

MEMORANDUM TO CABINET

POST OFFICE (AMENDMENT) BILL

CUSTOMS (AMENDMENT) BILL

Joint Memorandum
of the
Minister of Agriculture, Posts and Communications
and of the
Minister for Industrial Development and Tourism

As members of the Cabinet are aware there has for a long time been some complaint about the law relating to the detention of indecent literature by the Postal and Customs Departments. In recent months this complaint has increased and it is necessary to take some steps, both by legislation and by administrative action, to remove such causes of complaint as there are.

2. The initiative in the matter was taken by the previous Nationalist administration in 1954 and a Committee was later appointed by the Labour Administration to study what legislative and administrative reforms were required. This Committee had reported in 1957 recommending the enactment of a Censorship act and the appointment thereunder of a Censorship Board composed of seven members, to be divided into two sections, with the function of censoring all publications reaching Malta from abroad. For various reasons that Bill was not enacted.

3. On taking office, the Minister responsible for Posts inquired into the matter and instructed the Law Officers to give their further consideration to the Bill. The Deputy Attorney-General has now advised that on various grounds, with which the Ministers responsible for the two Departments, after consultation with the Minister of Justice, agree, the Bill recommended by the Committee should not be enacted but that the two attached Bills, which he has drafted, should take its place. The main objections to the old Bill are that (a) it unnecessarily repeals and re-enacts restrictive provisions which are already on the statute book, (b) it introduces a full-blooded form of

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censorship which would not be popular and (c) it would cause much greater expenditure than is strictly necessary to meet the situation.

4. The object of the two attached Bills is that of creating a Postal and Customs Printed Matter Appeals Board which will have two functions:-

- (a) that of giving immediate directions on the detention of newspapers and periodicals issued at intervals of not more than one week; and
- (b) that of serving as an appeals tribunal which may be easily and quickly brought into action, free of charge, by the interested party in the case of other detained publications.

5. The main advantage of the proposed legislation is that it reconciles, with a minimum of legislative and administrative effort, the retention of the system at present in force with an appeal to a tribunal the identity, independence and competence of whose members will be known to the public. The chief complaint at present is that the staffs of the Department do not always have the qualifications necessary for a task of such responsibility. The availability of a means of appeal is thus calculated to make the system more acceptable to the public and will provide valuable guidance to the two Departments in question in the method of application of the existing law.

6. The proposed legislation will apply only to publications detained on the grounds of their indecent, obscene or impious character. Seditious publications and other indecent or offensive postal or imported articles will continue to be dealt with exclusively by the two Departments under the main legislation which provides the background to the two Bills, namely sections 28 and 30 of the Post Office Act (Cap. 85) and the Indecent Articles (Prohibition of Importation) Regulations, 1954 (Government Notice No. 70 of 1954). The needs of persons or organizations requiring certain publications for educational, scientific, professional

or cultural purposes are, with due safeguards, taken into special consideration.

7. It is estimated that the cost of maintaining such a Board will, at most, amount to between £600 and £700 per annum, reckoning on a remuneration of £250 p.a. for the Chairman and £200 per annum for each of the other two members. There may also be ways and means of reducing this expenditure. The members of the proposed Board, apart from meeting weekly to consider any appeals pending may also have to meet on Sundays in connexion with Sunday newspapers.

8. In order to allow more time for consideration of the financial aspect and of the selection of the members of the Board the two Bills provide that they are to come into force on a date to be fixed by the Prime Minister.

9. It is submitted that the two Bills should be well received by the Legislative Assembly and the public as a much-needed improvement on the existing arrangements and will be of long-term benefit to Malta from the cultural point of view. Hon. Ministers are therefore invited to approve that further action should be taken thereon by the Government in the Legislative Assembly.

22nd March, 1963.

A BILL
entitled

AN ACT further to amend the Post Office Act, Cap.85.

ENACTED by the Legislature of Malta:-

Short title and
commencement.

1. (1) This Act may be cited as the Post Office (Amendment) Act and shall be read and construed as one with the Post Office Act, hereinafter referred to as "the principal Act".

(2) This Act shall come into force on such date as shall be fixed by the Prime Minister by notice published in the Government Gazette.

Amendment of
subsection (2)
of section 30
of the principal
Act.

2. Subsection (2) of section 30 of the principal Act is amended -

(a) by the deletion of the words "if authorised by the Minister"; and

(b) by the deletion of the words "may be destroyed" and the substitution of the words "may, with the written authority of the Minister, be destroyed, provided that where any printed matter, including any newspaper, is detained under this subsection on the grounds of its indecent, obscene or impious character, the provisions of Schedule C annexed to this Act (which relate to the establishment and functions of a Postal and Customs Printed Matter Appeals Board) shall apply".

3.

(3) The members of the Board, other than the Secretary, but including the supplementary members to be appointed under sub-paragraph (6) hereof, may at any time resign their appointment and the Minister may direct that any such member who appears to him to be unfit to continue in office or to be incapable of discharging his duties shall cease to hold office; but, save as aforesaid, such members of the Board shall hold office for such period, not exceeding three years from the date of their appointment, as may be determined by the Minister on their appointment, and shall be eligible for re-appointment.

(4) The Secretary shall hold office at the Minister's pleasure.

(5) The members of the Board, other than the Secretary, shall be paid such remuneration, whether by fee or allowance, as the Minister shall, with the concurrence of the Minister responsible for finance, determine.

(6) The Minister may also appoint supplementary members of the Board to serve on the Board during such periods or on such occasions as any of the members may be absent from Malta or temporarily unable to attend to their duties, and may from time to time designate any member of the Board to act as Chairman when the Chairman is absent from Malta or is temporarily unable to attend to his duties.

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(7) The names of the members and supplementary members of the Board and of the Secretary shall be published in the Government Gazette.

(8) In exercising the functions conferred by sub-paragraphs (1), (3) and (6) of this paragraph the Minister shall act with the concurrence of the Minister responsible for Customs.

Consultation by Board and interpreters.

3. (1) The Board may consult or take the opinion of any person whom it deems necessary or expedient to consult, or to take opinion from, for the proper discharge of its functions, and may for the purpose of such discharge avail itself of the services of interpreters.

(2) The Minister may determine the fees to be paid to any person assisting the Board under sub-paragraph (1) of this paragraph.

Procedure of Board.

4. (1) The decisions of the Board shall be taken by a majority of the members present and voting.

(2) Two members of the Board shall form a quorum and if only two members are present at any meeting the Chairman or, in his absence, the member appointed by the other members present to preside at that meeting, shall, in the case of an equality of votes, have a casting vote in addition to his original vote.

(3) The meetings of the Board shall be held in camera at such place, on such days and at such times as the Chairman may from time to time determine having regard to the prompt despatch of business.

(4) The Board shall, whenever requested, permit the making of representations to it by or on behalf of the Postmaster-General and the person or body of persons to whom the detained printed matter, forming the subject of an appeal to the Board or otherwise coming for decision before the Board under the provisions of this Schedule, is addressed or directed. Such representations may be made orally or in writing, as the Board may determine after taking into account the circumstances of the case.

(5) The Board shall reach its decisions summarily and shall communicate its findings, orally or in writing, through the Secretary, to the Postmaster-General and to the person or body of persons referred to in sub-paragraph (4) of this paragraph, but shall not be required to state reasons for its findings.

(6) Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

5. (1) The Board shall, saving the provisions of paragraph 6, function as an appeals tribunal for the purpose of determining, on an application made as hereinafter provided, whether any printed matter detained under subsection (2) of section 30 of this Act on the grounds of its

Functions of the Board as an appeals tribunal in respect of detained printed matter other than newspapers or periodicals issued at intervals not longer than one week.

indecent, obscene or impious character shall be delivered through the post, with or without cuts, to the person or body of persons to whom such printed matter is addressed or directed.

(2) Such application may be made either by letter addressed to the Secretary at the General Post Office, Valletta, or by filling up, signing and delivering to the Secretary such printed form of appeal as the Secretary shall, with the approval of the Board, make available at the General Post Office, free of charge, for the purpose. Such application shall not be subject to stamp duty.

(3) Forthwith on detaining any such printed matter as aforesaid, the Postmaster-General shall cause the person or body of persons to whom such printed matter is addressed or directed to be given notice in writing of such fact.

(4) The person to whom any printed matter detained as aforesaid is addressed or directed or, where such printed matter is addressed or directed to a body of persons, the authorised representative of such body may, within ten days from the date of posting of the notice mentioned in the last foregoing sub-paragraph, apply to the Board for the delivery to him of the detained printed matter on any of the following grounds, namely -

7.

- (a) that such printed matter is not of a character justifying its being detained under subsection (2) of section 30 of this Act; or
- (b) that he, being an individual acting in his own behalf, requires the printed matter for educational, professional or scientific purposes and for his sole use; or
- (c) that he, being the authorised representative of an educational, professional, cultural or scientific organization, requires the printed matter for the sole use of the members of such organization and that such use is within the principal objects of the organization and not morally harmful to its members.

(5) The Board, after taking into consideration any representations made to it, shall give its decision which shall be final and binding.

(6) The Board shall meet not less than once a week for the purpose of considering appeals under this paragraph and, except for a cause to be approved in each case by the Minister or with the consent of the person or body of persons by whom the appeal is made, shall not delay the decision on any such appeal beyond fifteen days from the date on which the appeal is lodged with, or is received by, the Secretary.

Special procedure
in respect of
newspapers and
periodicals
issued at
intervals not
longer than one
week.

6. (1) In dealing with newspapers and periodicals issued at intervals not longer than one week suspected by him to contain any indecent, obscene or impious matter, the Postmaster-General shall not exercise his powers of detaining them under subsection (2) of section 30 of this Act except after consulting a member, not being the Chairman, of the Board, and where he decided to detain any such newspaper or periodical he shall forthwith inform the Chairman of the Board of such fact and the Chairman shall thereupon summon an urgent meeting of the Board for the same day or, if the circumstances do not permit, for the day following that of the receipt by him of the information.

(2) At such meeting the Board shall direct the Postmaster-General whether, having regard to the matter contained in the newspaper or periodical in question, he should deliver it through the post, with or without cuts, to the person or body of persons to whom it is addressed or directed.

(3) A direction of the Board under the foregoing sub-paragraph shall be final and binding.

(4) If the Board shall fail to give a direction to the Postmaster-General within the time prescribed in sub-paragraphs (1) and (2) of this paragraph, such direction shall be given by the Minister.

(5) The fact that a member of the Board has been consulted by the Postmaster-General under sub-paragraph (1) of this paragraph shall not prevent such member from carrying out his functions at the meeting of the Board on the subject on which he was consulted.

Limitations on power to destroy printed matter to which this Schedule applies.

7. Printed matter to which the provisions of this Schedule apply may not be destroyed except with the written authority of the Minister and such authority may be given only if --

- (a) in the case of newspapers or periodicals issued at intervals not longer than one week, the Board or the Minister, as the case may be, directs that such printed matter should not be delivered to the person or body of persons to whom it is addressed or directed; and
- (b) in the case of any other printed matter, an appeal is not made in respect thereof in accordance with the provisions of paragraph 5 or, on being so made, is rejected by the Board.

Objects and Reasons

The object of this Bill is to amend the Post Office Act by the insertion of provisions relating to the establishment, composition and functions of a Board which will determine questions concerning printed matter detained under subsection (2) of section 30 of the principal Act on the grounds of its indecent, obscene or impious character.

A BILL
entitled

AN ACT further to amend the Customs Ordinance, Cap. 60.

ENACTED by the Legislature of Malta:-

Short title
and
commencement.

1. (1) This Act may be cited as the Customs (Amendment) Act, 1963 and shall be read and construed as one with the Customs Ordinance.

(2) This Act shall come into force on such date as shall be fixed by the Prime Minister by notice published in the Government Gazette.

Amendment of
section 76 of
the Customs
Ordinance.

2. Section 76 of the Customs Ordinance is amended by the addition, after subsection (2), of the following subsections:-

"(3) Where the Comptroller of Customs suspects that any printed matter, including any newspaper, of an indecent, obscene or impious character has been imported into these Islands in contravention of any regulations made under subsection (1) of this section, but so that no other offence against this Ordinance is committed in connection with or for the purpose of the importation thereof, the Comptroller of Customs may detain and open and, subject to the provisions of the next following subsection, destroy such printed matter.

(4) The provisions of Schedule C annexed to the Post Office Act shall apply to any printed matter detained under the last foregoing subsection, and for the purposes of this subsection -

- (a) the references in that Schedule to the Postmaster-General shall be construed as if they were references to the Comptroller of Customs;
- (b) the references to the Minister in subparagraph (6) of paragraph 5, in subparagraph (4) of paragraph 6 and in paragraph 7 of that Schedule shall be construed as if they were references to the Minister responsible for Customs; and
- (c) the references in that Schedule to the detaining of printed matter under subsection (2) of section 30 of the Post Office Act and to delivery through the post shall be construed as if they were references to the detaining of printed matter under subsection (3) of this section and to release from Customs respectively.

(5) The provisions of subsections (3) and (4) of this section shall be without prejudice to any seizure, forfeiture, remedy, right of proceeding or penalty established by the other provisions of this Ordinance in respect of any article, other than printed matter to which subsection (3) of this section applies, imported in contravention of regulations made under subsection (1) of this section."

Objects and Reasons

The object of this Bill is to render the provisions of Schedule C annexed to the Post Office Act applicable, with certain safeguards and with the necessary modifications, to printed matter of an indecent, obscene or impious character imported in contravention of regulations made under subsection (1) of section 76 of the Customs Ordinance.