

## Nru 49

10. 03. 2023

### MALTA

#### KAMRA TAD-DEPUTATI

#### HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Jonathan Attard, M.P., Ministru għall-Ġustizzja, u moqri għall-Ewwel darba fis-Seduta tas-6 ta' Marzu 2023.

A BILL introduced by the Honourable Jonathan Attard, M.P., Minister for Justice, and read the First time at the Sitting of the 6th March 2023.

**ATT li jemenda liġijiet varji dwar l-arrest u d-detenzjoni mill-pulizija ta' persuni suspettati li wettqu reati serji.**

**AN ACT to amend various laws relative to pre-trial police arrest and detention of persons suspected of having committed serious crimes.**

RAYMOND SCICLUNA  
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA  
Clerk of the House of Representatives



**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT li jemenda liġijiet varji dwar l-arrest u d-detenzjoni mill-pulizija ta' persuni suspettati li wettqu reati serji.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħareġ b'liġi dan li ġej:-

**1.** It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2023 li jemenda Titolu fil-qosor. Liġijiet Varji dwar l-Arrest u d-Detenzjoni mill-Pulizija.

**Taqsimha I**  
**Emenda għall-Kostituzzjoni**

**2.** Din it-Taqsimha temenda l-Kostituzzjoni u għandha tinqara u tinftiehem haġa waħda mal-Kostituzzjoni, hawn aktar 'il quddiem Emenda għall-Kostituzzjoni. imsejja "l-Kostituzzjoni".

**3.** Fis-subartikolu (3) tal-artikolu 34 tal-Kostituzzjoni, il-kliem Emenda tal-artikolu 34 tal-Kostituzzjoni. "għall-proċeduri preliminari għall-kawża." għandhom jiġu sostitwiti bil-kliem "għall-proċeduri preliminari għall-kawża:" u minnufih wara għandu jiġi miżjud dan il-proviso ġdid li ġej:

"Izda l-Parlament jista' b'liġi jipprovdi l-estensjoni, soġġetta għal salvagwardji proċedurali adegwati u għall-awtorizzazzjoni ta' Maġistrat, għall-perjodu ta' tmienja u erbghin (48) siegħa li fih il-persuna arrestata jew detenuta għandha titressaq quddiem qorti, b'perjodi oħra li ma jaqbzux it-total ta' erbgha u tmenin (84) siegħa oħra jekk il-persuna arrestata jew detenuta tkun raġonevolment suspettata li wettqet reat li jista' jwassal għal piena massima ta' aktar minn tmax-il (12) sena prigunerija."

**Taqsuma II**  
**Emenda għall-Kodiċi Kriminali**

Emenda għall-Kodiċi Kriminali, Kap. 9.

**4.** Din it-Taqsuma temenda l-Kodiċi Kriminali u għandha tinqara u tinftiehem haġa waħda mal-Kodiċi Kriminali hawn aktar 'il quddiem imsejha "l-Kodiċi".

Emenda tal-artikolu 355AJ tal-Kodiċi.

**5.** Minnufih wara s-subartikolu (3) tal-artikolu 355AJ tal-Kodiċi, għandhom jiġu mizjuda dawn is-subartikoli ġodda li ġejjin:

"(4) Minkejja d-dispożizzjonijiet tas-subartikolu (3) fejn l-uffiċjal tal-pulizija li jagħmel l-arrest għandu raġunijiet biżżejjed sabiex jemmen li l-persuna arrestata wettqet reat li jkun soġġett għal piena massima ta' aktar minn tmax-il (12) sena priġunerija u li l-kontinwazzjoni tal-arrest tal-persuna lil hinn minn tmienja u erbgħin (48) siegħa hija meħtieġa sabiex jinkisbu provi rilevanti jew sabiex jiġu ppreservati provi rilevanti, l-uffiċjal li jagħmel l-arrest jista' permezz ta' rikors kkonfermat b'għurament u sostnut b'informazzjoni, jitlob Maġistrat sabiex joħroġ mandat li jawtorizza ż-żamma tal-persuna arrestata taħt detenzjoni ulterjuri:

Iżda għall-finijiet ta' dan is-subartikolu "informazzjoni" tfisser informazzjoni dwar:

(a) in-natura tar-reat li għalih il-persuna taħt arrest ġiet arrestata;

(b) in-natura ġenerali tal-evidenza li fuqha dik il-persuna ġiet arrestata; u

(ċ) ir-raġunijiet għaliex wieħed jemmen li d-detenzjoni kontinwata ta' dik il-persuna hija meħtieġa.

(5) Maġistrat ma għandux jilqa' talba pprezentata skont is-subartikolu (4) sakemm:

(a) il-persuna li magħha għandha x'taqsam l-informazzjoni tkun ingħatat l-informazzjoni u tkun tressqet quddiem il-Maġistrat għal smiġh; u

(b) il-Maġistrat huwa sodisfatt li l-investigazzjoni qiegħda ssir b'diligenza u b'heffa.

(6) Rikors għal mandat skont is-subartikolu (4) jista' jsir fi kwalunkwe hin qabel l-iskadenza ta' tmienja u erbgħin (48) siegħa wara l-hin tal-arrest jekk il-persuna tkun għadha taħt arrest:

Iżda fil-każ fejn il-Maġistrat li lilu jsir ir-rikors jiddeċiedi li ma jkunx prattikabbli li jsir is-smiġh qabel jew mal-iskadenza ta' tmienja u erbgħin (48) siegħa wara l-ħin tal-arrest, il-Maġistrat għandu jzomm is-smiġh matul is-sitt (6) sigħat wara t-tmien ta' dak il-perjodu, fi kwalunkwe ħin qabel l-iskadenza tal-imsemmija sitt (6) sigħat u l-persuna li għaliha jirreferi r-rikors tista' bl-awtorizzazzjoni tal-Maġistrat, tinżamm taħt detenzjoni tal-pulizija sakemm jinstema' r-rikors .

(7) Fejn fuq rikors skont is-subartikolu (4) il-Maġistrat ma jkunx sodisfatt li hemm raġunijiet biżżejjed sabiex wiehed jemmen li d-detenzjoni ulterjuri tal-persuna arrestata għal aktar minn tmienja u erbgħin (48) siegħa hi ġġustifikata, hu jista' jiċhad ir-rikors jew jiddiferixxi s-smiġh għal ħin ta' mhux aktar tard minn tmienja u erbgħin (48) siegħa wara l-ħin tal-arrest.

(8) Fejn il-Maġistrat ikun sodisfatt li hemm raġunijiet biżżejjed sabiex wiehed jemmen li d-detenzjoni ulterjuri tal-persuna arrestata hi ġustifikata, hu għandu joħroġ mandat ta' detenzjoni ulterjuri għal dak il-perjodu, li ma jaqbiżx tmienja u erbgħin (48) siegħa oħra hekk kif il-Maġistrat iqis xieraq wara li jqis il-provi li jkollu quddiemu.

(9) Il-perjodu ta' detenzjoni ulterjuri awtorizzat jista' jiġi estiż b'perjodu konsekkutiv ieħor ta' erbgħa u għoxrin (24) siegħa wara smiġh ieħor mill-Maġistrat fuq rikors ieħor tal-uffiċjal li jagħmel l-arrest pprezentat mill-inqas erba' (4) sigħat qabel l-iskadenza tal-perjodu tad-detenzjoni ulterjuri, li għalih is-subartikoli (4) sa (8) għandhom japplikaw *mutatis mutandis*.

(10) Persuna li tiġi meħlusa wara li mandat għal detenzjoni ulterjuri jkun inħareġ jew ikun skada fir-rigward tagħha, ma għandhiex tiġi arrestata mill-ġdid mingħajr mandat li għandu jinħareġ minn Maġistrat għar-reat li għalih kienet diġà arrestata sakemm, minn meta l-persuna tinheles, ma jinstabux provi ġodda jew ikun sar eżami jew analiżi ta' provi eżistenti li ma setgħux raġonevolment isiru qabel ir-rilaxx tagħha.

(11) Smiġh miżmum għall-finijiet tas-subartikolu (4) jew tas-subartikolu (9) għandu jinżamm *in camera* u l-persuna taħt arrest għandu jkollha d-dritt li tkun assistita legalment waqt is-smiġh.

**Taqsimta III**  
**Emenda għall-Att dwar il-Pulizija**

Emenda għall-  
Att dwar il-  
Pulizija.  
Kap. 164.

**6.** Din it-Taqsimta temenda l-Att dwar il-Pulizija u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Pulizija hawn aktar 'il quddiem imsejjaħ "l-Att prinċipali".

Emenda tal-  
artikolu 64 tal-  
Att prinċipali.

**7.** Fil-paragrafu (a) tal-artikolu 64 tal-Att prinċipali, minnufih wara l-kliem "ta' tmienja u erbgħin siegħa mill-arrest tagħha" għandu jiġi miżjud il-kliem ", jew ta' dawk il-perjodi ta' detenzjoni ulterjuri li jkunu ġew awtorizzati b'mandat ta' detenzjoni ulterjuri maħruġ minn Magistrat,".

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**Għanijiet u Raġunijiet**

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Ligi huma sabiex jipprovdu għall-possibbiltà li jiġi estiż il-perjodu ta' arrest ta' persuni raġonevolment suspettati li wettqu reati serji li jistgħu jwasslu għal piena massima ta' aktar minn tmax-il (12) sena prigunerija sabiex l-investigaturi jkollhom aktar żmien sabiex jiksbu u jippreservaw il-provi. L-Abbozz ta' Ligi jipprovdi għal bilanċ xieraq bejn il-protezzjoni tal-pubbliku u l-garanziji tad-drittijiet tal-persuna suspettata permezz tal-introduzzjoni konkorrenti ta' salvagwardji proċedurali quddiem awtorità ġudizzjarja.

**A BILL  
entitled**

*AN ACT to amend various laws relative to pre-trial police arrest and detention of persons suspected of having committed serious crimes.*

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

**1.** The short title of this Act is the Various Laws relating to Police Arrest and Detention (Amendment) Act, 2023. Short title.

**Part I  
Amendment to the Constitution**

**2.** This Part amends the Constitution and it shall be read and construed as one with the Constitution, hereinafter in this Part referred to as "the Constitution". Amendment to the Constitution.

**3.** In sub-article (3) of article 34 of the Constitution, the words "proceedings preliminary to trial." shall be substituted by the words "proceedings preliminary to trial:" and immediately after there shall be added the following new proviso: Amendment of article 34 of the Constitution.

"Provided that Parliament may by law provide for the extension, subject to adequate procedural safeguards and to the authorisation of a Magistrate, of the period of forty-eight (48) hours within which the person arrested or detained shall be brought before a court, by other periods not exceeding a further eighty-four (84) hours in total if the person who is arrested or detained is reasonably suspected to have committed a crime liable to a maximum punishment exceeding twelve (12) years imprisonment."

**Part II**  
**Amendment to the Criminal Code**

Amendment to  
the Criminal  
Code.  
Cap. 9.

4. This Part amends the Criminal Code and it shall be read and construed as one with the Criminal Code hereinafter in this Part referred to as "the Code".

Amendment of  
article 355AJ of  
the Code.

5. Immediately after sub-article (3) of article 355AJ of the Code, there shall be added the following new sub-articles:

"(4) Notwithstanding the provisions of sub-article (3) where the arresting police officer has sufficient reasons for believing that the person arrested has committed a crime liable to a maximum punishment exceeding twelve (12) years imprisonment and that the continuation of the arrest of the person beyond forty-eight (48) hours is necessary to obtain relevant evidence or to preserve relevant evidence, the arresting officer may by means of an application confirmed on oath and supported by information request a Magistrate to issue a warrant authorising the keeping of the person arrested under further detention:

Provided that for the purposes of this sub-article "information" means information about:

(a) the nature of the offence for which the person under arrest has been arrested;

(b) the general nature of the evidence on which that person was arrested; and

(c) the reasons for believing the continued detention of that person to be necessary.

(5) A Magistrate shall not accede to a request filed in accordance with sub-article (4) unless:

(a) the person to whom the information relates has been furnished with the information and has been brought before the Magistrate for a hearing; and

(b) the Magistrate is satisfied that the investigation is being conducted diligently and expeditiously.

(6) An application for a warrant in accordance with sub-article (4) may be made at any time before the expiry of forty-eight (48) hours after the time of arrest if the person is still under arrest:



Provided that in the case where the Magistrate to whom the application is made, decides that it is not practicable to hold a hearing before or at the expiry of forty-eight (48) hours after the time of the arrest, the Magistrate shall hold the hearing during the six (6) hours following the end of that period, at any time before the expiry of the said six (6) hours and the person to whom the application relates may with the authorisation of the Magistrate, be kept under police detention until the application is heard.

(7) Where upon an application in accordance with sub-article (4) the Magistrate is not satisfied that there are sufficient reasons to believe that the further detention of the person arrested beyond forty-eight (48) hours is justified he may refuse the application or adjourn the hearing until a time not later than forty-eight (48) hours after the time of the arrest.

(8) Where the Magistrate is satisfied that there are sufficient reasons to believe that the further detention of the person arrested is justified he shall issue a warrant of further detention for such period, not exceeding a further forty-eight (48) hours as the Magistrate deems fit having regard to the evidence before him.

(9) The period of authorised further detention may be extended by a further consecutive period of twenty-four (24) hours after a further hearing by the Magistrate upon a further application of the arresting officer filed at least four (4) hours before the expiry of the period of further detention, to which sub-articles (4) to (8) shall *mutatis mutandis* apply.

(10) A person released after a warrant for further detention is issued or has expired in his respect, shall not be re-arrested without a warrant to be issued by a Magistrate for the offence for which he was previously arrested unless, since the person's release, fresh evidence has been discovered or an examination or analysis of existing evidence has been made which could not reasonably have been made before his release.

(11) A hearing held for the purposes of sub-article (4) or sub-article (9) shall be held *in camera* and the person under arrest shall have the right to be legally assisted during the hearing.

C 902

**Part III**  
**Amendment to the Police Act**

Amendment to  
the Police Act.  
Cap. 164.

**6.** This Part amends the Police Act and it shall be read and construed as one with the Police Act hereinafter in this Part referred to as "the principal Act".

Amendment of  
article 64 of the  
principal Act.

**7.** In paragraph (a) of article 64 of the principal Act, immediately after the words "of forty-eight hours from his arrest" there shall be added the words ", or of periods of further detention as may have been authorised by a warrant of further detention issued by a Magistrate,".

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**Objects and Reasons**

The objects and reasons of this Bill are to provide for the possibility to extend the period of arrest of persons reasonably suspected of having committed serious crimes liable to a maximum punishment exceeding twelve (12) years imprisonment so that the investigators will have more time to obtain and preserve evidence. The Bill provides for a proper balance between the protection of the public and the guarantees of the rights of the suspected person through the concurrent introduction of procedural safeguards before a judicial authority.



# VERŻJONI ELETTRONIKA