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I assent.

(L.S.)

**MARIE LOUISE
COLEIRO PRECA
President**

4th December, 2015

ACT No. XXXVI of 2015

AN ACT to amend the Immigration Act, Cap. 217, and to make provision with respect to matters ancillary thereto or connected therewith.

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

Short title and
commencement.
Cap. 217.

1. (1) The short title of this Act is the Immigration (Amendment) Act, 2015, and this Act shall be read and construed as one with the Immigration Act, hereinafter in this Act referred to as "the principal Act".

(2) This Act shall come into force on such a date as the Minister responsible for immigration may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this principal Act.

Amendment of
article 2 of the
principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) the definition "removal order" shall be substituted by the following:

S.L. 460.17. " "removal order" means an order enforcing the return decision or an order made in relation to the restriction of the free movement of a Union citizen and his family members as provided for in the Free Movement of European Union Nationals and their Family Members Order;"

(b) immediately after the definition "residence permit" there shall be added the following new definition:

" "return decision" means a decision issued by the Principal Immigration Officer, stating or declaring the stay of a third country national to be illegal and imposing or stating an obligation to return;" and

(c) immediately after the definition "Schengen acquis" there shall be added the following new definition:

" "third-country national" means any person who is not a national of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code);".

3. Article 14 of the principal Act shall be amended as follows:

Amendment of article 14 of the principal Act.

(a) in sub-article (1) thereof for the words "to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person who shall have a right to appeal against such order in accordance with the provisions of article 25A:" there shall be substituted the words "to be liable to return as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a return decision against such person who shall have a right to appeal against such decision in accordance with the provisions of article 25A.";

(b) the proviso to sub-article (1) thereof shall be deleted;

(c) sub-article (2) thereof, including the proviso thereto (2), shall be substituted by the following:

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"(2) If such a return decision is accompanied by a removal order, such person against whom such order is made, may be detained in custody until he is removed from Malta:

Provided that if the person in respect of whom a return decision and a removal order has been made is subject to criminal proceedings for a crime punishable with imprisonment or is serving a sentence of imprisonment, the Minister may give such directions as to whether the whole or part of the sentence is to be served before the return of such person from Malta, and in default of such directions, such person shall be removed after completion of the sentence, without prejudice to the provisions of any other law.";

(d) in sub-article (4) thereof the words "may be party." shall be substituted by the words "may be party:" and immediately thereafter there shall be added the following new provisos:

"Provided that, following the issue of a removal order by the Principal Immigration Officer in accordance with the provisions of this article, to any person considered as a prohibited immigrant under any of the provisions of article 5, if such person files an application for asylum in terms of the Refugees Act, all the effects of the removal order shall be suspended pending the final determination of the asylum application. Following the final rejection of the asylum application, the removal order along with its effects shall again come into force:

Provided that, notwithstanding that the effects of the removal order are suspended pending the final determination of the asylum application, the detention of such person shall continue until a final decision on detention is reached in terms of the regulations issued under the Refugees Act:

Provided further that, whenever a prohibited immigrant has filled an application for asylum, the Principal Immigration Officer shall not be required to issue a return decision or a removal order.";

(e) in sub-article (6) thereof for the word "expulsion" there shall be substituted the word "return";

(f) in sub-article (7) thereof for the word "expulsion" there shall be substituted the word "return" and immediately thereafter there shall be added the following new sub-articles:

"(8) The Principal Immigration Officer shall not execute any return decision or removal order if appeals proceedings before the Immigration Appeals Board are pending;

(9) (a) The Principal Immigration Officer shall issue a removal order and execute such order in respect of a Union citizen and his family members, when such person is being removed from Malta in accordance with the relative provisions of the Free Movement of European Union Nationals and their Family Members Order.

S.L. 460.17.

(b) Such person shall be detained in accordance with the provisions of such Order, if he would not have left Malta within the time limit specified by such Order and if an appeal has not been made in accordance with the provisions of this Act and the said Order."

4. In article 17 of the principal Act the words "no removal order shall be obstructed nor shall the implementation of any such order be delayed by means of any warrant issued under the Code of Organization and Civil Procedure." shall be substituted by the words "no return decision or removal order shall be obstructed nor shall the implementation of any such return decision or removal order be delayed by means of any warrant issued under the Code of Organization and Civil Procedure:" and immediately thereafter there shall be added the following new proviso:

Amendment of article 17 of the principal Act.

"Provided that article 17 shall not apply to orders issued by the Constitutional Court."

5. In article 19 of the principal Act for the words "removal order" there shall be substituted the words "return decision and removal order".

Amendment of article 19 of the principal Act.

6. Article 24 of the principal Act shall be substituted by the following:

Amendment of article 24 of the principal Act.

" 24. If any person who has been removed from Malta

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following a return decision, or a return decision and a removal order or following a deportation order, or a removal order in the case of a Union citizen or his family member, whose right of free movement has been restricted, at any time seeks leave to land or leave to land and remain in Malta or if he seeks to obtain a residence permit, he shall expressly declare in writing to the Principal Immigration Officer such circumstance. If he fails to do so, any such leave or any residence permit granted to him shall be null and void and he shall, moreover, by reason only of such omission and without prejudice to the issue or a return decision or a deportation order under this Act, be guilty of an offence and liable, on conviction by the Court of Magistrates, to a fine (*multa*) not exceeding one thousand and one hundred and sixty-five euro (1,165) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."

Amendment of article 25A of the principal Act.

7. Article 25A of the principal Act shall be amended as follows:

(a) in sub-article (9) thereof for the word "deportation" there shall be substituted the words "deportation order" and for the words "removal order" there shall be substituted the words "return decision and removal order";

(b) sub-article (10) thereof shall be substituted by the following:

"(10) The Board shall grant release from custody where the detention of a person is, taking into account all the circumstances of the case, not required or no longer required for the reasons set out in this Act or subsidiary legislation under this Act or under the Refugees Act, or where, in the case of a person detained with a view to being returned, there is no reasonable prospect of return within a reasonable time-frame."; and

(c) paragraph (a) of sub-article (11) thereof shall be deleted and paragraphs (b) and (c) thereof shall be renumbered as paragraphs (a) and (b) respectively.

Amendment of article 28 of the principal Act.

8. Article 28 of the principal Act shall be renumbered as article 28(1) and immediately thereafter there shall be added the following new sub-article (2):

"(2) The Principal Immigration Officer or any Authority responsible for the function related to the issue of visas or residence permits may require that personal data including

fingerprints be provided."

9. Article 32 of the principal Act shall be amended as follows: Amendment of article 32 of the principal Act.

(a) in sub-article (1) thereof for the words "unless a greater punishment is established for such offence by another law." there shall be substituted the words "unless a greater punishment is established for such offence by another law:" and immediately thereafter there shall be added the following new proviso:

"Provided that the Principal Immigration Police may decide not to institute proceedings on any person who aids or assists any other person in any immediate situation of danger to land or attempt to land or transit through Malta, when such acts have been committed with a view to providing humanitarian assistance."; and

(b) sub-article (2) thereof shall be deleted and sub-article (3) shall be renumbered as sub-article (2).

10. In sub-paragraph (b) of article 33 of the principal Act immediately after the words "removal order" there shall be added the words "or return decision". Amendment of article 33 of the principal Act.

11. Article 36 of the principal Act shall be amended as follows: Amendment of article 36 of the principal Act.

(a) in sub-article (1) thereof for the words "two thousand and five hundred euro (€2,500)" there shall be substituted the words "five thousand euro (€5,000)" and for the words "3 months" there shall be substituted the words "6 months."; and

(b) in sub-article (2) thereof, immediately after paragraph (c), there shall be added the following new paragraphs:

"(d) the standards and procedures for returning illegally staying third-country nationals;

(e) the better implementation of the provisions of this Act.".

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Passed by the House of Representatives at Sitting No. 332 of the
25th November, 2015.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

