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KOSTITUZZJONI TA' MALTA

THE CONSTITUTION OF MALTA

Delega ta' Ċerti Setgħat dwar
is-Servizz PubblikuDelegation of Certain Powers
respecting the Public Service

Mill-Onorevoli Dott. Joseph Muscat, K.U.O.M., B.Com, B.A. (Hons), M.A. (European Studies), Ph.D. (Bristol), M.P., Prim Ministru ta' Malta.

BY the Honourable Dr Joseph Muscat K.U.O.M., B.Com, B.A. (Hons), M.A. (European Studies), Ph.D. (Bristol), M.P., Prime Minister of Malta.

BILLI l-artikolu 110 tal-Kostituzzjoni ta' Malta jipprovdi li s-setgħa li jagħmel nomini lill-uffiċjali pubbliċi tkun fil-Prim Ministru, li jaġixxi fuq ir-rakkomandazzjoni tal-Kummissjoni dwar is-Servizz Pubbliku;

WHEREAS article 110 of the Constitution of Malta provides that power to make appointments to public offices shall vest in the Prime Minister, acting on the recommendation of the Public Service Commission;

U BILLI huwa pprovdut ukoll fl-imsemmi artikolu li l-Prim Ministru jista', billi jaġixxi fuq ir-rakkomandazzjoni tal-Kummissjoni dwar is-Servizz Pubbliku, jiddelega bil-miktub kull waħda mis-setgħat hawn fuq imsemmija lil dak l-uffiċjal pubbliku jew lil awtorità oħra kif jistgħu jkunu speċifikati fid-Dokument ta' Delega;

AND WHEREAS it is further provided in the same article that the Prime Minister, acting on the recommendation of the Public Service Commission, may delegate in writing any of the aforementioned powers to such public officer or other authority as may be specified in the said Instrument of Delegation;

U BILLI bid-Dokument ta' Delega tal-25 ta' Ottubru 1991, il-Prim Ministru, fuq rakkomandazzjoni tal-Kummissjoni dwar is-Servizz Pubbliku, iddelega setgħat biex jagħmlu nomini (li jistgħu jkunu permanenti jew temporanji) għal postijiet fil-Ferġha tas-Servizz Ġenerali jew postijiet dipartimentali tas-Servizz Pubbliku li jaqgħu taħt Skala 91 kif tidher fl-Estimji għall-1991, lis-Segretarju Amministrattiv jew Kap ta' Dipartiment kif ikun il-każ, fuq il-parir tal-Bordijiet tas-Servizz Ġenerali jew Bordijiet Dipartimentali nominati u kostitwiti b'tali mod li l-Prim Ministru jista', fuq ir-rakkomandazzjoni tal-Kummissjoni dwar is-Servizz Pubbliku, ġeneralment jordna fil-każ ta' reklutaġġ minn barra s-Servizz Pubbliku u bil-kundizzjoni li s-Segretarju Amministrattiv u l-Kap tad-Dipartiment li għalihom issir din id-delega, għandhom jissottomettu rapport dettaljat kull sena fuq in-nomini kollha li jkunu saru minnhom lill-Prim Ministru u kopja lill-Kummissjoni dwar is-Servizz Pubbliku;

AND WHEREAS by Instrument dated 25th October, 1991, the Prime Minister, acting on the recommendation of the Public Service Commission delegated powers to make appointments (whether substantive or temporary) to posts in the General Service Branch or departmental posts of the Public Service falling under Scale 91 as it appears in the Estimates for 1991 to the Administrative Secretary or a Head of Department as the case may be, with the advice of the General Service Boards or Departmental Boards appointed and constituted in such manner as the Prime Minister may, on the recommendation of the Public Service Commission, generally direct in the case of recruitment from outside the Public Service and on the condition that the Administrative Secretary and the Head of Department to whom such delegation is made, must submit a detailed annual report about all appointments made by them to the Prime Minister and copied to the Public Service Commission;

U BILLI l-bidliet li sehħew bir-rijorganizzazzjoni tas-Servizz Pubbliku fl-1991 fejn il-wieħed u disgħin skala ta' salarju ta' qabel ġew miġbura f'għoxrin skala ta' salarju hteġu li tiġi aġġornata d-delega ta' setgħat imsemmija fil-25 jum ta' Ottubru, 1991, sabiex tirreferi għall-iskali tas-salarji kurrenti;

AND WHEREAS the changes brought about by the reorganisation of the Public Service in 1991 whereby the previous 91 salary scales were absorbed into 20 salary scales had made it necessary to update the said delegation of powers of the 25th day of October, 1991, so as to make reference to the current salary scales;

U BILLI bid-Dokument ta' Delega tat-18 ta' Janjar, 2000, il-Kummissjoni dwar is-Servizz Pubbliku rakkomandat l-aġġornament imsemmi tad-delega ta' setgħat tal-25 jum ta' Ottubru, 1991, sabiex tkun tirreferi għall-iskali tas-salarji kurrenti kif imsemmija hawn fuq;

AND WHEREAS by Instrument dated 18th January, 2000, the Public Service Commission had recommended the said updating of the delegation of powers of the 25th day of October, 1991, so as to refer to the current salary scales as outlined above;

U BILLI bid-Dokument ta' Delega tat-18 ta' Janjar, 2000, il-Kummissjoni dwar is-Servizz Pubbliku rakkomandat

AND WHEREAS by Instrument dated 18th January, 2000, the Public Service Commission had also recommended

ukoll li reklutaġġ ta' uffiċjali pubbliċi fil-grad ta' salarju 20 isiru mis-Segretarju Permanenti fl-Uffiċċju tal-Prim Ministru minghajr ma jirreferi lill-Kummissjoni dwar is-Servizz Pubbliku skond il-paragrafu (b) tas-subartikolu (2) tal-artikolu 110 tal-Kostituzzjoni kemm-il darba jsir skond il-paragrafu (c) tagħha;

U BILLI bid-Dokument ta' Delega tat-18 ta' Jannar, 2000, il-Kummissjoni dwar is-Servizz Pubbliku rakkomandat ukoll li r-rapporti fuq ir-reklutaġġ magħmula skond dan id-Dokument ta' Delega jintbagħtu lill-Kummissjoni dwar is-Servizz Pubbliku mill-aktar fis prattikabbli u f'kull każ fi żmien raġonevoli wara li jsir ir-reklutaġġ pjuttost milli darba fis-sena kif provdut fid-dokument ta' delega msemmi aktar qabel tal-25 jum ta' Ottubru, 1991;

U BILLI l-Prim Ministru kien qabel ma' din ir-rakkomandazzjoni, bis-saħħa tal-poteri mogħtija bl-artikolu 110 tal-Kostituzzjoni, ordna li mit-18 ta' Jannar, 2000 u soġġett għall-kundizzjonijiet hawn fuq imsemmija, fil-każ ta' reklutaġġ minn barra s-Servizz Pubbliku, is-setgħa li jsiru nominazzjonijiet (permanenti jew temporanji) għal postijiet fis-Servizz Pubbliku, li jkunu karigi li l-artikolu 110 tal-Kostituzzjoni japplikaw għalihom u li jaqgħu taħt Skala tas-Salarju 20 fl-Appendiċi I tal-Estimati għas-sena 2000, tkun eżerċitabbli mis-Segretarju Permanenti fl-Uffiċċju tal-Prim Ministru, u dan bla ħsara għat-tħaris tad-dispożizzjonijiet tal-Att tal-1990 dwar Impiegi u Servizzi fir-reklutaġġ għal dawn il-postijiet, fejn japplikaw, u ma-paragrafu (c) tas-subartikolu (2) tal-artikolu 110 tal-Kostituzzjoni;

U BILLI nholqot il-htieġa li d-Dokument ta' Delega tat-18 ta' Jannar, 2000 jiġi estiż biex jippermetti l-ingaġġ ta' persuni rreġistrati fuq ir-reġistru ta' persuni qiegħda b'diżabilità miżmum mill-Korporazzjoni għall-Impiegi u Tħriġ minn barra s-Servizz Pubbliku għall-postijiet jew pożizzjonijiet (permanenti jew għal perjodu definit, u *full-time* jew *part-time*) fis-Servizz Pubbliku, li jkunu karigi li l-artikolu 110 tal-Kostituzzjoni japplika għalihom, minbarra postijiet/pożizzjonijiet ma' korpi ta' dixxiplina, korpi ta' difiża ċivili, u postijiet/pożizzjonijiet li bil-liġi jirrikjedu kwalifika, liċenzja jew *warrant* partikolari, fl-Iskali ta' Salarju 16 sa 20 (iż-żewġ skali inklużi) kif stabbiliti fl-Estimati Finanzjarji mahruġa kull sena;

U BILLI huwa rakkomandat li s-setgħa biex isir dan l-ingaġġ tkun delegata lis-Segretarji Permanenti;

U BILLI huwa rakkomandat li persuni ingaġġati skond dan id-Dokument ta' Delega fi kwalunkwe mill-Iskali ta' Salarji stabbiliti fl-Estimati Finanzjarji kif mahruġa kull sena, mhux neċessarjament jippossjedu r-reqwiżiti stabbiliti ta' eliġibiltà rikjesti għall-post/pożizzjoni li fih qed isir l-ingaġġ kif stabbilit fil-*Classification/Collective Agreement* rilevanti jew, fil-każ ta' pożizzjonijiet fuq kuntratt definit,

that recruitment of public officers into a grade in salary scale 20 be made by the Permanent Secretary at the Office of the Prime Minister without reference to the Public Service Commission in terms of paragraph (b) of subsection (2) of Section 110 of the Constitution provided that it is made in accordance with paragraph (c) thereof;

AND WHEREAS by Instrument dated 18th January, 2000, the Public Service Commission had also recommended that reports on the recruitment made under this Instrument of Delegation be submitted to the Public Service Commission as soon as practicable and in any case within a reasonable time after the recruitment is made rather than annually as provided in the afore-mentioned Instrument of Delegation of the 25th day of October, 1991;

AND WHEREAS the Prime Minister, having concurred with such recommendation, in exercise of the powers conferred by article 110 of the Constitution, had directed that, as from 18th January 2000 and subject to the above-mentioned conditions, in the case of recruitment from outside the Public Service, power to make appointments (whether substantive or temporary) to posts in the Public Service, being offices to which article 110 of the Constitution applies and falling under Salary Scale 20 in Appendix I of the Estimates for the year 2000, shall, subject to the compliance in the recruitment to such posts with the provisions of the Employment and Training Services Act, 1990, insofar as applicable, and with paragraph (c) of subsection (2) of article 110 of the Constitution, be exercisable by the Permanent Secretary at the Office of the Prime Minister;

AND WHEREAS the need has arisen to extend the Instrument of Delegation dated 18th January, 2000, to allow for the recruitment of persons registered on the register of disabled unemployed persons held by the Employment and Training Services Corporation from outside the Public Service to posts or positions (whether substantive or for a definite period, and whether full-time or part-time) in the Public Service, being offices to which article 110 of the Constitution applies, except for posts/positions with disciplined corps, civil defence bodies, and posts/positions for which a particular qualification, license or warrant is required by law, in Salary Scales 16 to 20 (both scales included) as announced in the Financial Estimates as issued each year;

AND WHEREAS it is recommended that the power to effect such recruitment be delegated to Permanent Secretaries;

AND WHEREAS it is recommended that persons recruited under this Instrument in any of the Salary Scales announced in the Financial Estimates as issued each year, need not necessarily be in possession of the established eligibility requisites required for the post/position in which recruitment is being made as established in the relevant *Classification/Collective Agreement* or, in the case of

skond il-kriterji tal-eligibilità għall-pożizzjoni, iżda jistgħu jgawdu minn bdil raġonevoli bil-kundizzjoni li jkunu jistgħu jagħmlu d-dmirijiet tal-post/pożizzjoni fil-qofol tagħhom u bil-kundizzjoni li tintwera prova ta' din l-abilità permezz ta' eżami ta' dhul u, f'każijiet fejn ma jsirx eżami ta' dhul, din l-eżenzjoni tkun kundizzjonali li l-persuna b'diżabilità toqgħod għal eżami speċjali ta' kompetenza biex turi l-abilità tagħha li taqdi d-dmirijiet tal-post/pożizzjoni fil-qofol tagħhom.

U BILLI huwa rakkomandat li din l-akkomodazzjoni raġonevoli tkun bil-kundizzjoni li d-diżabilità in kwistjoni hija permanenti u mhux temporanja, u bil-kundizzjoni li d-diżabilità tkun iċċertifikata minn speċjalista professjonali u minn *placement medical officer* kompetenti, u wkoll bil-kundizzjoni li din id-diżabilità tkun tali li fixklet b'mod serju lill-individwu milli jilhaq il-potenzjal tiegħu.

U BILLI huwa rakkomandat li l-abilità li jtwettqu d-dmirijiet tal-post/pożizzjoni tiġi stabbilita mid-dipartiment fejn se jimitela l-post/pożizzjoni, wara li l-Korporazzjoni għall-Impiegi u Tahrig tkun identifikat rekluti potenzjali mir-reġistru tagħha ta' persuni qiegħda b'diżabilità li għandhom il-kwalifiki u/jew il-kapaċitajiet/l-esperjenza rikjesti mid-dipartiment fil-formola fejn ikun intalab il-mili tal-vakanza/i, u li fil-ġudizzju tagħha jistgħu jiġu kkunsidrati li għandhom l-abilità li jwettqu d-dmirijiet tal-post/pożizzjoni fl-essenza tagħhom, u s-sottomissjoni ta' lista ta' dawn ir-rekluti potenzjali lid-dipartiment fejn se tintela/jimtlew il-vakanza/i;

U BILLI huwa rakkomandat li ingaġġar minn din il-lista jsir bi proċess ta' għażla wara li jkun twaqqaf Bord ta' Għażla mid-Dipartiment, liema Bord ikun jinkludi rappreżentant mill-Kummissjoni Nazzjonali Persuni b'Diżabilità, u li jistabbilixxi l-kriterji u s-sub-kriterji skond liema l-persuni b'diżabilità jkunu evalwati flimkien mal-marki allokati għal kull kriterju, sabiex il-Bord ikun jista' jiġġustifika għaliex kull persuna riferita mill-Korporazzjoni għall-Impiegi u Tahrig hija eligibbli jew ineligibbli kif ukoll l-ordni tal-mertu (inkluż fejn persuni ma jkunux għaddew), biex b'hekk jiġi żgurat li l-evalwazzjoni u l-kriterji ta' għażla huma validi u ġusti u li r-reklutaġġ huwa bbażat fuq mertu ġenwin;

U BILLI huwa rakkomandat li f'każ li ma jintlaħaq ebda ftehim mill-membri tal-Bord tal-Għażla rigward il-mili tal-post/pożizzjoni skond dan id-Dokument ta' Delega, l-affari għandha tiġi riferita lill-Kummissjoni dwar is-Servizz Pubbliku li tagħxi bhala Bord ta' Appell;

U BILLI huwa rakkomandat li persuni b'diżabilità evalwati mill-Bord tal-Għażla li ma jintgħażlux, ikunu intitolati li jibagħtu petizzjonijiet lill-Kummissjoni dwar is-Servizz Pubbliku skond ir-regolamenti kurrenti, li għalihom il-Bord, permezz tal-Kummissjoni dwar is-Servizz Pubbliku, iwieġeb;

positions on a definite contract, as per established eligibility benchmarks, but may be given reasonable accommodation subject that they are able to perform the duties of the post/position in essence and subject to proof of such ability being shown by means of an entry examination and in cases where there are no entry examinations, such exemption being conditional on the disabled person undertaking a special test of competence to demonstrate ability to perform the duties of the post/position in essence;

AND WHEREAS it is recommended that such reasonable accommodation is to be subject that the disability in question is permanent and not temporary, and subject to due specialist professional certification of said disability and certification by a competent placement medical officer, and subject that said disability should be such as to have seriously impeded the individual's achievement of his or her potential;

AND WHEREAS it is recommended that ability to fulfil the duties of the post/position shall be established by the department where the post/position is to be filled, following the identification by the Employment and Training Corporation of potential recruits from its register of disabled unemployed who possess the qualifications and/or skills/experience requested by the department in the vacancy form, and who in its judgement may be considered suitable of performing the duties of the post/position in essence, and the submission of a list of such potential recruits to the department where the vacancy is to be filled;

AND WHEREAS it is recommended that recruitment from such list shall be through a selection process following the setting up of a Selection Board by the department, which Board shall include a representative from the National Commission for Persons with a Disability, and which shall establish criteria and sub-criteria according to which the disabled persons are to be assessed together with marks allotted to each criterion, so that the Board may justify why each person referred for consideration by the ETC is either eligible or ineligible and the order of merit obtained (including any failures), thereby ensuring that assessment and selection criteria are valid and fair and that recruitment is based on genuine merit,

AND WHEREAS it is recommended that should no agreement be reached by the members of the Selection Board regarding the filling of the post/position in terms of this Instrument of Delegation, the matter should be referred to the Public Service Commission which shall act as a Board of Appeal;

AND WHEREAS it is recommended that disabled persons assessed by the Selection Board who are not selected, shall be entitled to send petitions to the PSC according to the current regulations, to which the Board, through the PSC, shall reply;

U BILLI huwa rakkomandat li persuni ingaġġati skond dan id-Dokument huma soġġetti għal perjodu bi prova kif u fejn applikabbli;

U BILLI huwa rakkomandat li persuni ingaġġati skond dan id-Dokument li ma jkunux mahtura f'post permanenti inma f'pożizzjoni fuq kuntratt definit ikollhom il-kuntratt definit tagħhom mibdul f'post permanenti wara erba' snin fuq tali kuntratt definit, soġġett għall-ħidma sodisfacenti u skond il-liġi applikabbli dwar il-kuntratti ta' servizz għal terminu ta' żmien fiss (AL 51/2007 u l-emendi sussegwenti);

U BILLI huwa rakkomandat li f'każ ta' persuni ingaġġati skond dan id-Dokument f'pożizzjoni b'kuntratt definit, fejn dan il-kuntratt jiġi tterminat qabel l-iskadenza tal-kuntratt, issir rakkomandazzjoni lill-Kummissjoni dwar is-Servizz Pubbliku għal din it-terminazzjoni;

U BILLI jiena naqbel ma' din ir-rakkomandazzjoni;

ISSA, GHALHEKK, JIENA, JOSEPH MUSCAT, K.U.O.M., B.COM, B.A. (HONS), M.A. (EUROPEAN STUDIES), Ph.D. (BRISTOL), M.P., Prim Ministru, bis-saħha tal-poteri mogħtija bl-artikolu 110 tal-Kostituzzjoni, qiegħed b'din nordna li, mid-data ta' dan l-istess Dokument, u soġġett għall-kundizzjonijiet hawn fuq imsemmija, id-Dokument ta' Delega tat-18 ta' Jannar, 2000, jiġi estiż biex ikun jista' jsir l-ingaġġ ta' persuni rreġistrati fir-reġistru tal-persuni qiegħda b'diżabbiltà miżmum mill-Korporazzjoni tal-Impiegi u Tahriġ minn barra is-Servizz Pubbliku f'postijiet jew pożizzjonijiet (permanententi jew fuq kuntratt definit, u full-time jew part-time) fis-Servizz Pubbliku, li jkunu karigi li l-artikolu 110 tal-Kostituzzjoni japplika għalihom, minbarra postijiet/pożizzjonijiet ma' korpi ta' diċiplina, korpi ta' difiża civili, u postijiet/pożizzjonijiet li għalihom tinhtieg xi kwalifika, liċenzja jew warrant partikolari rikjest bil-liġi, fi Skali ta' Salarju 16 sa 20 (iż-żewġ skali inkluzi) kif stabbilit fl-Estimi Finanzjarji kif mahruġa kull sena, soġġett għall-kundizzjonijiet imsemmija hawn fuq, u li s-setgħa biex isiru ingaġġi skond dan id-Dokument tkun eżerċitata mis-Segretarji Permanententi jew uffiċjal pubbliku ieħor li jiġi delegat dan il-poter, mingħajr rikors għall-Kummissjoni dwar is-Servizz Pubbliku, u dan bla ħsara għat-tarifs tad-dispożizzjonijiet tal-Att tal-1990 dwar Impiegi u Servizzi ta' Tahriġ, fejn japplikaw, u skont paragrafu (ċ) tas-subartikolu (2) ta' artikolu 110 tal-Kostituzzjoni.

DAN ID-DOKUMENT ta' Delega jkun b'żieda u mingħajr preġudizzju għal Dokumenti ta' Delega oħrajn li harġu skond l-artikolu 110 tal-Kostituzzjoni.

(If.) JOSEPH MUSCAT
Mogħti taht il-firma tiegħi
fil-Berġa ta' Kastilja, Valletta,
illum, 3 ta' Mejju, 2013

AND WHEREAS it is recommended that persons recruited under this Instrument shall be subject to a probationary period as and where applicable;

AND WHEREAS it is recommended that persons recruited under this Instrument who are not recruited in a substantive post but in a position on a definite contract shall have their definite contract transformed into a permanent post after four years on such definite contract, subject to satisfactory performance and in terms of the applicable legislation regarding fixed-term contracts (LN 51/2007 and subsequent amendments);

AND WHEREAS it is recommended that in the case of persons recruited under this Instrument in a position on a definite contract, where such contract is terminated prior to expiry of contract, a recommendation shall be made to the Public Service Commission for such termination;

AND WHEREAS I agree with the said recommendation:

NOW, THEREFORE, I, JOSEPH MUSCAT, K.U.O.M., B.COM, B.A. (HONS), M.A. (EUROPEAN STUDIES), Ph.D. (BRISTOL), M.P., Prime Minister, in exercise of the powers conferred by article 110 of the Constitution, do hereby direct that as from the date hereof and subject to the above-mentioned conditions, the Instrument of Delegation dated 18th January, 2000, be extended to allow for the recruitment of persons registered on the register of disabled unemployed persons held by the Employment and Training Services Corporation from outside the Public Service to posts or positions (whether substantive or on a definite contract, and whether full-time or part-time) in the Public Service, being offices to which article 110 of the Constitution applies, except for posts/positions with disciplined corps, civil defence bodies, and posts/positions for which a particular qualification, license or warrant is required by law, in Salary Scales 16 to 20 (both scales included) as announced in the Financial Estimates as issued each year, subject to the aforementioned conditions, and that power to make appointments in terms of this Instrument be exercisable by Permanent Secretaries or any other public officer to whom such power may be delegated, without recourse to the Public Service Commission, subject to compliance with the provisions of the Employment and Training Services Act, 1990, insofar as applicable, and with paragraph (c) of subsection (2) of article 110 of the Constitution.

THIS INSTRUMENT of delegation shall be in addition and without prejudice to other Instruments of Delegation which have been issued in terms of article 110 of the Constitution.

(Sgd) JOSEPH MUSCAT
Given under my hand at the
Auberge de Castille, Valletta,
this 3rd day of May, 2013