

MEMORANDUM FOR THE CABINET
BY THE HON. PRIME MINISTER

Act to amend the Visiting Forces Act, 1952

The attached Draft of a Bill entitled an Act to amend the Visiting Forces Act, 1952, is submitted for early consideration by Hon. Ministers.

2. The United Kingdom Visiting Forces Act, 1952, was made applicable to Malta in 1954 by an Order in Council entitled the Visiting Forces (Application to Colonies) Order, 1954. The amendments proposed in the draft Bill are intended to adapt the Act in its general application to local circumstances, and particularly to make the United Kingdom one of the countries to which the provisions of the said Act will apply in Malta, in a manner which will implement certain provisions of the Defence Agreement. These are mainly provisions which detract from the jurisdiction of our Criminal Courts, offences reserved for the jurisdiction of the U.K. Service courts and Service authorities, and from our Civil Courts, claims against the British Authorities reserved for arbitration.

3. It is imperative, therefore, that the Bill be introduced in the House of Representatives as early as possible, since the Defence Agreement itself is no law, and the embarrassing situation may well arise in which (a) the Commissioner of Police will be obliged, owing to the challenging power contained in section 535 of the Criminal Code, to bring before our Criminal Courts a charge for an offence which in the Defence Agreement is reserved to the U.K. Service Courts or Service Authorities, and (b) individuals may bring before our Civil Courts civil claims which, according to the Defence Agreement, should be dealt with by Arbitration.

4. The memorandum by the Deputy Crown Advocate General covering the draft Bill indicates the lines of policy which have been followed, and it is for consideration whether they should be confirmed or modified. Instructions are also sought in the memorandum on specific points in order that appropriate revision of the draft Bill can be effected, as directed.

5. Finally, as the Bill in question represents the implementation of an Agreement concluded between the Government of Malta and the Government of the United Kingdom, it is desirable that when all points of policy have been decided and the final form of the Bill agreed, such Bill should be referred to the British Government for comments. This will avoid any amendments having to be proposed by the Government to its own Bill in the Committee stage.

31st May, 1965.

A BILL
entitled

AN ACT to amend the Visiting Forces Act, 1952.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. This Act may be cited as the Visiting Forces (Amendment) Act, 1965 and shall be read and construed as one with the Visiting Forces Act, 1952.

O. i. C. No.
636 of the 13th
May, 1954.

2. References in this Act to the Visiting Forces Act, 1952, are to be construed as references to the Visiting Forces Act, 1952, enacted in the United Kingdom on the 30th October, 1952, as from time to time amended, and as made applicable to Malta by the Visiting Forces Act (Application to Colonies) Order, 1954.

Amendments to
the Visiting
Forces Act,
1952.

3. The Visiting Forces Act, 1952, shall have effect in Malta, as part of the laws of Malta, subject to the amendments set out in the Schedule to this Act.

SCHEDULE

Section 3

Amendments to be made to the Visiting Forces Act,
1952

1. For the word "Governor" wherever it occurs there shall be substituted the words "Prime Minister" and for the words "the Territory" wherever they occur there shall be substituted the word "Malta" except in any context in which the following provisions of this Schedule otherwise require.

2. For section 1 there shall be substituted the following new section:-

"Countries to which Act applies. 1. (1) References in this Act to a country to which a provision of this Act applies are references to -

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- (a) the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon or the Federation of Malaya, or
- (b) any country designated for the purposes of that provision by Order under the next following subsection.

(2) Where it appears to the Governor-General, as respects any country not mentioned in paragraph (a) of the foregoing subsection, that having regard to any arrangements for common defence to which the Government of Malta and the Government of that country are for the time being parties it is expedient that the following provisions of this Act, or any of those provisions, should have effect in Malta in relation to that country, the Governor-General may by Order designate that country for the purposes of the provisions in question:

Provided that any country designated in respect of Malta as a country to which a provision of this Act applies by Order in Council made before the 21st day of September, 1964, shall be deemed for all the purposes of this Act to have been so designated by an Order made under this subsection and all the provisions of this Act shall apply accordingly.'

3. (1) In subsection (1) of section 2 for the words "or on board any ship or aircraft belonging to Her Majesty in right of the Territory" there shall be substituted the words "or on board any ship or aircraft belonging to the Government of Malta".

(2) In paragraph (b) of subsection (2) of section 2 for the words "of the United Kingdom and Colonies" there shall be substituted the words "of Malta".

(3) In subsection (6) of section 2 there shall be deleted the words "United Kingdom forces or".

4. (1) For subsection (2) of section 3 there shall be substituted the following new subsection:-

"(2) In relation to the trial of a person who was a member of a visiting force or a member of a civilian component at the time when the offence is alleged to have been committed, the last foregoing subsection shall not have effect unless it is shown that the offence is punishable by the law of the sending country."

(2) In paragraph (a) of subsection (3) of section 3 for the words "the Governor" there shall be substituted the words "the Crown Advocate-General".

(3) The Schedule referred to in subsection (6) of section 3 shall be cancelled and for that subsection there shall be substituted the following new subsection:-

"(6) For the purposes of this section -
the expression "offence against the person" means an offence punishable under any of the provisions of sections 205, 212 to 262, 325 where the offence is of a nature likely to endanger the life of a person, 326, 330, 342 paragraphs (a) (b) and (c), of the Criminal Code and sections 2 to 5 and subsection (1) of section 7 of the White Slave Traffic (Suppression) Ordinance, provided that any such offence is also an offence punishable by the law of the sending country; and

the expression "offence against property" means an offence punishable under any of the provisions of sections 274 to 308, 325 where the offence is of a nature likely to cause only serious injury to the property of another person, 329, 332, 336, 339, 340 342 paragraph (d) and 348 of the Criminal Code, provided that any such offence is also an offence punishable by the law of the sending country."

(4) Immediately after subsection (6) of section 3 there shall be inserted the following new subsection:-

"(7) The provisions of section 535 of the Criminal Code shall not apply in regard to any offence which in accordance with the provisions
/of

of this section is not triable by a court of Malta, except in any case where the Crown Advocate-General has been notified by the appropriate authority of the sending country that it is not proposed to deal with such case under the law of that country."

5. In subsection (2) of section 5 -

- (a) for the words "for a period not exceeding three days" there shall be substituted the words "for not more than forty-eight hours";
- (b) for the words from "but if within that period" to "the expiration of that period" there shall be substituted the following words:-

"but if within that period he is not delivered into the custody of an authority of that country or is not brought before the Court of Judicial Police he shall be released."

6. (1) For the marginal title to section 7 there shall be substituted the following:-

"Provisions as to Magistrates' inquests."

(2) In subsection (1) of section 7 -

- (a) for the words "If any coroner" there shall be substituted the words "If a Magistrate of Judicial Police" and for the words "the coroner" there shall be substituted the words "the Magistrate";
- (b) the words "and, if a jury has been summoned, shall discharge the jury" shall be cancelled.

(3) In subsection (2) of section 7 -

- (a) for the word "coroner" wherever it occurs there shall be substituted the word "Magistrate";
- (b) the words from "and, if a jury has been summoned" to "as they have been ascertained at the inquest" shall be cancelled.

(4) For subsection (3) of section 7 there shall be substituted the following:-

"(3) Where an inquest is adjourned under this section the Magistrate shall not resume it except on the direction of the Prime Minister and, if he does resume it, shall proceed, in so far as possible, in all respects

respects as if the inquest had not been previously begun."

(5) Subsections (4) (5) and (6) of section 7 shall be repealed and immediately after section (3) of that section there shall be inserted the following new subsection:-

"(4) In this section "homicide" includes the offences of voluntary homicide, involuntary homicide, infanticide, any other offence from which death ensues and any offence under the law of the country in question which is analogous to any of the offences aforesaid."

7. In section 8 the words "United Kingdom forces or" shall be deleted wherever they occur and for the words "the Governor" wherever they occur there shall be substituted the words "the Governor-General".

8. (1) In subsection (1) of section 9 there shall be deleted the words "made by the Governor".

(2) In subsection (2) of section 9 between the words "for securing that" and the words "persons concerned" there shall be inserted the words "the service authorities and the".

9. For paragraph (a) of subsection (1) of section 10 there shall be substituted the following new paragraph:

"(a) that he is a member of the civilian personnel accompanying a visiting force who are in the employ of the service authorities of the sending country, that he is not ordinarily resident in Malta and that he holds a passport issued in respect of him by a Government, not being a passport issued by the passport authorities of Malta."

10. For subsection (3) of section 11 there shall be substituted the following new subsection:-

"(3) For the purposes of subsection (2) of section 3 of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating in connection with any charge against a person of an offence against the law of Malta, being a charge specified in the certificate, that such
/offence

offence is punishable by the law of that country, shall in any such proceedings as aforesaid be sufficient evidence of the fact so stated unless the contrary is proved."

11. In section 12 -
 (a) the definition of "local forces" shall be deleted and substituted as follows:-

"local forces" includes any body which by virtue of any law in Malta is or is deemed to form part of the armed forces of Malta and includes any police force";

- (b) the definition of "United Kingdom forces" shall be deleted;

- (c) the definition of "visiting force" shall be deleted and substituted as follows:-

"visiting force" means, for the purposes of any provision in this Part of this Act, any body, contingent or detachment of the forces of a country to which that provision applies, being a body, contingent or detachment for the time being lawfully present in Malta pursuant to any treaty, agreement or arrangement to which the Government of Malta is a party;"

- (d) in paragraph (b) of subsection (2) of section 12 for the words "the United Kingdom and Colonies" there shall be substituted the word "Malta".

12. For section 13 there shall be substituted the following new section:-

"Apprehen- 13. (1) Members of the local forces may, sion and in compliance with a request of the appropriate disposal of authority of the country to which the person of deserters concerned belongs and having obtained for that and absentees purpose the issue of a warrant by a Magistrate without leave. of Judicial Police, apprehend any person who is reasonably suspected to be a deserter or an absentee without leave from the forces of that country.

(2) A Magistrate of Judicial Police shall not issue a warrant for the purpose referred to in the last foregoing subsection unless an officer of the forces to whom the person concerned belongs confirms on oath that such person is reasonably believed to be a deserter or an absentee without leave from the said forces.

(3) A person apprehended as aforesaid shall be brought within twenty-four hours before the Court of Judicial Police, which shall deal with his case in like manner as if such person were brought before that Court charged with an offence within its jurisdiction as a Court of Criminal Judicature.

(4) The said Court, if satisfied that it has been proved that the person before it is a deserter or an absentee without leave, shall forthwith cause him to be delivered to such authority of the country to which he belongs and at such place in Malta as may be designated by the appropriate authority of that country:

Provided that there shall be allowed for the purpose of the said delivery a reasonable time not in excess of twenty-four hours."

13. For section 14 there shall be substituted the following new section:-

"Arrange-
ments for
reception
of
deserters
or
absentees
without
leave in
any prison
in Malta.

14. (1) The appropriate authority of the country to whom the person found guilty of desertion or absence without leave belongs may from time to time make arrangements with the Prime Minister for the reception in any prison in Malta under this Act of deserters or absentees without leave from the forces of that country, on payment of such sums as may be provided by the arrangement, and the director of any prison to which any such arrangement relates shall be under the obligation to receive and detain such deserters or absentees without leave as if they were sentenced to a term of imprisonment by a court of criminal jurisdiction of Malta.

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(2) Any deserter or absentee without leave detained in any prison in Malta under the arrangements referred to in the last foregoing subsection shall be handed over to the authority of the country to which he belongs at the request of such authority or on the expiration of the period which he was sentenced to serve in prison for his offence, whichever is the earlier."

14. Immediately after section 14 and before Part III there shall be inserted the following new section:-

"Evidence for purposes of section 13. 15. For the purpose of any proceedings under or arising out of any of the provisions of section 13 --

(a) a document purporting to be a certificate under the hand of the Prime Minister stating that a request has been made for the exercise of the powers mentioned in subsection (1) of the said section and indicating the effect of the request, shall be sufficient evidence, unless the contrary is proved, that the request has been made and of its effect; and

(b) a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any of the forces of a country to which this section applies, stating that a person named and described therein was at the date of the certificate a deserter or absentee without leave, from those forces shall be sufficient evidence, unless the contrary is proved, of the facts appearing from the document to be so certified."

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15. In paragraph (b) of subsection (1) of section 16 for the words "on the invitation of Her Majesty's Government in the Territory" there shall be substituted the words "pursuant to a treaty, agreement or arrangement to which the Government of Malta is a party".

16. (1) For subsection (1) of section 17 there shall be substituted the following subsection:-

"(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:-

"court of Malta" means a court exercising jurisdiction in Malta under the law of Malta otherwise than by virtue of section 2 of this Act;

"forces" in relation to a country, means any of the naval, military or air forces of that country;

"legislature of Malta" includes any authority having power to make laws for Malta."

(2) In subsection (6) of section 17 -

- (a) there shall be deleted the words "Order in Council or", wherever they occur, and for the words "and an Order in Council" there shall be substituted the words "and an Order";
- (b) for the words "Her Majesty in Council" there shall be substituted the words "the Governor-General".

17. Immediately after section 18 there shall be inserted the following new section:-

"Modifications in the application of this Act to the United Kingdom.

18A. In its application in relation to the United Kingdom, this Act shall have effect subject to the modifications specified hereunder, namely:-

- (a) there shall be deleted the words "of such a force" wherever they occur after the words "of a civilian component";

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(b) immediately after section 5 there shall be inserted the following new section:-

"Summoning of witnesses. 5A. (1) Where any person, not being a person subject to the service law of the United Kingdom, is required as a witness by the service authorities or by a service court of that country for the purpose of the exercise of the jurisdiction referred to in section 2 of this Act, any such authorities or court may notify with such requirement the Crown Advocate-General who, upon obtaining all the relevant information, may apply to Her Majesty's Criminal Court for the issue to such person of a subpoena to which the provisions of sections 568, 569, 574 and 575 of the Code of Organization and Civil Procedure shall apply.

(2) The service court or service authorities indicated in the application for the issue of the said subpoena as the court or authorities before whom the witness is to appear shall be deemed to be a Court or one or more officers, as the case may be, authorized by law to examine witnesses for the purposes of the abovequoted provisions of the Code or Organization and Civil Procedure.";

- (c) for section 9 there shall be substituted the following new section:-

"Settlement of claims against the British authorities.

9. (1) The British authorities shall investigate expeditiously all claims (other than contractual claims) in respect of the acts or omissions of a member of the British forces or other officer or servant of the Government of the United Kingdom and which arose out of and in the course of his employment as such in Malta and for which he is legally responsible or in respect of any other act, omission or occurrence in Malta for which the Government of the United Kingdom are legally responsible and, where liability is established by the British authorities in accordance with the laws of Malta, such claims shall be settled by the payment by the British authorities of such compensation as the claimant might have been awarded under the laws of Malta in all the circumstances of the case:

Provided that where, under the laws of Malta, responsibility may be apportioned between the Government of the United Kingdom or the member of the British forces or other officer or servant of that Government and any other
/person

L-ARKIVJI NAZZJONALI TA' MALTA

person (including the claimant) the compensation payable under this section shall be limited to the appropriate share of the responsibility of the Government of the United Kingdom or of the member of the British forces or other officer or servant of that Government as the case may be;

(2) Where a claim is rejected altogether by the British authorities or where the amount of compensation offered by them is not accepted by the claimant, the question whether compensation is payable or of the amount of such compensation may be submitted by the claimant for decision by an arbitrator selected by agreement between the Government of Malta and the Government of the United Kingdom from amongst the citizens of Malta who hold or have held high judicial office.

(3) Notice by the claimant that he is dissatisfied with the decision of the British authorities and that he intends to submit his claim to arbitration shall be given to the Prime Minister within thirty days of the receipt by the
/claimant

L-ARKIVJI NAZZJONALI TA' MALTA

claimant of that decision and, in any such case, the Prime Minister shall without delay inform the British authorities that he has received such notice and invite them to reach agreement with the Government of Malta on the appointment of an arbitrator in pursuance of the last foregoing subsection. Should the Government of Malta and the Government of the United Kingdom fail to agree upon the person to be so appointed, either may request the Chief Justice of Malta to select an arbitrator with the qualification mentioned in the said subsection.

(4) The arbitrator shall also decide any counterclaims arising out of the same incident out of which the claim before him has arisen.

(5) The remuneration of the arbitrator shall be fixed by agreement between the authorities of Malta and the British authorities and shall, together with all costs of the arbitration, be borne by the parties to the arbitration, in terms of the award:

Provided that the Government of Malta shall have the right to take all /necessary

necessary, including judicial, steps to collect for the Government of the United Kingdom any costs that may be awarded against a Maltese citizen.

(6) The fees payable to the lawyer assisting any party to the arbitration proceedings shall be taxed in like manner as the fees which would have been taxed in regard to the same subject matter of the arbitration proceedings in a law suit before Her Majesty's Civil Court, First Hall, or before the Court of Magistrates of Judicial Police, as the case may be.

(7) The arbitrator appointed under subsection (3) of this section shall have power to administer the oath to witnesses in accordance with section 108 and subsection (1) of section 109 of the Code of Organization and Civil Procedure and the provisions of subsection (1) of section 567 and of sections 568, 569, 574 and 575 of that Code shall apply in regard to the summoning of witnesses to appear before him in like manner as they apply to the summoning of witnesses to appear before Her Majesty's Civil Court, First Hall.

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L-ARKIVJI NAZZJONALI TA' MALTA

(8) Notwithstanding any provision contained in the Code of Organization and Civil Procedure or in any other law by virtue of which the Courts of Justice of civil jurisdiction for the Island of Malta and its Dependencies would, but for the provisions of this section, have jurisdiction in regard to any matters referred to in subsection (1) of this section, the said Courts shall not have any jurisdiction in regard to such matters except for the purpose of the last foregoing subsection.";

- (d) for section 10 there shall be substituted the following new section:-

"Defin- 10. In this Part of
ition of this Act references to a
member- member of a civilian
ship of component are references
civilian to a civilian (not being
component. a citizen of nor ordinarily
 resident in Malta) in the
 service of a British
 authority or an authorised
 service organisation who
 is employed in or is
 visiting or entering Malta
 for purposes relating to
 the British forces in
 Malta and who is in
 possession of an identity
 document issued by the
 British authorities or a
 passport showing his status
 /to

to be that of a member
of a civilian component.";

(e) in subsection (1) of section 12 -

(i) immediately before the
definition of "court" there
shall be inserted the following
definitions:-

"authorised service
organisation" means the Navy,
Army and Air Force Institutes,
the Royal Naval Film Corporation,
the Army Kinema Corporation and
the Royal Air Force Cinema
Corporation and such other non-
profit making organisations
authorised by the Government
of the United Kingdom to
accompany the armed forces of
that Government in Malta to
provide for the need of members
of those forces and their
dependants, as may be designated
by the Prime Minister by notice
published in the Malta
Government Gazette;

"British authorities"
means the departments,
authorities and organisations
of the Government of the United
Kingdom having functions
relating to the British forces
or to defence matters (including
authorities of the British
forces) and persons authorised
to act for any of them;

"British forces"
means naval, army or air forces
of the United Kingdom;

/British

"British forces in Malta" means the contingents of the British forces stationed in Malta, and also members of the British forces in transit by sea, land or air through Malta, or visiting Malta or being otherwise present in Malta, on duty or under official leave arrangements;

- (ii) for the definition of "visiting force" there shall be substituted the following:

"visiting force" means, for the purposes of any provision in this Part of this Act, the British forces in Malta.";

- (f) in paragraph (a) of subsection (2) of section 12 there shall be deleted the words "of that force";
- (g) in paragraph (b) of subsection (2) of section 12 there shall be deleted the words "of a member of that visiting force or of a civilian component of that force.";
- (h) for subsection (4) of section 12 there shall be substituted the following subsection:-

"(4) In this section the expression "dependant" means any of the following, that is to say -

- (i) the wife or husband of,
- (ii) any other person wholly or mainly maintained by or in the custody or charge of, or

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- (iii) any other person (not being a citizen of nor ordinarily resident in Malta) who is employed in the care of children or invalids in the household of,

a member of the British forces in Malta or civilian component or of a member of the British forces who has been posted to, but has not yet arrived in, Malta, or who, although stationed in Malta, is for the time being absent from Malta."

Objects and Reasons

This Bill amends the Visiting Forces Act, 1952, enacted in the United Kingdom on the 30th October, 1952, and made applicable to Malta by an Order in Council of the 13th May, 1954, entitled the Visiting Forces Act (Application to Colonies) Order, 1954.

The main object of the Bill is to make the United Kingdom one of the countries to which the provisions of the said Act will apply in Malta, in a manner which will be implementing certain provisions of the Agreement on Mutual Defence and Assistance between the Government of the United Kingdom and the Government of Malta signed on the 21st September, 1964.

The Bill also introduces some amendments of general application to the said Act, so as to adapt its provisions to the circumstances obtaining in Malta.