and magistrates) with a separate service for each branch of the state. This builds on the recent establishment of a Parliamentary Service, as well as the designation of the Auditor General and Ombudsman as officers of Parliament. Staff in the President’s office are classified as public officers since current article 78(1) vests executive authority in the President.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	<p><i>The Public Service.</i></p> <p>N8. (1) The Public Service shall consist of public officers.</p> <p>(2) The Principal Permanent Secretary shall be the head of the Public Service.</p>	<p>The first in a sequence of three articles establishing a separate service for each branch of the state.</p>
	<p>(3) Except where this Constitution provides otherwise, public officers shall be appointed by the Principal Permanent Secretary:</p> <p>Provided that no person shall be appointed to any office on the personal staff of the President except with the approval of the President.</p>	<p>Appointments are subject to the merit principle and scrutiny by the PSC under articles N14 and 110(1) as revised.</p> <p>Proviso reproduces current article 110(4) except for its reference to acting appointments, which are already catered for by current art 124(5)(a).</p>
	<p>(4) The Principal Permanent Secretary may, by instrument in writing, delegate his power to make appointments under this article to other senior public officers, subject to such conditions and limitations as may be set out in the instrument.</p>	
	<p><i>The Parliamentary Service.</i></p> <p>N9. (1) The Parliamentary Service shall consist of the Clerk of the House of Representatives and other officers of Parliament, who shall serve in the House of Representatives or such other bodies as may be established within the Parliamentary Service by this</p>	<p>Title “Clerk of the House” adopted in line with current usage, as opposed to “Clerk to the House” as found in article 64 of the current Constitution.</p> <p>“Such other bodies” refers to the NAO, the Office of the Ombudsman and the</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	<p>Constitution or other laws.</p> <p>(2) The Speaker of the House of Representatives shall be the head of the Parliamentary Service.</p>	<p>Office of the Commissioner for Standards in Public Life, whose staff are also being designated officers of Parliament.</p>
	<p>(3) Except where this Constitution or any other law provides otherwise, officers of Parliament shall be appointed as follows:</p> <p>(a) appointments in the House of Representatives shall be made by the Speaker;</p> <p>(b) appointments in each independent body within the Parliamentary Service shall be made by the head of that body.</p>	<p>Reference to Constitution caters for the heads of the independent bodies themselves and for the Deputy Auditor General, who reports to but is not appointed by the Auditor General. See article N12. Reference to any other law caters for the possibility of additional bodies being established within the Parliamentary Service by law.</p>
	<p><i>The Judicial Service.</i></p> <p>N10. (1) The Judicial Service shall consist of the Director General of the Courts of Justice and other officers of the Courts, who shall serve in the Courts of Justice or such other bodies as may be established within the Judicial Service by law.</p> <p>(2) The Chief Justice shall be the head of the Judicial Service.</p>	<p>“Such other bodies”: none exist at present but they might be set up in future, e.g. existing stand-alone tribunals might be attached to the Judicial Service to enhance their autonomy from the executive.</p>
	<p>(3) Except where this Constitution or any other law provides otherwise, officers of the Courts shall be appointed by the Director General of the Courts of Justice.</p>	<p>Power assigned to DG Courts rather than the Chief Justice so as to avoid the risk of embroiling the latter in court cases, given that appointments can be contentious. See article N13 regarding</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
		the appointment of DG Courts.
	<p><i>Disciplined forces.</i></p> <p>N11. (1) Subject to this Constitution, disciplined forces shall be organised and managed as provided for by law.</p>	
	<p>(2) Except where this Constitution or any other law provides otherwise, appointments in a disciplined force shall be made by the head of that force.</p>	See articles N12, N13 regarding the appointment of heads of disciplined forces.
	<p>(3) Public officers may be appointed or assigned to a disciplined force to perform supporting functions that do not need to be carried out by members of that force, and such public officers shall be under the authority of the head of the force but shall otherwise retain the terms and conditions of employment of public officers.</p>	Deliberately avoids specifying who appoints or assigns public officers to disciplined forces. This allows PPS to delegate to the head of a force the power to recruit public officers to fill civilian vacancies in the force.
	<p><i>Appointments and removals from office by the President on the basis of a resolution of the House of Representatives.</i></p> <p>N12. (1) Appointments to the offices to which this article applies shall be made by the President, acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two thirds of all the members in the House:</p> <p>Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives, he shall not be treated as</p>	Based on current article 108(2) and (4) concerning the Auditor General. These provisions are replicated in the Acts on the Ombudsman and the Commissioner for Standards in Public Life. However, the provisions on the appointment, suspension and removal of all three officers merit being enshrined in the Constitution. These provisions have accordingly been reframed as a separate article which can be extended to other

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	a member of the House for the purpose of establishing the majority required by this sub-article:	offices.
	<p>Provided further that if a resolution on any office to which this article applies is not made as aforesaid within one month of when it becomes due, the President shall act in accordance with his own deliberate judgement in making an appointment to that office.</p>	Covers situations where Parliament is unable to achieve a two thirds majority for any nominee to a particular post.
	<p>(2) The holder of any office to which this article applies may be removed or suspended from that office by the President upon an address from the House of Representatives, supported by the votes of not less than two-thirds of all members in the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the first proviso to sub-article (1) shall also apply for the purpose of establishing the majority required under this sub-article.</p>	
	<p>(3) At any time when Parliament is not in session, the holder of any office to which this article applies may be suspended from that office by the President, acting in accordance with his own deliberate judgement, for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next session of Parliament.</p>	

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	<p>(4) Should any office to which this article applies be vacant, or should the incumbent for any reason be unable to perform the functions of his office, the President, acting in accordance with his own deliberate judgement, may appoint a person to that office on a temporary, substitute or acting basis, subject to any provisions of law setting out qualifications or disqualifications for appointment to that office.</p>	<p>Temporary/substitute appointments are currently provided for in the Ombudsman Act and the Standards in Public Life Act. The concept has been adopted here and extended to all offices to which this article applies.</p>
	<p>(5) This article applies to the offices of:</p> <ul style="list-style-type: none"> (a) Auditor General and Deputy Auditor General; (b) Ombudsman; (c) Commissioner for Standards in Public Life; (d) Chief Electoral Commissioner; (e) chairperson of the Public Service Commission; (f) chairperson of the Broadcasting Authority; (g) chairperson of the Employment Commission; (h) Commissioner of Police; (i) Commander of the Armed Forces of Malta; and 	<p>Extends the scope of this article to the chairpersons of constitutional commissions and the heads of the forces of law and order. The Chief Electoral Commissioner is <i>ex officio</i> chair of the Electoral Commission.</p>

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	(j) Head of the Security Service.	
	(6) Parliament may, by law, apply this article to other offices with respect to which the manner of appointment is not specifically provided for by this Constitution, and articles N14, N15 and N16 shall not apply to such offices in so far as they would otherwise apply.	Allows for the application of this mechanism to other posts, whether already existing or newly established by law. This would exempt the posts in question from the provisions on selection by merit, appointments on transfer and removal from office, since these are incompatible with art N12.
	<p><i>Other senior appointments in public administration.</i></p> <p>N13. (1) Appointments to the offices to which this article applies shall be made by the President of Malta on the recommendation of the Committee on Presidential Appointments, in this article referred to as the Committee.</p> <p>(2) The Committee shall consist of –</p> <p>(a) the chairperson of the Public Services Commission, who shall chair the Committee;</p> <p>(b) the Principal Permanent Secretary; and</p> <p>(c) a Permanent Secretary appointed to the Committee by the President, who may nominate a different Permanent Secretary according to the office to be filled.</p> <p>(3) The Committee shall make its recommendation to the President after advertising the office to be filled and</p>	Establishes a mechanism for second-tier appointments in public administration whereby candidates are assessed by an independent selection board but the government can veto the chosen candidate. This is on lines broadly similar to the mechanism used in the UK for the selection of Permanent Secretaries and in New Zealand for the selection of departmental chief executives. See A Paun and J Harris, Permanent Secretary Appointments and the Role of Ministers (Institute for Government), and the New Zealand State Services Commission webpage at www.ssc.govt.nz/appt-process .

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	<p>holding a selection process based on merit in accordance with article N14(2).</p> <p>(4) Before advertising the office to be filled, the Committee shall seek the views of the Minister responsible for that office concerning the requirements of the office and the qualities and attributes needed by any person who may be appointed thereto.</p> <p>(5) The Committee may obtain advice and assistance from other persons as it deems fit in connection with the selection process, and it shall regulate its own procedure subject to the provisions of this Constitution.</p> <p>(6) The members of the Committee shall not be subject to the direction or control of any other person or authority in the exercise of their functions under this article except as provided herein.</p> <p>(7) Upon receiving a recommendation from the Committee for an appointment under this article, the President shall notify the Prime Minister of his intention to make the said appointment, and the Prime Minister may object to the appointment, stating his reasons for doing so, within such a period of time as may be allowed for this purpose by the President.</p>	
	<p>(8) If the President, acting in his own deliberate judgement, considers the Prime Minister's objections to an appointment to be justified in the public interest, the President shall not make the appointment, and he shall</p>	<p>The requirement to hold a fresh selection process is based on the UK system. It ensures that the Prime Minister cannot object to the proposed</p>

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	<p>instead direct the Committee to re-advertise the office and hold a fresh selection process open to any eligible candidates except any candidate with respect to whom the President has upheld the Prime Minister's objection.</p> <p>(9) Subarticles (7) and (8) shall apply to the fresh selection process in the same manner as to the initial selection process.</p>	<p>nominee in the hope of securing the appointment of the next candidate in line according to the result of the original selection process.</p>
	<p>(10) This article applies to the following offices:</p> <p>(a) Permanent Secretaries;</p>	<p>Permanent Secretaries are included in response to the report of the Venice Commission, which recommended that they be chosen by an independent mechanism.</p>
	<p>(b) the heads of disciplined forces, other than those whose appointment is separately provided for by this Constitution; and</p>	<p>Applies to the Correctional Service and any new disciplined forces that may be set up by law.</p>
	<p>(c) the Director General of the Courts of Justice.</p>	<p>Included here so as not to involve the Chief Justice in appointments.</p>
	<p>(11) Parliament may, by law, apply this article to offices with respect to which the manner of appointment is not specifically provided for by this Constitution, and articles N14, N15 and N16 shall apply to such offices in the same manner and with the same limitations as they apply to the offices listed in subarticle (10) of this article.</p>	<p>Allows for the application of this mechanism to other posts, whether already existing or newly established by law.</p> <p>Regarding limitations, see arts N14(5)(b), N15(5)(a) and N16(6).</p>

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	<p>(12) The application of this article is subject to the following qualifications:</p> <p>(a) if an office to which this article applies needs to be filled with urgency on a temporary basis, or if the incumbent is for any reason unable to perform the functions of his office, the Committee may recommend to the President that a person be appointed to act in that office until such time as it can be filled on a regular basis or the incumbent is able to resume his duties, and in such a case the requirement to issue a call for applications under subarticle (3) and subarticle (8) shall not apply;</p>	
	<p>(b) the President, acting on the advice of the Prime Minister, may fill a vacant office of Permanent Secretary through the appointment on transfer of a serving Permanent Secretary, and this article shall not apply to such an appointment on transfer;</p>	<p>Under article 92(2) of the current Constitution it is the Prime Minister who assigns departments to Permanent Secretaries. However, it is understood that in practice reassignments of Permanent Secretaries are treated like new appointments. This paragraph is based on the established practice.</p>
	<p>(c) the Chief Justice shall be entitled to present his views to the Committee in the same manner as the responsible Minister under subarticle (4) with respect to the office of Director General of the Courts of Justice.</p>	

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	<p><i>Principle of merit in appointments.</i></p> <p>N14. (1) Except where this Constitution provides otherwise, public employees shall be appointed on the basis of merit.</p> <p>(2) An appointment shall be based on merit if –</p> <p>(a) the vacancy is advertised in such a manner as to afford those eligible a reasonable chance to apply;</p> <p>(b) there is an impartial selection process based on eligibility requirements and selection criteria that reflect solely the duties of the vacant post and the legitimate needs of the employing body;</p> <p>(c) the person appointed is the most suitable from among eligible and available candidates, as determined by the aforementioned selection process; and</p> <p>(d) the selection and appointment process meets such other standards as the Public Services Commission may set for it.</p>	<p>“Except where this Constitution provides otherwise” caters for the exceptions to the merit principle that are made later in this same article.</p>
	<p>(3) The Public Services Commission may –</p> <p>(a) hear complaints concerning the application or otherwise of the merit principle; and</p> <p>(b) inquire into selection processes and appointments on its own initiative or as a result of</p>	

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	complaints in order to determine whether the merit principle has been observed.	
	(4) The Public Services Commission may waive the application of this article in cases where it is satisfied that such a waiver is in the public interest, but each year the Commission shall publish a report setting out the number of waivers granted under this subarticle during the previous year and the reason for each waiver.	Caters for situations such as the re-employment of former public employees in their old posts or the recruitment of essential staff in a new office that has to start operating immediately.
	(5) The application of this article is subject to the following qualifications: (a) no selection process shall be necessary in the case of appointments that are granted to every person who qualifies therefor on the basis of objective criteria, which may include a requirement to have a satisfactory record of performance;	
	(b) subarticle (3) shall not apply to appointments under article N13; and (c) this article shall not apply to temporary appointments that do not exceed six months in duration, even if renewed or extended;	Para (b) avoids placing the chairperson of the PSC in a situation of conflict since he/she chairs the committee which advises the President on appointments under article N13.
	(d) this article shall not apply to appointments under articles 91, 94, N12, N15, N18 and 111; and	Applies to the Attorney General; the Principal Permanent Secretary and Secretary to the Cabinet; appointments by the President on the basis of a parliamentary resolution; appointments on transfer; persons of trust; and

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		ambassadors and other principal representatives of Malta abroad.
	(e) this article shall not apply to the appointment of Commissioners in the Office of the Ombudsman if such appointments are made on the joint nomination of the Prime Minister and the Leader of the Opposition.	Caters for article 17A(2) of the Ombudsman Act (chapter 385), under which Commissioners are appointed by the Ombudsman on the joint nomination of the PM and Leader of the Opposition or, if no such nomination is received, at the Ombudsman's discretion. In the latter case the merit principle would apply.
	<p><i>Appointments on transfer.</i></p> <p>N15. (1) A public employee may be appointed on transfer to any office of employment in public administration to which article N14 applies without recourse to a selection process if –</p> <p>(a) the office to which the employee is appointed on transfer offers materially the same remuneration and benefits as his current post; and</p> <p>(b) the employee was appointed to his current level on the basis of merit.</p> <p>(2) The Public Services Commission may rescind an appointment on transfer if it finds that any of the conditions set out in subarticle (1) have not been satisfied.</p>	<p>Permits the transfer of staff within the public administration as a whole, subject to conditions that safeguard the independence of the Parliamentary and Judicial Services and the independent bodies within the Parliamentary Service. The term “appointments on transfer” is used since it already appears in the Constitution. See current art. 124(5)(a).</p> <p>Subarticle (1)(b) is a safeguard to ensure that appointments on transfer do not become the means through which persons of trust are granted permanent employment in public administration.</p>

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	<p>(3) Power to make appointments on transfer under this article from one body to another within the same service shall vest in the head of that service.</p> <p>(4) Power to make appointments on transfer under this article between bodies in public administration that are not part of any service or that are in different services shall vest in the Principal Permanent Secretary.</p> <p>(5) The application of this article is subject to the following qualifications:</p> <p>(a) appointments on transfer to offices to which article N13 applies may be made only as provided for in that article;</p> <p>(b) appointments on transfer to or from the Parliamentary Service or the Judicial Service shall require the consent of the Speaker of the House or the Director General of the Courts of Justice, as applicable, except where paragraph (c) applies;</p> <p>(c) appointments on transfer to or from an independent body within the Parliamentary Service shall require the consent of the head of that body; and</p> <p>(d) appointments on transfer to a disciplined force, in so far as the special requirements of service in that force allow for such appointments, shall require the consent of the head of that force.</p>	

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	<p>(6) A public employee who is appointed on transfer to any body in public administration shall, for as long as he serves therein, be –</p> <p>(a) under the authority of the head of that body; and</p> <p>(b) regarded as a member of the same service, where applicable, and subject to the same rules of conduct and disciplinary procedures, as comparable employees serving in that body:</p> <p>Provided that the employee may retain the right of reversion to his former body or service under such conditions as may be specified by the Principal Permanent Secretary or the head thereof:</p> <p>Provided further that the Public Service Commission may inquire into reversions and the conditions therefor, and it may rescind any reversion and order changes to conditions that result, or would result, in an employee gaining unmerited benefits.</p>	<p>This subarticle is intended to clarify the situation of staff appointed on transfer. The basic principle is that an employee who moves from one employing body to another changes his or her employment as a result. However, the former employing body can grant the employee the right of reversion and can also recognise that employee’s service while on transfer for the purposes of career progression and benefits.</p> <p>The word “comparable” in para (b) caters for situations such as where public officers are serving in civilian roles within a disciplined force.</p> <p>The second proviso is a safeguard to ensure that reversions do not turn into camouflaged promotions.</p>
	<p><i>Removals from office and discipline.</i></p> <p>N16. (1) Except in cases where this Constitution or any other law provides otherwise, the person or authority with the power to make appointments to any office of employment in public administration shall also have the power to remove a public employee from that office and to exercise disciplinary control over that employee.</p>	<p>“Any other law” enables special provision to be made in particular cases by ordinary legislation, e.g. with respect to separate bodies in the Judicial Service, the DG Courts himself/herself, and the heads of disciplined forces.</p>

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	<p>(2) Except as otherwise provided by this Constitution, the removal from office of any public employee shall be for just cause, and an employee who is removed from office shall have a right of appeal to the Public Services Commission.</p> <p>(3) The Public Services Commission may hear appeals in disciplinary cases in the Public Service, the Parliamentary Service and the Judicial Service, including any bodies established within the Parliamentary and Judicial Services, in accordance with any applicable regulations on discipline that the Commission may issue under article 121 of this Constitution.</p> <p>(4) Any person in whom powers to exercise disciplinary control are vested by this article may, by instrument in writing, delegate those powers (other than the power of removal from office) to any other persons, subject to such conditions and limitations as may be set out in the instrument, and subject to the provisions of this Constitution.</p>	
	<p>(5) Power to remove Permanent Secretaries from office shall vest in the President, acting in accordance with the advice of the Prime Minister, who shall consult the Public Services Commission and give his reasons before tendering his advice to the President; and, notwithstanding subarticle (2), loss of confidence by the Prime Minister in a Permanent Secretary shall be sufficient grounds for the removal of that Permanent Secretary, who</p>	<p>Retains the mechanism for removal of Permanent Secretaries that is set out in current article 92(3), while adding a minimal requirement to justify such removals. It should be possible for a democratically elected government to remove a Perm Sec who does not perform well or cannot get on with</p>

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	shall not have a right of appeal to the Commission against his removal.	his/her minister, even if there are insufficient grounds for disciplinary action. Under these proposals the government cannot choose the Perm Sec's replacement, so it has no incentive to abuse its power of removal.
	(6) Power to remove from office and exercise disciplinary control over public employees to whom article N13 applies, other than Permanent Secretaries, shall vest in the Principal Permanent Secretary except in so far as alternative provision with respect to any such employees is made by law.	Default provision applicable in particular to DG Courts and the heads of disciplined forces. Subarticle (2) still applies to the removal of these officials.
	(7) Power to remove from office and exercise disciplinary control over officers of Parliament serving in the House of Representatives, other than the Clerk of the House, shall vest in the Clerk of the House.	Intended to eliminate the perception that removals or discipline might be influenced by politics if the Speaker is a serving MP. The role of the Speaker is limited to the Clerk of the House.
	(8) In this article "removal from office" includes any action resulting in dismissal or the loss, withdrawal, cancellation or revocation of an appointment, whether it leads to loss of employment or reversion to a previous appointment, and any action resulting in compulsory early retirement, but does not include the grant of permission to retire from public employment on proven medical grounds to a person who has requested such permission.	Part of this paragraph transposes para (b) of the proviso to article 124(7).

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	(9) The application of this article is subject to the following qualifications:	
	(a) subarticles (2) and (3) shall not apply to persons of trust;	Excludes persons of trust from the jurisdiction of the PSC.
	(b) the removal from office of public employees to whom articles N12 and 111 apply shall not be governed by this article; and	Refers to persons appointed by the President on the basis of a parliamentary resolution (in so far as they are public employees, since article N16 only applies to public employees) and to ambassadors and other principal representatives of Malta abroad.
	(c) this article is without prejudice to the power of any person or authority to abolish any office if that office is no longer required, or to any law providing for the compulsory retirement of public employees generally or any class of public employees on attaining an age specified therein; and	Transposes current article 124(8).
	(d) this article is without prejudice to the powers of the Public Services Commission to revoke appointments or remove persons from office under this Constitution and any regulations issued hereunder.	Protects the PSC's power to revoke appointments and to dismiss public officers as a result of criminal cases.

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	<p><i>Administrative autonomy of the Parliamentary Service, the Judicial Service, and any independent bodies in the Parliamentary Service.</i></p> <p>N17. The head of the Parliamentary Service, the heads of the independent bodies established therein, and the Director General of the Courts of Justice shall have the power to fill vacancies and to determine the salaries and conditions of employment of employees within the House of Representatives, the independent bodies in the Parliamentary Service, and the Judicial Service respectively, without any requirement for approval from any person or authority, except as provided for by this Constitution and provided that available funds as approved by the House of Representatives are not exceeded.</p>	<p>Replaces the current article 64(2) and extends it to independent bodies within the Parliamentary Service and to the Judicial Service.</p>
	<p><i>Persons of trust.</i></p> <p>N18. (1) Each Minister may appoint advisors and other persons on the basis of trust to serve in his secretariat, up to a maximum number to be determined by the Prime Minister.</p>	
	<p>(2) Persons appointed under this article shall not, by virtue thereof, be considered public officers, but they shall be considered public employees.</p>	<p>Resolves the currently ambiguous status of persons of trust. See also article N7(f).</p>
	<p>(3) Persons appointed under this article may transmit instructions from the Minister to any other</p>	

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	<p>person or authority, in so far as the Minister has the power to issue such instructions, but may not –</p> <p>(a) exercise powers conferred by law on the Minister or on any other person or authority; or</p> <p>(b) exercise authority over other public employees, except for employees serving in the Minister’s secretariat.</p>	
	<p>(4) Any appointment under this article shall cease to have effect when the Minister who made the appointment ceases to hold office in that capacity, subject to the possibility of a limited period of grace during which the person so appointed may seek alternative employment.</p> <p>(5) Subarticle (4) shall apply notwithstanding any law to the contrary, and any provisions in the terms and conditions of service of persons appointed under this article that are inconsistent with subarticle (4) shall be null and void.</p>	<p>These provisions represent a constitutional safeguard to ensure that persons of trust cannot become permanent employees.</p>
	<p>(6) In this article, “Minister” includes the Prime Minister and any Parliamentary Secretary.</p>	
	<p>(7) The Public Services Commission may approve special arrangements for the appointment of persons on the basis of trust in the office of the President.</p>	<p>Caters for the appointment of domestic staff and other persons of trust to serve the President.</p>

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<p><i>Public Service Commission.</i></p> <p>109. (1) There shall be a Public Service Commission for Malta which shall consist of a chairman, a deputy chairman and from one to three other members.</p>	<p><i>Appointment of the Public Services Commission.</i></p> <p>109. (1) There shall be a Public Services Commission for Malta, which shall consist of a chairperson, a deputy chairperson and three other members.</p>	<p>PSC retitled “Public Services Commission” (in plural) to reflect the extension of its remit to all three services and other bodies in public administration.</p>
<p>(2) The members of the Public Service Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.</p>	<p>(2) The members of the Public Services Commission shall be appointed as follows:</p> <p>(a) the chairperson shall be appointed in accordance with article N12;</p> <p>(b) two members including the deputy chairperson shall be appointed by the President on the advice of the Prime Minister; and</p> <p>(c) two members shall be appointed by the President on the advice of the Leader of the Opposition.</p>	<p>Formalises the established practice whereby two members of the PSC are nominated by the Leader of the Opposition. Paras (b) and (c) are loosely based on the current article 120(2) of the Constitution, which deals with the Employment Commission.</p>
<p>(3) A person shall not be qualified to hold office as a member of the Public Service Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives, a member of a local government authority or if he is a public officer.</p>	<p>(3) A person shall not be qualified to hold office as a member of the Public Services Commission if he is –</p> <p>(a) a Minister or Parliamentary Secretary;</p> <p>(b) a member of, or a candidate for election to, the House of Representatives, the European Parliament, or a local government authority in Malta;</p> <p>(c) a public employee; or</p> <p>(d) a member of any officially appointed</p>	<p>Extends the disqualification to members or candidates of other elected bodies, to employees in the wider public administration, and to members of other boards.</p>

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	body other than the Public Services Commission.	
(4) A member of the Public Service Commission shall not, within a period of three years commencing with the day on which he last held office as a member, be eligible for appointment to or to act in any public office.	(4) A member of the Public Service Commission shall not, within a period of three years commencing on the day when he last held office as a member, be eligible for any appointment as a public employee.	Extended to include employment in throughout public administration.
(5) Subject to the provisions of this article, the office of a member of the Public Service Commission shall become vacant –	(5) Subject to the provisions of this article and article N12, the office of a member of the Public Service Commission shall become vacant –	Addition of reference to article N12 caters for possibility of removal of the chairperson.
(a) at the expiration of five years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.	No change.	
(6) A member of the Public Service Commission may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.	(6) A member of the Public Service Commission other than the Chairperson may be removed from office by the President, acting in accordance with a resolution of the House of Representatives, supported by the votes of not less than two-thirds of all the members of the House, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.	Reframed to require a two-thirds majority vote in Parliament. Removal of the chairperson is catered for by article N12.
(7) If the office of a member of the Public Service Commission is vacant or if a member is for any reason	(7) If the office of a member of the Public Service Commission, other than that of Chairperson, is vacant, or if	Temporary appointments to the chairmanship are catered for by article

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<p>unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of sub-articles (5) and (6) of this article, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.</p>	<p>a member other than the Chairperson is for any reason unable to perform the functions of his office, the President, acting in accordance with the applicable provision of subarticle (2), may appoint a person who is qualified for membership to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of sub-articles (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.</p>	<p>N12.</p>
<p><i>Appointment, etc., of public officers.</i></p> <p>110. (1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices shall vest in the Prime Minister, acting on the recommendation of the Public Service Commission:</p> <p>Provided that the Prime Minister may, acting on the recommendation of the Public Service Commission, delegate in writing, subject to such conditions as may be specified in the instrument of delegation, any of the powers referred to in this subarticle to such public officer or other authority as may be specified in that instrument.</p> <p>(2) A delegation of a power under this article –</p> <p>(a) shall be without prejudice to the exercise of that power by the Prime Minister acting on the</p>	<p><i>Functions of the Public Services Commission.</i></p> <p>110. (1) The Public Services Commission shall exercise the following functions in accordance with and subject to the relevant provisions of this Constitution:</p> <p>(a) regulating the selection and appointment of public employees to ensure that the merit principle, where applicable, is upheld;</p> <p>(b) hearing appeals against removal from office by public employees with the right to lodge such appeals; and</p> <p>(c) regulating discipline in the Public Service, the Parliamentary Service and the Judicial Service, including any bodies established within the Parliamentary and Judicial Services, to ensure that the disciplinary process is fair.</p>	<p>The PSC is being recast as a regulator in its own right. As such the PSC should act on its own authority rather than through recommendations to the Prime Minister, as is currently the case.</p> <p>Furthermore, the focus of the PSC should be on setting standards. It should be involved in individual appointments only by exception. Under this mode of operations there is no longer a need for the delegation of authority as provided for by article 110(2) of the current Constitution.</p> <p>As proposed here, the PSC can regulate discipline in the three state services, while its role in the wider public sector is limited to hearing appeals against</p>

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<p>recommendation of the Public Service Commission;</p> <p>(b) may authorise the public officer or other authority concerned to exercise that power either with or without reference to the Public Service Commission; and</p> <p>(c) in respect of recruitment to public offices from outside the public service, shall, unless such recruitment is made after a public examination advertised in the Gazette, be exercised only through an employment service provided out of public funds which ensures that no distinction, exclusion or preference is made or given in favour or against any person by reason of his political opinion and which provides opportunity for employment solely in the best interests of the public service and of the nation generally.</p>	<p>(2) The Public Services Commission shall have such powers as are necessary for the discharge of its functions under this Constitution, including but not limited to the power to –</p> <p>(a) carry out such inspections and investigations it may consider necessary;</p> <p>(b) summon any person to appear before it and give evidence on oath;</p> <p>(c) order the production of any relevant information in the custody of a body in public administration;</p> <p>(d) enter the premises of any body in public administration;</p> <p>(e) suspend or annul selection and disciplinary processes or alter the outcome thereof;</p> <p>(f) revoke appointments and removals from office; and</p> <p>(g) interdict any person from the exercise of functions relating to the selection, appointment, discipline or removal from office of public employees, indefinitely or for a specific period of time, and to give such directions as it may deem fit concerning the exercise of those functions while the interdiction is in force.</p>	<p>removal from office under article N16. New subarticle 110(4) would permit the extension of the PSC's regulatory role over discipline to other bodies if this is desired.</p>

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<p>(3) (a) An appeal shall lie to the Prime Minister, acting in accordance with the recommendation of the Public Service Commission, from any decision of a public officer or authority to remove any person from a public office in exercise of power delegated under sub-article (1) of this article:</p> <p>Provided that such right of appeal shall be without prejudice to any such other right of appeal as may be provided under article 121(1) of this Constitution in respect of the exercise of any other power delegated under sub-article (1) of this article.</p> <p>(b) A right of appeal under this article shall be exercised in accordance with such provision relating to procedure as may be prescribed by the Public Service Commission under article 121(1) of this Constitution:</p> <p>Provided that any procedure so prescribed shall be the same for all classes of public officers.</p> <p>(c) Where an appeal is brought under paragraph (b) of this sub-article by any public officer he shall, upon the consideration of the appeal by the Public Service Commission, have the right to be heard by the Commission in person and to be assisted by a representative of any trade union to which he belongs.</p>	<p>(3) In the exercise of its functions under this Constitution, the Public Services Commission shall not be subject to the direction or control of any other person or authority.</p> <p>(4) Nothing in this article shall be construed as precluding the grant of additional functions to the Public Services Commission by or under any law.</p>	
<p>(4) No person shall be appointed under this article to or to act in any office on the personal staff of the President except with the approval of the President.</p>	Delete.	See proviso to article N8(3) and article N18(7).

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<p>(5) The provisions of this article shall not apply in relation to –</p> <p>(a) the offices referred to in articles 91, 92 (other than sub-article (4) thereof), 94, 95(6), 100, 108 and 111 of this Constitution; or</p>	Delete.	This subarticle refers to the Attorney General, Permanent Secretaries, PPS/Secretary to the Cabinet, judges, magistrates, the Auditor General and Deputy Auditor General, and principal representatives abroad. It is no longer necessary because articles N14 (merit principle) and N16 (removals and discipline) already contain limitations and they are further limited in that they only apply to public employees, thereby excluding judges and magistrates.
<p>(b) appointments to act in any public office for two months or less in so far as the recommendation of the Public Service Commission is required for any such appointment; or</p>	Delete.	See new article N14(5)(c), which exempts temporary appointments of up to six months' duration from the merit principle.
<p>(c) appointments to the offices referred to in article 92(4) and appointments on transfer to and from the offices referred to in article 112 of this Constitution.</p>	Delete.	Exempts heads of department, posts abroad, and other posts in the Ministry for Foreign Affairs that are designated by the Prime Minister, from the application of the merit principle. However it is proposed that the merit principle should extend to these categories of posts.
<p>(6) Recruitment for employment with any body established by the Constitution or by or under any other</p>	Delete.	A more comprehensive definition of the merit principle, that is not limited to any specific selection method, is set out in

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>law, or with any partnership or other body in which the Government of Malta, or any such body as aforesaid, have a controlling interest or over which they have effective control, shall, unless such recruitment is made after a public examination duly advertised, be made through an employment service as provided in sub-article (2) of this article.</p>		<p>article N14.</p>
<p><i>Appointment on transfer in respect of certain offices.</i></p> <p>112. (1) Power to make appointments on transfer to and from the offices to which this article applies shall vest in the Prime Minister acting after consultation with the Public Service Commission:</p> <p>Provided that the person appointed to any such office under the provisions of this article shall, on being transferred from that office, revert to the rank which he held in the public service immediately before his appointment to that office.</p> <p>(2) The offices to which this article applies are –</p> <p>(a) offices the holders of which are required to reside outside Malta for the proper discharge of their functions; and</p> <p>(b) such offices in the Ministry responsible for the external affairs of Malta as may, from time to time, be designated by the Prime Minister.</p>	<p>Delete.</p>	<p>Deleting this article would subject appointments within the Ministry for Foreign Affairs (other than ambassadorships, which fall under article 111) to the merit principle. In many cases it is already the practice to make appointments on merit: for instance, Technical Attachés are appointed following calls for applications.</p>

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<p><i>Protection of Public Service Commission from legal proceedings.</i></p> <p>115. The question whether –</p> <p>(a) the Public Service Commission has validly performed any function vested in it by or under this Constitution;</p> <p>(b) any member of the Public Service Commission or any public officer or other authority has validly performed any function delegated to such member, public officer or authority in pursuance of the provisions of subarticle (1) of article 110 of this Constitution; or</p> <p>(c) any member of the Public Service Commission or any public officer or other authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding paragraph,</p> <p>shall not be enquired into in any court.</p>	<p>Delete.</p>	<p>The PSC should not be above scrutiny by the courts. In any case past court judgements have already effectively reduced this article to a dead letter.</p>
<p><i>Broadcasting Authority.</i></p> <p>118. (1) There shall be a Broadcasting Authority for Malta which shall consist of a chairman and such number of other members not being less than four as may be prescribed by any law for the time being in force in Malta.</p>	<p><i>Broadcasting Authority.</i></p> <p>118. (1) There shall be a Broadcasting Authority for Malta, which shall consist of a chairperson and such a number of other members, being an even number not less than four, as may be prescribed by any law for the time being in force in Malta.</p>	

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(2) The members of the Broadcasting Authority shall be appointed by the President, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.</p>	<p>(2) The members of the Broadcasting Authority shall be appointed as follows:</p> <ul style="list-style-type: none"> (a) the Chairperson shall be appointed in accordance with article N12; (b) half of the remaining members shall be appointed by the President on the advice of the Prime Minister; and (c) the remaining members shall be appointed by the President on the advice of the Leader of the Opposition. 	<p>Amended in keeping with the model proposed for the Electoral Commission and Public Services Commission (see articles 60 and 109 as revised).</p>
<p>(3) A person shall not be qualified to hold office as a member of the Broadcasting Authority if he is a Minister, a Parliamentary Secretary, a member of, or candidate for election to, the House of Representatives, a member of a local government authority or if he is a public officer.</p>	<p>(3) A person shall not be qualified to hold office as a member of the Broadcasting Authority if he is –</p> <ul style="list-style-type: none"> (a) a Minister or Parliamentary Secretary; (b) a member of, or a candidate for election to, the House of Representatives, the European Parliament, or a local government authority in Malta; (c) a public employee; or (d) a member of an officially appointed body other than the Broadcasting Authority. 	<p>As proposed for the Public Services Commission.</p>
<p>(4) A member of the Broadcasting Authority shall not, within a period of three years commencing with the day on which he last held office or acted as a member, be eligible for appointment to or to act in any public office.</p>	<p>(4) A member of the Broadcasting Authority shall not, within a period of three years commencing on the day when he last held office or acted as a member, be eligible for any appointment as a public employee.</p>	<p>As proposed for the Public Services Commission.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
<p>(5) Subject to the provisions of this article, the office of a member of the Broadcasting Authority shall become vacant –</p>	<p>(5) Subject to the provisions of this article and article N12, the office of a member of the Broadcasting Authority shall become vacant –</p>	<p>Amended to cater for possibility of removal of chairperson.</p>
<p>(a) at the expiration of five years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or</p> <p>(b) if any circumstances arise that, if he were not a member of the Authority, would cause him to be disqualified for appointment as such.</p>	<p>No change.</p>	
<p>(6) A member of the Broadcasting Authority may be removed from office by the President, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.</p>	<p>(6) A member of the Broadcasting Authority other than the Chairperson may be removed from office by the President, acting in accordance with a resolution of the House of Representatives that is supported by the votes of not less than two-thirds of all the members of the House, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.</p>	<p>The removal of the Chairperson is catered for in article N12.</p>
<p>(7) If the office of a member of the Broadcasting Authority is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of</p>	<p>(7) If the office of a member of the Broadcasting Authority, other than that of Chairperson, is vacant, or if a member other than the Chairperson is for any reason unable to perform the functions of his office, the President, acting in accordance with the applicable provision of subarticle (2), may appoint a person who is qualified for membership to be a temporary member of the Commission; and any person so appointed shall,</p>	<p>Temporary appointments to the chairmanship are catered for in article N12.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
sub-articles (5) and (6) of this article, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.	subject to the provisions of subarticles (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.	
(8) In the exercise of its functions under article 119(1) of this Constitution the Broadcasting Authority shall not be subject to the direction or control of any other person or authority.	No change.	
<i>Employment Commission.</i> 120. (1) There shall be an Employment Commission for Malta which shall consist of a chairman and four other members.	No change.	
(2) The members of the Employment Commission shall be appointed by the President who, in appointing the chairman shall act in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition, in appointing two of the four other members shall act in accordance with the advice of the Prime Minister, and in appointing the other two members shall act in accordance with the advice of the Leader of the Opposition.	(2) The members of the Employment Commission shall be appointed as follows: (a) the Chairperson shall be appointed in accordance with article N12; (b) two members shall be appointed by the President on the advice of the Prime Minister; and (c) two members shall be appointed by the President on the advice of the Leader of the Opposition.	As proposed for the other constitutional commissions.
(3) A person shall not be qualified to hold office as a member of the Employment Commission if he is a	(3) A person shall not be qualified to hold office as a member of the Employment Commission if he is –	As proposed for the PSC and Broadcasting Authority.

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Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives, a member of a local government authority, or if he is a public officer.	<p>(a) a Minister or Parliamentary Secretary;</p> <p>(b) a member of, or a candidate for election to, the House of Representatives, the European Parliament, or a local government authority in Malta;</p> <p>(c) a public employee; or</p> <p>(d) a member of any officially appointed body other than the Employment Commission.</p>	
(4) A member of the Employment Commission shall not, within a period of three years commencing with the day on which he last held office or acted as a member, be eligible for appointment to or to act in any public office.	(4) A member of the Employment Commission shall not, within a period of three years commencing on the day when he last held office or acted as a member, be eligible for any appointment as a public employee.	As proposed for the PSC and Broadcasting Authority.
(5) Subject to the provisions of this article, the office of a member of the Employment Commission shall become vacant –	(5) Subject to the provisions of this article and article N12, the office of a member of the Employment Commission shall become vacant –	Amended to cater for possibility of removal of chairperson.
<p>(a) at the expiration of three years from the date of his appointment; or</p> <p>(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.</p>	No change.	
(6) A member of the Employment Commission may be removed from office by the President, acting in accordance with the advice of the holder of the office on whose advice such member was appointed, given, where applicable, as provided in sub-article (2) of this article, but such member may be removed only for inability to	(6) A member of the Employment Commission other than the Chairperson may be removed from office by the President, acting in accordance with a resolution of the House of Representatives that is supported by the votes of not less than two-thirds of all the members of the House, but he may be removed only for inability to	The removal of the Chairperson is catered for in article N12.

Provisions in current Constitution	Proposed changes or new provisions	Notes
discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.	discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.	
<p>(7) If the office of a member of the Employment Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the holder of the office on whose advice such member was appointed, given, where applicable, as provided in sub-article (2) of this article, may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of sub-articles (5) and (6) of this article, cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.</p> <p>[...]</p>	<p>(7) If the office of a member of the Employment Commission, other than that of Chairperson, is vacant, or if a member other than the Chairperson is for any reason unable to perform the functions of his office, the President, acting in accordance with the applicable provision of subarticle (2), may appoint a person who is qualified for membership to be a temporary member of the Commission; and any person so appointed shall, subject to the provisions of sub-articles (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.</p>	<p>Temporary appointments to the chairmanship are catered for in article N12.</p>
<p><i>Powers and procedure of Commissions.</i></p> <p>121. (1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister by regulation or otherwise regulate its own procedure and confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of its functions.</p>	<p><i>Powers and procedure of Commissions.</i></p> <p>121. (1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister, by regulation or otherwise regulate its own procedure and confer powers and impose duties on any public authority, public employee or body in public administration for the purpose of the discharge of its</p>	<p>Extended to cover the whole public administration.</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
	functions.	
<p>(2) Any Commission established by this Constitution may act notwithstanding any vacancy in its membership or the absence of any member and any proceedings thereof shall be valid notwithstanding that some person who was not entitled so to do took part therein.</p>	<p>(2) Any Commission established by this Constitution may act notwithstanding any vacancy in its membership or the absence of any member.</p>	<p>It is understandable that a commission should not be held hostage to any member who chooses to absent himself or herself, but the aim behind the remainder of this provision is unclear. Third parties should be present in commission meetings only as permitted by each commission’s rules of procedure.</p>
<p>(3) Any question proposed for decision at any meeting of any Commission established by this Constitution shall be determined by a majority of the votes of all the members thereof, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.</p>	<p>(3) Any question proposed for decision at any meeting of any Commission established by this Constitution shall be determined by a majority of the votes of all the members present, and if on any such question the votes are equally divided the member presiding shall have and exercise a casting vote.</p>	<p>The requirement for decisions to have a majority of votes of “all the members” appears at odds with subarticle (2), which allows commissions to function in the absence of any member.</p>
<p>(4) For the purposes of sub-article (3) of this article, the references to a member of the Electoral Commission shall be construed as including a reference to the Chairman of that Commission.</p>	Delete.	No longer necessary in the light of article 60(3) and 60(4) as amended.
<p>(5) The provisions of this article shall apply to the Broadcasting Authority established by this Constitution.</p>	Renumber as subarticle (4).	

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<p><i>Interpretation.</i></p> <p>124. (1) In this Constitution, unless the context otherwise requires -</p>	<p>No change (see new and amended definitions below).</p>	
	<p>“body in public administration” means:</p> <ul style="list-style-type: none"> (a) the Government of Malta, including any ministry or department thereof; (b) the House of Representatives; (c) any other body within the Parliamentary Service; (d) the Courts of Justice; (e) any other body within the Judicial Service; (f) any disciplined force; and (g) any public entity; 	<p>New addition. “Body in public administration” preferred to “public body” to avoid confusion with “public entity” in para (g), since it is a broader term than “public entity”.</p>
	<p>“disciplined force” has the meaning assigned by paragraph (d) of article N7;</p>	<p>New addition to substitute definition in current article 47(1).</p>
	<p>“Judicial Service” means the class of public employees to which article N10 refers;</p>	<p>New addition.</p>
	<p>“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;</p>	<p>New addition reproducing definition in current art 47(1). Moved here since a reference to members of disciplined forces has been added to Chapter X.</p>

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	“officer of Parliament” means any public employee to whom article N9(1) refers;	New addition.
	“officer of the Courts” means any public employee to whom article N10(1) refers;	New addition.
	“officially appointed body” means any council, commission, board, panel, committee or other similar body established by or under any law, including Commissions established by this Constitution and the governing boards of public entities;	New addition. To replace references to “boards and commissions”.
	“Parliamentary Service” means the class of public employees to which article N9 refers;	New addition.
	“person of trust” has the meaning assigned by paragraph (f) of article N7;	New addition.
	“public employee” shall be understood in accordance with article N7;	New addition.
	“public entity” has the meaning assigned by paragraph (e) of article N7;	New addition.
“public office” means an office of emolument in the public service;	“public office” means an office of emolument in the Public Service;	“Public Service” capitalised in keeping with Parliamentary and Judicial Services.
“public officer” means the holder of any public office or of a person appointed to act in any such office;	“public officer” has the meaning assigned by paragraph (a) of article N7;	
“the public service” means, subject to the provisions of subarticles (2) and (3) of this article, the service of the Government of Malta in a civil capacity;	“Public Service” means the class of public employees to which article N8 refers;	“Public Service” capitalised in keeping with Parliamentary and Judicial Services.

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	<p>“state” means the President, the Government of Malta, Parliament, the Courts of Justice, other bodies in the Parliamentary and Judicial Services, and the employees thereof.</p>	<p>New addition. Term used in articles N3, 82 (as amended) and N7.</p>
<p>(2) In this Constitution, unless the context otherwise requires, “the public service” includes service in the office of judge of the Superior Courts, service in the office of Auditor General and Deputy Auditor General, service in the office of magistrate of the Inferior Courts and service in the office of a member of the Malta Police Force.</p>	<p>Delete.</p>	<p>The amended definition of “Public Service” excludes the judiciary, officers of Parliament and members of disciplined forces including the Police.</p>
<p>(3) In this Constitution “the public service” does not include service in the office of –</p> <p>(i) Prime Minister or other Minister, a Parliamentary Secretary, Speaker, Deputy Speaker, a member of the House of Representatives, a member of a Commission established by this Constitution;</p>	<p>(2) In this Constitution “public employee” does not include persons serving in the offices of –</p> <p>(a) Prime Minister or other Minister, Parliamentary Secretary, Speaker, Deputy Speaker, member of the House of Representatives, or member of a Commission established by this Constitution other than the Chief Electoral Commissioner,</p>	<p>Reframed as referring to public employees. Those who are not considered public employees are similarly not considered public officers, since public officers are a sub-set of public employees.</p>
<p>(ii) save where the holder of the office is selected from the public service, an Ambassador, High Commissioner or other principal representative of Malta in any other country; or</p>	<p>Delete.</p>	<p>Avoids leaving externally-appointed ambassadors in a grey area. Ambassadors should all be public officers, whether they are external appointees or career diplomats.</p>
<p>(iii) save in so far as may be prescribed by Parliament, a member of any council, board, panel, committee or other similar body established by or</p>	<p>(b) save in so far as may be prescribed by Parliament, a member of any officially appointed body other than a Commission established by this</p>	<p>Reference to constitutional commissions is necessary since the possibility of exception prescribed by Parliament</p>

Provisions in current Constitution	Proposed changes or new provisions	Notes
under any law.	Constitution, or	should not apply to them.
	(c) judge or magistrate, and the words “employed” and “employment”, with respect to public administration, shall be understood accordingly.	Judges and magistrates have been excluded since it would diminish their status to classify them as employees. Officers of the Courts are at the service of members of the judiciary in the same way that officers of Parliament are at the service of members of Parliament.
(4) For the purposes of this Constitution a person shall not be regarded as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of public service.	(3) For the purposes of this Constitution a person shall not be regarded as a public employee by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service in public administration.	Reframed as referring to public employees.
[Subarticles (5) and (6)]	Renumber as (4) and (5), otherwise no change.	
(7) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service: Provided that – (a) nothing in this sub-article shall be construed as conferring on any person or authority power to require any person holding any of the offices referred to in articles 91, 95(6), 100 or 108(1) or (9) of this Constitution to retire from the public service; and	Delete.	See article N16(8), which covers the main provision of this subarticle and para (b) of the proviso. Para (a) of the proviso refers to the Attorney General, judges, magistrates, the Auditor General and the Deputy Auditor General. It has been omitted since the current Constitution already contains provisions protecting all these offices against arbitrary removal.

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<p>(b) the provisions of this sub-article shall not apply to any power conferred by any law to permit a person to retire from the public service where that person has requested permission to retire from the public service on proved medical grounds.</p>		
<p>(8) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified therein.</p>	Delete.	Transposed to article N16(9)(c).