

# **The Government White Paper of 1990**

*The White Paper of 1990 was only one of several initiatives by the Nationalist Government to bring about substantial reforms in Maltese elections. It was a far-reaching effort to change not only the administration of elections but also the role of political parties and, most notably, the rules governing the allocation of parliamentary seats.*

*In the end, some of the proposals put forward in this White Paper were enacted into law, such as the consolidation of previously scattered regulations, the enhanced role of political parties in electoral administration and a variety of provisions that streamlined election processes and guarded against fraud.*

*However, the main features advocated in the White Paper failed to win adoption in Parliament -- in particular, the adoption of the d'Hondt system on a nationwide basis, the threshold requirement for minor parties and the prohibition of vote transfers among candidates of the larger parties. It was not until 1996 that the legislature approved the constitutional amendment in Section 52(1) the text of which can be found elsewhere on this site.*

## **Reforming Malta's Electoral Laws**

### **Volume One: The Government's Proposals**

May 1990

#### **Present Legislation**

The electoral process in Malta is governed by four different acts of legislation:

1. The Constitution which regulates the qualification and disqualification of voters, the setting up of the Electoral Commission, the method of drawing up electoral divisions and the basic principles governing elections. All the relevant sections in the Constitution are entrenched.
2. The Electoral Ordinance (Voting, Method of Election and Registration of voters) which establishes the number of electoral divisions and sets out how the electoral register shall be compiled.
3. The Electoral (Polling) Ordinance which provides how elections should be conducted and determines what constitutes a corrupt or illegal practice.
4. The Voting Regulations which determine the method of counting votes cast at an election.

The above mentioned ordinances and regulations originated in 1921 and in essence are still very much what they were even though a number of changes have been affected. This is especially so with respect to the method of counting of votes and to the legal guarantees against electoral fraud, which though practically non-existent in the law, have been developed in practice.

### **Reasons for Reform**

The evolution of party organisations (it is well to note that political parties have only an indirect status in the law) from 1921 to date, the introduction of modern technology in the way that an election is conducted, the ever increasing needs for legal guarantees against electoral fraud, are all arguments in favour of the reform of the present electoral legislation.

The only reference to political parties that one will find in the electoral legislation is in the Voting Regulations and political parties are only mentioned in connection with the form of the ballot paper. Our present electoral legislation (and the rights of surveillance emanating therefrom) is based on the individual candidate. In reality, it is the political parties which exercise these rights and Government considers that it is a grave defect of such legislation that it does not regulate the position of political parties.

Modern technology is progressively being introduced into elections even in Malta. Whilst at the present time this is rather limited it is fair to assume that the time is not far away when the Electoral Office will have its own computer which will help speed up the electoral process. Since this evolution cannot be sensibly impeded but is, at the same time, open to abuse unless the political parties are given adequate rights of access, the Government is proposing that the present electoral legislation be amended before computerisation comes into effect.

After the 1976 general elections the need for guarantees against electoral fraud became self-evident. Through public pressure and pressure by the political parties on the Electoral Commission, the political parties were given a number of new facilities to oversee the electoral process to ensure that no electoral fraud occurred. It should, however, be noted that the facilities are given "ex gratia" by the Electoral Commission and not because they are part of the electoral law. It can be safely said that following the 1987 general elections consensus exists on what these facilities should be.

It is consequently considered that it is about time that the legislation reflects reality and is brought in line with what was done in practice during the last two general elections. The more the electoral process is open to public scrutiny the greater will be the confidence of the public in the final result.

For this reason it is being proposed that the new law incorporate all those practical measures which in the last two general elections the Electoral Commission accorded to the political parties in order that they may ensure that no electoral fraud is taking place e.g. the nomination of assistant commissioners, the presence of party representatives during the printing of the voting documents, etc.

It is of the utmost importance that the electoral process through which Parliament is elected is not only actually free from fraud but is also seen to be so by the general public. No government can govern effectively if suspicions exist that its election has come about through electoral fraud. The

reform being proposed is intended to remove all possible doubts and to give the political parties the widest possible powers to enable them to scrutinise the electoral process.

The need is also felt to remove the present anomaly that whilst the conduct of the general election is the responsibility of the Electoral Commission, the drawing up of the electoral register is the responsibility of the Electoral Registrar. The Electoral Commission is set up in terms of the Constitution whilst the Electoral Registrar is an appointment within the Civil Service. Since in practice the Electoral Registrar has also been the Chairman of the Electoral Commission there seems to be no valid reason for the distinction.

The proposed reform will also do away with the great anomaly that whilst responsibility for the conduct of the election is given to an Electoral Commission constitutionally independent, the decision as to who has and who does not have the right to vote in that election (subject to an appeal made to a Revising Officer) rests with a civil servant who does not have a constitutional guarantee of independence.

The principle aim of the reform of the proposed Electoral Law, however, is to regulate once and for all the problem of proportionality between votes and seats in Parliament. The constitutional amendment introduced in 1987 provides only that where a party at the first count obtains more than fifty per cent of the votes cast it will be guaranteed a one seat majority in Parliament. This amendment does not lead to strict proportionality between votes and seats in Parliament as required by the Constitution which provides for a "*proportional system of representation*" because:

1. in an election contested by two parties and where there has been gerrymandering of the electoral boundaries, one party may obtain fifty-five per cent of the votes cast but a number of seats less than the other party. Through the operation of the 1987 constitutional amendment the first party would have its seats increased to have a one seat majority when in effect its majority should be three or more;
2. in an election where no party obtains fifty percent of the first count votes there exists no guarantee of proportionality between votes polled and seats in Parliament and it may happen that, again due to gerrymandering, a party which has a relative majority in votes does not obtain a similar relative majority in seats, or that a party which has only a relative majority of votes obtains an absolute majority of seats.

Consequently the principle aim of the proposed reform is the introduction of a new method of counting of votes to ensure a much stricter proportionality between the votes polled by a particular party on a national basis and the seats assigned to that party in Parliament.

The Constitution provides that elections in Malta shall be conducted on the principle of proportional representation through the use of the single transferable vote. It is common knowledge that the single transferable vote, as used in Malta, provides for proportional representation between candidates in a particular electoral division but does not provide for proportional representation between candidates in different electoral divisions and, to a much greater extent, proportional representation between the parties on a national basis.

Consequently in order to ensure the observance of the principle of proportional representation mentioned in the Constitution, Government is proposing to adopt the system known as the "*D'Hondt system*" and this to ensure that the number of seats in Parliament assigned to a particular party is as much as possible proportionate to the votes polled by that party on a national basis. The "*D'Hondt system*" is known as "*the archetype of proportional representation*" and is used in a number of countries where proportional representation exists.

The primary principle of the system is that a seat is assigned according to the "highest average" of votes. The first seat is assigned to the party which has obtained the highest number of votes. After assigning the first seat the total number of votes polled by each party is progressively divided by two, three, four, etc., and each time a result is obtained the seat is assigned to the party which has the highest average as a result thereof. This process is continued until all the seats in Parliament have been assigned.

The single transferable vote will remain the method whereby voters express their preference between candidates and the system whereby candidates are elected to Parliament. The basic differences with the present system will be the following:

1. transfers between candidates belonging to different political parties will not be allowed except when a party does not achieve 5% of the total valid votes;
2. in the first phase only four candidates will be elected from each electoral division (instead of the present five) on the basis of a division quota determined by the same method used today;
3. in the second phase another candidate will be elected from each electoral division (making a total of five from each electoral division) from the pool of non-elected candidates and with a procedure intended to ensure that the number of candidates elected for each political party is equal to the number which has been predetermined through the operation of the "*D'Hondt system*".

Under the present system a party may achieve substantial popular support in the country but still fail to elect a Member of Parliament if it does not achieve a quota of votes in at least one electoral division. Today, the district electoral quota is 16.6% of all valid votes polled in that division which, in an extreme case, means that even through a party polls slightly less than 16.6% of all the votes nationally, it might still not elect a single Member of Parliament.

Government is of the opinion that this system is not liberal enough because it makes it practically impossible for non-established political parties to exist. Democracy requires that the electoral system of a country does not on the one hand militate against the creation of new political forces or, on the other hand, render a country ungovernable by placing the balance of power in the hands of one or two Members of Parliament.

For this reason Government is proposing that Malta adopts a middle of the road approach and whilst making it easier for new political forces to be represented in parliament ensures that there is a certain amount of nation-wide consent in favour of the creation of such new political forces.

Consequently, Government is proposing to change the threshold required and instead of the threshold existing in each and every electoral division, as at present, henceforth it will exist on a national basis, an amendment which obviously helps the creation of new political forces.

For this reason it is being proposed that a political party will have the right to elect Members of Parliament if it polls at least 5% of all the valid votes cast at an election. On the basis of the last general elections 5% of the valid votes cast nationally would have been equivalent to about 12,000 votes and consequently to more than three electoral quotas. Through such an amendment our system will become more democratic by facilitating the possibility of the creation of new political forces whilst at the same time ensuring the governability of the country.

Government is of the opinion that this amendment is the most just in the particular circumstances of our country and follows the example of the majority of countries where the system of proportional representation is adopted.

### **Method of Reform**

It is not the intention of Government to move amendments to the Constitution. Whilst it is Government's opinion that this would have been desirable, after the experience of the discussions held with the Opposition in the Select Committee set up by Parliament, Government does not think that it is opportune at this stage to move amendments to the Constitution. Consequently, it has to be emphasised that the reforms being proposed consist of changes to laws and regulations.

**Notwithstanding the above Government wants to make it very clear that should the Opposition indicate its agreement with the principle of strict proportionality, Government is prepared to move the relative amendment to the Constitution. This can be done by amending article 52 of the Constitution, in order to provide for strict proportionality between the votes obtained by a party on a national basis and the number of seats assigned to it by Parliament.**

Since the Constitution also provides that any change with respect to corrupt and illegal practices connected with the election requires the approval of two thirds of the members of the House of Parliament, no change is being proposed to the relative sections in the law, although Government is of the opinion that these require a thorough overhaul.

The two existing laws and the regulations governing the counting of votes require a substantial number of amendments to achieve the ends set out by Government for the reform. Due to this as well as because the compilation of the Electoral Register is seen as an intrinsic part of the electoral process, it is being proposed that there will be one law which covers the whole electoral process from the Electoral Register up to and including the counting of votes.

The new law will be called the General Elections Act and will be divided into various chapters covering the functioning of the Electoral Office, the Electoral Register, the rights of parties and candidates, the electoral process, corrupt and illegal practices and the counting of votes.

## **Resume of the New Law**

### *Chapter I – General*

General Provisions providing for definitions, etc.

### *Chapter II - Electoral Commission and Office*

This chapter sets out the powers of the Electoral Commission and the rights of political parties vis-à-vis the Commission. The Electoral Office is being placed directly under the Electoral Commission. This chapter also provides for the appointment of Revising Officers and for a Medical Board to decide on cases of disqualification of voters due to mental infirmity.

### *Chapter III – Voters*

This chapter establishes who the voters at an election will be.

### *Chapter IV - Electoral Divisions and Method of Election*

This chapter establishes the number of electoral divisions and that the election will be held according to the single transferable vote system.

### *Chapter V - Registration of Voters*

This chapter establishes how and where a person who is entitled to be registered as a voter shall be registered and when an application for registration can be refused or a registration as a voter cancelled as well as the method of appeal from such decisions. The principle innovation is that in the case of allegations of mental infirmity the decision to remove or otherwise a voter from the electoral register shall be taken by a Medical Board rather than by the Electoral Commission.

### *Chapter VI - Electoral Register*

This chapter establishes how and when an electoral register should be published. The principle amendment is the removal of the discretion of the Electoral Commission to refuse to give a voting document to whoever appears on the Electoral Register on an allegation that that person is not qualified to vote.

### *Chapter VII - Appeals to Revising Officers*

This chapter establishes how appeals to Revising Officers shall be made. The principle amendment affected is that the time for deciding appeals has been extended from the dissolution of Parliament, as it stands at present, to fourteen days before the day of the election.

### *Chapter VIII - Notices, Voting Documents and Ballot Papers*

In this chapter, whilst consolidating a number of different articles already existing in the law and regulations, a number of new sections have been introduced based on the practical experiences of the 1981 and 1987 general elections. Consequently the rights of political parties to scrutinise the printing and distribution of voting documents and the printing of ballot papers is being established.

### *Chapter IX - Nomination of Candidates*

This chapter establishes how candidates are to be nominated for the election.

### *Chapter X - Assistant Commissioners*

The present articles of the law have been amplified to incorporate the right of political parties to nominate assistant commissioners and the method of objection and substitution thereto.

### *Chapter XI - Voting*

In addition to the electoral agent which each candidate has at present, the right of parties to nominate party agents has been introduced and the parties will have the right to nominate a number of agents equal to the number of ballot boxes (as in fact happened in the general elections of 1981 and 1987). A section has been introduced to provide for publicity on such appointments.

This chapter, besides consolidating a number of articles already present in the law, has been expanded to reflect the practices introduced in the 1981 and 1987 general elections. There are detailed sections which lay out what happens at the opening of the election, the rights which party agents have, what documents have to be checked at the close of the poll, etc.

### *Chapter XII - Polling in Old Age Homes*

Due to past experiences a new chapter has been introduced setting down the way elections in Old Age Homes where there are more than 50 residents, should be conducted. It is proposed to set up a sub-committee to run the elections in these Old Age Homes, such sub-committee having the participation of the political parties. A number of sections lay out in precise terms what has to happen on election day.

### *Chapter XIII - Counting of Votes*

This chapter, nearly completely new, provides for what has to happen before the counting of votes, e.g., when the ballot boxes are taken to the place where counting will take place, and how counters, agents, supervisors are selected, the place where counting will take place, etc.

### *Chapter XIV - Reconciliation of Ballot Paper Account*

This is the first phase of the counting process where the number of votes in each ballot box is reconciled with the ballot paper account drawn up by the assistant commissioners. Except for a few details there is little that is not already in existing regulations.

### *Chapter XV - Sorting of Votes*

This is the second phase of the counting process and the first where there is a radical departure from the present system. To date, votes have been attributed to candidates who have a first preference on the ballot paper at this stage. Under the new system the attribution will be to the party of the candidate who has the first preference on the ballot paper. This chapter also provides for the sequence which has to be followed in the counting and what happens with dubious votes.

### *Chapter XVI - Allocation of Members of Parliament to Parties*

This is the third phase of the counting process, a phase which is completely new and through which it is determined how many Members of Parliament will be elected by each political party, without actually knowing who the candidates to be elected will be or from which district.

In short the process will be as follows:

1. through the previous phase it would have already been determined how many votes each party has obtained in all the electoral divisions and consequently the total votes obtained by it on a national basis;
2. for a party to qualify to elect members of Parliament it will have to poll at least five per cent of the total valid votes polled in that election
3. if a party has not achieved this threshold its votes will be transferred to the party whose candidate has the highest consecutive preference on the ballot paper and which has qualified to elect Members of Parliament and, if no such preference exists, that vote will be declared invalid.;
4. the number of Members of Parliament each qualifying party will elect will be determined as follows:
  - a. the first Member of Parliament will be assigned to that party which has polled the highest number of votes;
  - b. as soon as the first seat has been assigned the total number of votes achieved by each party will be divided by two and the second seat assigned to the party which achieves the highest result taking into consideration both the results achieved after the division as well as the total number of votes polled by it;
  - c. this process will be continued until all Parliamentary seats have been assigned.

### *Chapter XVII - Election of Candidates*

This is the fourth phase of the counting process and where, after establishing how many Members of Parliament each party will elect, the candidates to be elected will be determined.

In this phase there are some differences from what happens today:

1. In the first phase each electoral division will elect four (and not five candidates) each of whom will be elected on the basis of a division quota, namely the total number of valid votes divided by five and the result increased by one;
2. The method of counting votes will be similar to that existing today with the following differences:



- a. candidates will be declared elected either by achieving the quota or without a quota, as today, until the number of candidates elected is equal to the number indicated in 1 above;
- b. in each electoral division a candidate from each party will not be eliminated after all the transfers have been effected, except in those cases where this is not possible because all the party's candidates have been elected in terms of 2a above

No transfers between parties will be allowed.

3. This process will lead to four candidates being elected from each electoral division and a candidate from each party not being eliminated. From here on the second phase begins;
4. The Commission will add the total number of Members of Parliament elected by each party from all the electoral divisions and subtract the result from the number of members of Parliament which each party has the right to elect (determined in the previous phase). The difference, should there be any, will be elected from amongst the non-elected candidates;
5. The choice between the non-elected candidates will be done as follows:
  - a. the party which has the least number of candidates to elect will first elect its candidates;
  - b. from amongst the non-elected candidates of this party, the candidates with the highest number of votes -- equivalent in number to the number of candidates which it has to elect -- will be declared elected;
  - c. as soon as these candidates are elected all the other candidates of that party will be excluded as well as candidates belonging to other parties but contesting the same electoral division of the candidates that have been elected according to the preceding paragraph;
  - d. this process will be applied to elect candidates of the remaining parties in the remaining divisions.

#### *Chapter XVIII - End of the Counting Process*

This chapter incorporates a number of different sections relating to the counting of votes as, for example, recounts, appeals, casual elections, etc.

#### *Chapter XIX - Illegal practices*

#### *Chapter XX - Corrupt practices*

#### *Chapter XXI - Excuse for Corrupt and Illegal Practices*

#### *Chapter XXII - When the Election of a Candidate is Invalid*

*Chapter XXIII - Appeal Provisions*

Together with the law in its English version, a comparative table showing the number of each section of the new law compared to the present laws is also being published.

*The following are omitted here: (a) Volume Two of the White Paper, containing the actual legislative text to carry out the aims detailed in Volume One. And (b) a three-page list of the specific section numbers in the proposed legislation matched to their equivalents in earlier legislation.*