

**ENVIRONMENT AND DEVELOPMENT PLANNING ACT****ARRANGEMENT OF ACT**

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## CHAPTER 504

ENVIRONMENT AND DEVELOPMENT PLANNING  
ACT

*To protect the environment, to make provision for the planning and management of development and for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto.*

30th November, 2010\*

31st December, 2010†

11th March, 2011‡

17th February, 2012§

31 March, 2014\*\*

*ACT X of 2010, as amended by Legal Notices 57 of 2011, 229 of 2012, 52 and 121 of 2013, and 223, 362, 404 and 470 of 2014.*

## PART I

## Preliminary

Short title.

1. The short title of this Act is the Environment and Development Planning Act.

Interpretation.

*Amended by:  
L.N. 362 of 2014.*

2. In this Act, unless the context otherwise requires:

"advertisement" means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, including any boarding or similar structure used or adapted for use for the display of advertisements;

"agency of Government" means a body corporate established by law and a company in which the Government or such body corporate, or a combination thereof has a controlling interest or which is a subsidiary of such a company;

"application" means a permission or licence application;

"application report" means the final permission or licence application report;

"the Authority" means the Malta Environment and Planning Authority established under article 6 and includes any body or other person acting on its behalf under powers delegated by the Authority under this Act, and the Minister may, by order in the Gazette, designate different bodies or persons as a competent authority for different provisions and different purposes of this Act or any regulations made thereunder;

"biological diversity" or "biodiversity" means the variability

\*See article 1(2) of the Act, as originally enacted, and [Legal Notice 511 of 2010](#).

†See article 1(2) of the Act, as originally enacted, and [Legal Notice 511 of 2010](#).

‡See article 1(2) of the Act, as originally enacted, and [Legal Notice 91 of 2011](#).

§See article 1(2) of the Act, as originally enacted, and [Legal Notice 78 of 2012](#).

\*\*See article 1(2) of the Act, as originally enacted, and [Legal Notice 112 of 2014](#).

among living organisms from all sources, including inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and includes diversity within species, between species and of ecosystems;

"building" includes any structure or erection and any part of a building, but does not include plant or machinery comprised in a building;

"building or work" includes waste materials, refuse and other matters deposited on land;

"building operations" includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

"the Chairman of the Board" means the Chairman of the Authority appointed in terms of article 6;

"the Chief Executive Officer" means the officer appointed under the provisions of article 13;

"conservation" in relation to environment protection means a series of measures required to maintain or restore the natural habitats and the population of species of wild fauna and flora at a favourable status and for cultural heritage means any activity required to maximize the endurance or minimize the deterioration of any cultural property as far as possible and includes examining, testing, treating, recording and preserving any such cultural property or any part thereof;

"the Commission" means the Environment Planning Commission established under article 35;

"derivatives" means parts of any specimen, whether processed by man or not;

"development permission" means a permission to carry out development granted by the Authority either on an application in that behalf or in a development order;

"discharge" includes emission, deposit, dumping, disposal, addition or introduction into the environment of a substance or energy, directly or indirectly from any point source or diffuse source, whether stationary or mobile, and whether caused or permitted intentionally or otherwise and whether continuous or intermittent or once only;

"energy" includes all types of radiation forming part of the electromagnetic energy spectrum, or resulting from a nuclear source, as well as all vibrations and noise;

"engineering operations" includes any physical changes to the land surface to the site topography, or the formation or laying out of roads and of means of access to roads;

"environment" means the whole of the elements and conditions, natural or man made, existing on earth, whether together or in isolation, and in particular:

- (a) the air, water and land;

- (b) all the layers of the atmosphere;
- (c) all organic and inorganic matter and all living organisms;
- (d) all ecosystems; and
- (e) the landscape;

"erection" in relation to buildings, includes extension, alteration and re-erection;

"fauna" means all types of animals and other biota including akaryotes, prokaryotes and eukaryotes, dead or alive, in whole or in part and their derivatives;

"flora" means all types of plants and other biota including akaryotes, prokaryotes and eukaryotes, dead or alive, in whole or in part and their derivatives;

"functions" includes responsibilities, powers and duties;

"genetically modified organism" means any of the following:

- (a) an organism derived from the formation of a combination of genetic material by any means other than natural means;
- (b) an organism inheriting such combination of genetic material;
- (c) an organism that results from the replication of an organism as derived in paragraph (a); or
- (d) such other organism as may be prescribed by the Minister under this Act;

"land" includes a building;

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"local council" means a local council established under the [Local Councils Act](#);

"minerals" includes all minerals and substances (including oil and natural gas) in or under land of a kind ordinarily worked for removal by underground or surface working;

"the Minister" means the Minister responsible for the environment;

"natural resources" means any component of nature and includes air, water, land, soils, minerals, energy, living organisms and genetic resources;

"owner" means -

- (a) a person who in his own right or as agent for another is entitled to receive the rent of the land or, where the land is not let, would be so entitled if it were let;
- (b) where the land is subject to usufruct, bare owner or usufructuary;
- (c) an emphyteuta;
- (d) any one of the spouses, where the land to which the development relates forms part of the community of acquests;

"plan" means a plan approved in accordance with the provisions of the Act;

"policy" means a policy approved in accordance with the provisions of the Act;

"pollution" means the direct or indirect introduction by man, or due to natural processes, into the environment of substances, organism, genetic material or energy that cause or are likely to cause hazard to human health, harm to living resources or to ecosystems, or damage to amenities, or interfere with other legitimate uses of the environment;

"position statement" means a statement issued by either the Minister or the Authority in order to provide a detailed technical explanation justifying a position with respect to a specific planning issue;

"precautionary principle" means the principle whereby appropriate measures are taken to protect the environment and to ensure sustainable management of natural resources in the absence of absolute or conclusive scientific proof of the need for such measures;

"prescribed" means prescribed by regulation, rule, order or other instrument made as provided in the provisions of this Act empowering the making of any such instrument;

"project of common interest" means a project necessary to implement the energy infrastructure priority corridors and areas set out in Annex I of Regulation (EU) No 347/2013 and which is part of the Union list of projects of common interest referred to in Article 3 of the said Regulation (EU) No 347/2013;

"public officer" has the meaning assigned to it by article 124 of the [Constitution](#);

"road" means any highway or road, whether public or private, and includes any street, square, court, alley, lane, bridge, footway, passage or quay, whether thoroughfare or not;

"scheduled buildings" has the meaning assigned to it by article 81;

"specimen" means any species, whether alive or dead, any part or derivative thereof, and includes any goods which from an accompanying document, the packaging, mark or label or from other circumstances appear to be parts or derivatives of animals or plants;

"Standing Committee" means the Standing Committee on Environment and Development Planning established in terms of article 34;

"subsidiary plans" includes subject plans, local plans, action plans or management plans;

"substances" means any matter, chemical, mixture, compound or product and including fuels, combinations of elements, mixtures or compounds of a chemical reaction, as well as the mixture of substances of different molecular identities;

"Temporary Provisions Schemes" means a planning scheme prepared and approved in accordance with the Building Permits (Temporary Provisions) Act\*;

"Tribunal" means the Environment and Planning Review Tribunal established under the provisions of article 40 of the Act;

"use", in relation to land, does not include the use of land by the carrying out of any building, engineering, mining or other operations thereon;

"waste" means any thing, substance or object which the holder discards or intends to discard, or is required to keep in order to discard, and includes such other thing, substance or object as the Minister may prescribe.

## PART II

### Duty to Protect the Environment

Duty of every person to protect the environment.

3. It shall be the duty of every person together with the Government to protect the environment and to assist in the taking of preventive and remedial measures to protect the environment and manage natural resources in a sustainable manner.

Duty of Government to protect the environment.

4. It shall be the duty of the Government to protect the environment for the benefit of the present and future generations and to that effect:

- (a) to manage the environment in a sustainable manner by integrating and giving due consideration to environmental concerns in decisions on socio-economic and other policies;
- (b) to take such preventive and remedial measures as may be necessary to address and abate the problem of pollution and any other form of environmental degradation in Malta and beyond, in accordance with the polluter pays principle and the precautionary principle;
- (c) to collaborate with other governments and entities in the protection of the global environment;
- (d) to disseminate information on the environment and to facilitate the participation of the public in decisions that affect the environment;
- (e) to apply scientific and technical knowledge and resources in determining matters that affect the environment;
- (f) to ensure the sustainable management of wastes and to promote its reduction and the proper use, re-use and recovery of matter and energy;
- (g) to safeguard biological diversity;
- (h) to combat all forms of pollution;
- (i) to consider the environment as the common heritage and common concern of mankind; and

\*repealed by Act I of 1992.

- (j) to provide incentives leading to a higher level of environmental protection.

5. The provisions of articles 3 and 4 shall not be directly enforceable in any court, but the principles therein contained are this notwithstanding fundamental to the Government of Malta and those principles shall be employed in the interpretation of the other provisions of this Act or of any other law relating to matters governed by this Act.

Application of articles 3 and 4.

### PART III

#### 1. Administration

6. (1) There is hereby established an authority, to be known as the Malta Environment and Planning Authority which shall consist of not less than thirteen and not more than fifteen members, of whom one shall be the Chairman of the Authority.

Establishment of the Malta Environment and Planning Authority.

(2) Save as hereinafter provided, the members of the Authority shall be appointed by the Prime Minister as follows:

- (a) not more than three public officers representing the Government being persons who have experience or qualifications in matters concerning any of the following: planning, the environment, the infrastructure, social policy in so far as it relates to land use, economic affairs, agriculture, tourism and transport;
- (b) not more than eight members (hereinafter called the "independent members") shall be chosen from amongst persons of known integrity and with knowledge of and experience in:
- (i) the Environmental Voluntary Organisations sector and, or civil society;
  - (ii) commerce, economy and industry;
  - (iii) cultural heritage;
  - (iv) and the rest being persons with knowledge of and experience in matters relating to environment, development, social and community affairs.
- (c)\* two members who shall be chosen from amongst the chairpersons of the Environment and Planning Commission;
- (d)\* two members who shall be members of the House of Representatives and of which one shall be appointed by the Prime Minister and the other by the Leader of the Opposition:

Provided that the Authority shall be properly constituted and may function notwithstanding any failure to appoint either or

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\*when originally enacted, paragraphs (c) and (d) were mistakenly enacted as sub-articles (3) and (4). As a consequence of the correction made under the [Statute Law Revision Act](#), 1980, sub-articles (5) to (12), both included, as originally enacted, have been re-numbered as sub-articles (3) to (10).

both members of the Authority under this sub-article.

(3) The chairman of the Authority shall be chosen by the Prime Minister from amongst the independent members of the Authority, and may occupy any other post within the Authority, whereas the chairpersons of the Environment and Planning Commission appointed as Members of the Authority shall be appointed as Deputy chairpersons.

(4) Save as provided in sub-article (2), no person shall be qualified to be appointed as, or remain, a member of the Authority if he:

(a) is a public officer:

Provided that the Chairman and the Chairperson of the Environment and Planning Commission, shall not be considered as public officers for the purposes of this sub-article;

(b) is an employee of any department, agency, Corporation or Authority of the Government, provided that for the purposes of this paragraph a member of the academic staff of the University shall be excluded;

(c) is a Minister, Parliamentary Secretary or a member of the House of Representatives, of the European Parliament, or of a local council;

(d) is a judge or magistrate of the courts of justice; or

(e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Authority:

Provided that the Minister may determine that the person's interest is not likely to affect the discharge of his functions and upon such determination that person shall be qualified to hold the office of member of the Authority provided that the declared interest and the Minister's determination are published in the Gazette; or

(f) is interdicted or incapacitated; or

(g) is convicted of an offence affecting public trust, or of theft or fraud, or of knowingly receiving property obtained by theft or fraud or of bribery or of money laundering; or

(h) is subject to disqualification under article 320 of the [Companies Act](#).

Cap. 386.

(5) The independent members shall hold office for such period, being not less than three years, as may be specified in the letter appointing them and if no such period is specified shall remain in office for three years. In determining such period of office the Prime Minister shall, as far as practicable, ensure a measure of rotation.

(6) Without prejudice to the provisions of sub-article (4), the independent members may resign by letter addressed to the Prime Minister but may not be removed from office except by a resolution

of the House of Representatives on the ground of misconduct or inability to perform the duties of their office.

(7) The other members of the Authority shall hold office until they are replaced by the Prime Minister, and as long as they remain public officers or members of the House, as the case may require. Members of the House may also resign from office by letter addressed to the authority appointing them.

(8) A person who has ceased to be a member of the Authority shall if he is otherwise qualified, be eligible for reappointment; but no person shall in the aggregate be a member of the Authority for more than seven consecutive years.

(9) The provisions of the First Schedule shall apply to the Authority and regulate its proceedings.

(10) The Authority shall transmit a copy of the agenda, minutes and relative enclosures of its meetings to the Minister for his information.

7. (1) The Authority shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

Authority to be  
body corporate.

(2) The legal and judicial representation of the Authority shall jointly vest in the Chairperson and the Chief Executive Officer:

Provided that the Authority may appoint any one or more of its other members or any one or more of its officers or employees to appear in the name and on behalf of the Authority in any proceedings and in any act, contract, instrument or other document whatsoever, or in the case of any vacancy in the post of Chairman or Chief Executive Officer.

(3) In the absence of the chairman, or if the chairman is unable to perform the functions of his office, whether under this or any other provision of this Act, any one of the deputy chairpersons shall perform those functions and shall rotate the chairmanship of the Authority between them as far as practical.

8. (1) The Authority shall be the principal means whereby the Government shall implement its duties under this Act.

Functions of the  
Authority.  
Amended by:  
L.N. 362 of 2014.

(2) The functions of the Authority shall be the following:

- (a) to perform and succeed in the functions, assets, rights, liabilities and obligations of the competent authority established under the provisions of article 3 of the Development Planning Act\* and article 6 of the Environment Protection Act\*;

Cap. 356.  
Cap. 435.

\*although these two Acts were repealed by article 97(1) of this Act, they are still reproduced in the Revised Edition of the Laws of Malta, as a consequence of this paragraph.

- (b) the formulation and implementation of policies relating to the promotion of sustainable development, protection and management of the environment and the sustainable management of natural resources, and on such other matters as may be necessary for the better carrying out of the provisions of this Act;
  - (c) the promotion of proper planning and sustainable development of land and at sea, both public and private;
  - (d) the control of such development in accordance with plans and policies approved in terms of this Act;
  - (e) the carrying out of national mapping, including carrying out land surveys of specific areas and keeping up to date the national geographical database to undertake the functions mentioned in this sub-article;
  - (f) the regulation of alignment and levelling schemes and their interpretation on site;
  - (g) to facilitate and coordinate the permit granting process for projects of common interest acting as the competent authority for Malta under Regulation (EU) No 347/2013.
- (3) In carrying out its functions under sub-article (2) the Authority shall:
- (a) seek to co-operate or to make arrangements with other entities or persons to enable it to better monitor the implementation of and compliance with the provisions of this Act;
  - (b) establish long and short term objectives and strategies;
  - (c) make or advise the Minister on the making of environmental standards, guidelines and the making of regulations under this Act as well as on the formulation and implementation of contingency and emergency plans to safeguard the environment;
  - (d) issue any licence or permit that may be required by or under this Act under such conditions as it may, subject to any other provision of this or any other law, deem necessary to control and manage activities having an impact on the environment;
  - (e) establish threshold levels of discharge from production, management, use, possession or any other activity involving products, substances and the production of or use of energy;
  - (f) monitor the quality of the environment and for such purpose establish methodologies, maintain and disseminate information related to the environment; and
  - (g) publish, at intervals not exceeding three years, a report on the state of the environment.
- (4) For these purposes, and subject to the provisions of this Act, the Authority shall be responsible for:

- (a) ensuring that environmental audits and environmental assessments as may be prescribed are properly carried out;
  - (b) the preparation of the plans and policies including any other matter ancillary, incidental or conducive thereto, and the updating thereof following their approval in terms of this Act;
  - (c) the conduct of consultations with Government departments, non-governmental organizations, private organisations and international organizations and other persons relating to environmental protections and the sustainable management of the environment and natural resources and planning, and to undertake and promote research on such matters;
  - (d) the provision of support and advisory services relating to environment protection, to Government and local authorities in relation to the performance of their functions;
  - (e) the provision of, either alone or in collaboration with others, education, training and public awareness programmes relating to environmental protection, and the sustainable management of the environment and natural resources;
  - (f) the publication and updating, as circumstances may warrant, of an official manual containing such matters as the Minister may prescribe and which shall be made available to the public, provided that:
    - (i) no policy or amendment thereto approved in terms of sub-article (2)(b) shall have effect unless it is approved in accordance with the provisions of this Act and published in the official manual;
    - (ii) a policy or an amendment thereto, as the case may be, shall be published in the official manual within one month from the date of its approval in terms of this Act;
    - (iii) the official manual may be published and updated in electronic form or in any other format as the Authority may approve;
  - (g) the performance of such other functions as may from time to time be assigned to it by the Minister, including the functions required to give effect to any international obligation entered into by Malta relative to matters regulated by this Act.
- (5) In the execution of its functions under Part III and Part IV, the Authority shall consult with the Minister, and it shall have and may exercise all or any one or more of the powers vested in it or entrusted to it by this Act.
- (6) The Authority may also exercise all powers of control over the environment and development as may from time to time be

delegated to it in writing by the Minister on behalf of any department or agency of Government.

(7) It shall be the Minister's function to ensure that the Authority is fully informed of Government's strategic directions relative to development, and to monitor the proper execution of such policies.

(8) The Authority shall execute its duties, functions and responsibilities in accordance with Government's strategic directions relating to development and the environment as well as such policies relating to the environment as are applicable to Malta.

(9) In the pursuance of its functions under this Act, the Authority shall, as far as possible, make reference to European best practices and emulate them.

(10) The Authority shall also ensure that it keeps an audit trail of all its files, including all documentation and reports.

Delegation of power.

**9.** Saving the provisions of article 72 and subject to retaining overall control and supervision, and otherwise observing the provisions of this Act, the Authority may, with the approval of the Minister, delegate any one or more of its functions under this Act under such conditions as it may deem appropriate. In particular, but without prejudice to the generality of the foregoing, the Authority may delegate as aforesaid to, or exercise concurrently with, the Commissioner of Police, or any local council, or any other body, authority or contractor, any of the functions vested in it in terms of Part VI and the Authority shall also have the power to delegate any of its enforcement powers, including the levying of penalties established in this Act, to local wardens appointed in terms of the provisions of the [Private Guards and Local Wardens Act](#) in terms of such procedure as the Minister may in agreement with the Minister responsible for local councils prescribe. Notice of any such delegation shall be published in the Gazette.

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Appointment of advisory boards and committees.

**10.** The Authority may with the approval of the Minister appoint advisory boards and committees to assist it in the performance of its functions under this or any other law. The functions of the said boards and committees shall be prescribed by the Authority with the approval of the Minister.

Conduct of the affairs of the Authority.

**11.** (1) Subject to the other provisions of this Act, the affairs and business of the Authority shall be the responsibility of the Authority, but save as aforesaid, the executive conduct of the Authority, its administration and organisation and the administrative control of its Directorates and of its officers and employees, shall be the responsibility of the Chief Executive Officer of the Authority, who shall also have such other powers as may from time to time be delegated to him by the Authority.

(2) The Authority and each of the Directorates may exercise any one or more of their functions or responsibilities either directly or through any of their officers or employees authorised for the purpose.

(3) Where in this Act anything is to be done by or against or

with respect to the Authority, or any notice is to be or may be given to the Authority, any such thing or notice may also be done by or against or with respect to or be given to the Directorates under whose jurisdiction the matter falls by reason of a delegation of function to such Directorate; and for the purposes aforesaid any reference in this Act to the Authority includes a reference to the appropriate Directorate.

**12.** (1) There shall be established the Directorates designated in the Third Schedule which shall have the respective responsibilities described in the same Schedule.

Establishment of Directorates.

(2) The Authority shall in writing vest in the Directorates established under sub-article (1) and subject to the overall supervision and control of the Authority and of the Chief Executive Officer, such of its functions as relate or are ancillary to the matters for which they are responsible as will enable the said Directorates to give effect to the strategies, policies and directives of the Authority and to otherwise discharge effectively and efficiently the functions of the Authority in their respective areas of operation.

(3) Each of the Directorates established under sub-article (1) shall be headed by a person having adequate experience or knowledge in the respective area of operation who shall either be a public officer detailed for duty with the Authority or any employee of the Authority, or a person detailed to work for the Authority in accordance with an agreement made between the Authority and a public or private undertaking.

(4) Such Directors shall be appointed by the Authority with the approval of the Minister for a period of three years which may be extended for further periods of three years each.

**13.** (1) The Authority shall appoint a Chief Executive Officer with the approval of the Minister. Such appointment shall be for a period of three years which may be extended for further periods of three years each.

Appointment of Chief Executive Officer.

(2) The Chief Executive Officer shall be responsible for the implementation of the objectives of the Authority in the exercise of its functions and without prejudice to the generality of the foregoing shall -

- (a) assume full responsibility for the overall supervision and control of the Directorates;
- (b) with the approval of the Authority, assign to the Directorates such duties which are by, or in accordance with, the provisions of this Act vested in such Directorates;
- (c) co-ordinate the workings of the Directorates;
- (d) develop the necessary strategies for the implementation of the objectives of the Authority;
- (e) advise the Authority on any matter it may refer to him or on any matter on which he considers his advice necessary or expedient; and

(f) carry out such other functions and duties as the Authority may assign to him from time to time.

(3) The Chief Executive Officer may be dismissed by the Authority at any time for a just cause and it shall be a just cause if the Authority determines that he has not achieved the targets and objectives set for him by the Authority.

Other matters relating to officers of the Authority.

**14.** (1) The Chief Executive Officer and each Director shall, himself or his representative, have the right to be present and participate at all meetings of the Authority, of the Commission and of all the meetings held by all the boards and committees appointed by the Authority:

Provided that the Authority may if it so deems fit, require the Chief Executive Officer or any of the Directors not to attend any of the meetings or any part of a meeting.

(2) The Authority shall also appoint one of its officers to act as secretary of the Authority. The secretary shall have the duty of calling meetings and keeping minutes and such other duties as the Chairman may delegate to him.

(3) The Authority shall also appoint one of its officers as the Internal Auditor. The Internal Auditor shall:

- (a) provide oversight of the systems of internal control and risk management of the Authority and to assist and support the Authority in discharging its responsibilities in relation thereto;
- (b) provide the communication link with external auditors and to evaluate and coordinate the audit and financial reporting process of the Authority;
- (c) scrutinize and evaluate any transaction to be entered into by the Authority with a value exceeding two hundred and fifty thousand euro (€250,000); and
- (d) review and assess the effectiveness of the management of the Authority in its compliance with policies and in the discharge of its regulatory and compliance functions.

(4) The Internal Auditor shall report directly and exclusively to the Authority in accordance with procedures established by the Authority.

Staff appointments.

**15.** (1) Subject to the provisions of the Constitution, any other enactment applicable thereto, and without prejudice to the other provisions of this Act, the employment and appointment of officials and other employees of the Authority shall be made by the Authority and the terms and conditions of their employment and appointment shall be established by the Authority with the concurrence of the Minister.

(2) The Authority may, with the approval of the Minister given after consultation with the Minister responsible for finance, establish a scheme or schemes, whether by contributory or non-contributory arrangements or partly by one and partly by the other,

for the payment of pensions, gratuities and other like benefits to its officers and employees on their retirement, death or injury, or to their dependants.

**16.** (1) Where any member of the Authority, the Chief Executive Officer or a member of the staff of the Authority, or a consultant, advisor or other person engaged by the Authority, has any interest in, or material to, any matter which falls to be considered by the Authority, he shall -

Disclosure of interests.

- (a) disclose to the Authority the nature of his interest at the first meeting of the Authority after such interest is acquired or in advance of any consideration of the matter, whichever is the earlier, and in accordance with directives issued from time to time by the Authority;
- (b) neither influence nor seek to influence the processing and the decision in relation to such matter;
- (c) take no part in any consideration of such matter; and
- (d) not attend nor participate in any meeting on such matter.

(2) Where a question arises as to whether or not a course of conduct, if pursued by a person, would constitute failure by him to comply with the requirements of sub-article (1), the question shall be determined by the Authority and the decision and its motivation shall be recorded in the minutes of the meeting during which the decision was taken and such person to be duly informed.

(3) Where a disclosure is made to the Authority pursuant to sub-article (1), particulars of the disclosure shall be recorded in the minutes of the relative meeting.

(4) Where a person to whom sub-article (1) applies fails to make the required disclosure, the Authority shall decide the appropriate action to be taken which may include the removal from office or termination of the contract of the person concerned.

**17.** The Authority shall appoint and employ, at such remuneration and upon such terms and conditions as it may, in accordance with article 15, determine, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Appointment and functions of officers and employees of the Authority.

**18.** (1) The Prime Minister may, from time to time, direct that any public officer shall be detailed for duty with the Authority in such capacity and with effect from such date as may be specified in the Prime Minister's direction.

Detailing of public officers for duty with the Authority.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different period is specified in such direction, end on the happening of any of the following events, that is to say:

- (a) the acceptance by such officer of an offer of transfer to the service of, and permanent employment with, the

Authority made in accordance with the provisions of article 20; or

- (b) the revocation of such direction by the Prime Minister, in relation to such officer:

Provided that in relation to a public officer detailed for duty with the Authority with effect from such date as the Prime Minister may in a direction as aforesaid establish, the detailing of such public officer shall cease to have effect after one year from the effective date of such direction, unless the direction is revoked earlier by the Prime Minister.

(3) Where a direction as aforesaid is revoked by the Prime Minister in relation to any officer, the Prime Minister may, by further direction, detail such officer for duty with the Authority in such capacity and with effect from such date as may be specified in the Prime Minister's direction, and the provisions of sub-article (2) shall thereupon apply to the period of duration of such detailing by any such further direction in relation to such officer.

Status of public officers detailed for duty with the Authority.

19. (1) Where any public officer is detailed for duty with the Authority under any of the provisions of article 18, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Authority but he shall for all intents and purposes remain and be considered and treated as a public officer.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid -

- (a) shall not during the time in respect of which he is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment held by him under the Government on the date on which he was so detailed for duty; or

(ii) receive remuneration and be subject to conditions of service which are less favourable than those attached to the appointment under the Government held by him on the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Authority; and

- (b) shall be entitled to have his service with the Authority considered as service with the Government for the purposes of any pension, gratuity, or benefit under the [Pensions Ordinance](#) and the [Widows' and Orphans' Pensions Act](#) and for the purpose of any other right or privilege to which he would have been entitled, and liable to any liability to which he would have been liable, but for the fact of his being detailed for duty with the Authority.

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(3) Where an application is made as provided in sub-article (2)(a)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

(4) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Authority as aforesaid during the period in which he is so detailed.

**20.** (1) The Authority may, with the approval of the Prime Minister, offer permanent employment with the Authority to any officer detailed for duty with the Authority under any of the provisions of article 18 at remuneration and on terms and conditions not less favourable than those enjoyed by such officer on the date of such offer.

Offer of permanent employment with the Authority to public officers detailed for duty with the Authority.

(2) The terms and conditions of any permanent employment offered by the Authority under the provisions of sub-article (1) shall not be deemed to be less favourable merely because they are not in all respects identical or superior to those enjoyed by the officer concerned on the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(3) Every officer who accepts permanent employment with the Authority offered to him under the provisions of sub-article (1) shall, for all purposes other than those of the [Pensions Ordinance](#) and of the [Widows' and Orphans' Pensions Act](#), and saving the provisions of article 44, be deemed to have ceased to be in service with the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meanings thereof respectively.

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(4) Every such officer as aforesaid who, immediately before accepting permanent employment with the Authority was entitled to benefit under the [Widows' and Orphans' Pensions Act](#), shall continue to be so entitled to benefit thereunder to all intents as if his service with the Authority were service with the Government.

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(5) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted permanent employment with the Authority as aforesaid during the period commencing on the date of such officer's acceptance.

(6) In the case of a public officer detailed for duty with the Authority with effect from the date established under the proviso to article 18(2)(b) and who subsequently accepts permanent employment with the Authority the foregoing provisions shall apply subject to the following provisions of this article.

(7) For the purposes of the [Pensions Ordinance](#) the pensionable emoluments on retirement of any public officer to whom sub-article (6) applies shall be deemed to be the pensionable

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emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post occupied and incremental level on the date on which the officer retires from the Authority.

- (8) (a) The classification referred to in sub-article (7) shall be carried out by a board composed of a chairperson appointed by the Ministry responsible for finance and two other members, one appointed by the Ministry responsible for personnel policies in general in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.
- (b) Such classification shall take place within three months of any adjustment of salaries of employees in Government service and, or of employees of the Authority.
- (c) Without prejudice to article 113 of the [Constitution](#), no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

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Engagement of consultants and advisers.

**21.** The Authority may engage such consultants or advisers, as it may consider necessary to assist it in the fulfilment of its functions.

Authority to meet expenditure out of revenue.

**22.** (1) Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

(2) For the purposes of sub-article (1) the Authority shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law providing for matters falling under the powers and functions vested in the Authority by or under this Act.

(3) The Authority shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works or activities to be continued or otherwise carried out by the Authority.

(4) Subject to such directives as the Minister may give from time to time after consultation with the Minister responsible for finance, any excess of revenue over expenditure shall be applied by the Authority to the formation of reserve funds to be used for the purposes of the Authority. Without prejudice to the generality of the power of the Minister to give directives under this sub-article, any directive given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with sub-article (2).

(5) Any funds of the Authority not immediately required to meet expenditure may be invested by the Authority in such manner as may from time to time be approved by the Minister.

**23.** (1) For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow, including by way of overdraft or otherwise, or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

Power to borrow or raise capital.

(2) The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one million euro (€1,000,000) there shall be required the approval of the Minister in writing.

**24.** The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Advances from Government.

**25.** (1) The Minister responsible for finance may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

Borrowing from Government.

(2) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in sub-article (1), or for the purpose of providing the Authority with working capital, the Minister responsible for finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to the Authority out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.

(4) The proceeds of any loan raised for the purposes of making advances to the Authority, and any other moneys to be advanced to the Authority under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Authority Loan Fund".

(5) Sums received by the Accountant General from the Authority by way of repayment of advances made to the Authority under sub-article (3) shall be paid into the Treasury Clearance Fund and sums received by the Accountant General by way of interest on such advances shall be paid into the Consolidated Fund.

Estimates of the Authority.

**26.** (1) The Authority shall cause to be prepared in every financial year, and shall not later than four weeks before the end of such year adopt, estimates of the income and expenditure of the Authority for the following financial year distinguishing, in particular, between each of such Directorates as may be established under the provisions of this Act:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or of an appropriation Act or of any other law; and the Authority shall so prepare the said estimates as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account, including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparisons with previous years as the Minister responsible for finance may direct.

(4) A copy of the estimates shall, upon their adoption by the Authority, be sent forthwith to the Minister and to the Minister responsible for finance.

(5) The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Authority, approve the same with or without amendment after consultation with the Minister responsible for finance.

Expenditure to be according to approved estimates.

**27.** (1) No expenditure shall be made or incurred by the Authority unless provision therefor had been made in the estimates approved as provided in article 26.

(2) Notwithstanding the provisions of sub-article (1) -

- (a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the House, whichever is the earlier date, the Authority may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one-half of the amount approved for the preceding financial year;
- (b) expenditure approved in respect of a head or subhead of the estimates may, with the approval of the Minister given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or subhead of the estimates;
- (c) if in respect of any financial year it is found that the amount approved in the estimates is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act

applicable to the estimates shall as near as practicable apply to the supplementary estimates.

**28.** The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives, together with a motion that the House approve the said estimates. One sitting day shall be allotted for the debate in the House on such motion; and both the motion and the approval of the estimates by the House may be with or without amendment to the estimates.

Publication of approved estimates.

**29.** (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

Accounts and audit.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the Authority to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other verifications as he may deem necessary.

(3) The Authority shall not later than three months after the end of each financial year cause a copy of the statement of accounts duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall cause a copy of every such statement and report to be laid before the House as soon as practicable.

**30.** (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Authority. Such monies shall, as far as practicable, be paid into any such bank from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

Deposit of revenues and payments by the Authority.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the Authority as the Authority shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Authority for that purpose and shall be countersigned by the Chairperson or such other member or officer of the Authority as may be authorised by the Authority for that purpose.

(4) The Authority shall also make provision with respect to -

- (a) the manner in which and the officer or officers by whom payments are to be authorised or approved;
- (b) the title of any account held with the bank or banks into which the monies of the Authority are to be paid, and the transfer of funds from one account to the other;
- (c) the method to be adopted in making payments out of funds of the Authority, and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Authority.

Contracts of supply or works.

**31.** The Authority shall not award or enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, except in accordance with regulations in force regulating the procurement of all goods and services in the public sector.

Annual Report.

**32.** The Authority shall, not later than three months after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year, distinguishing, in particular, between each of such Directorates as may be established under the provisions of this Act and containing such information relating to the proceedings and policy of the Authority as either of the said Ministers may from time to time require. The Minister shall cause a copy of every such report to be laid on the Table of the House as soon as practicable.

Exemption from tax.

**33.** The Authority shall be exempt from any liability for the payment of any tax on income or duty on documents for the time being in force in Malta.

## 2. Committees, Commissions, Boards and Tribunals

Standing Committee on Environment and Development Planning.

**34.** (1) There shall be a Standing Committee on Environment and Development Planning which shall consist of five members appointed by the House, of whom three shall be members supporting the Government, one of whom shall be appointed as Chairman, and the other two shall be members from the Opposition.

(2) The Standing Committee shall:

- (a) review any plan referred to the House of Representatives in terms of this Act. The Standing Committee shall also recommend to the House whether the plan should be approved, with or without amendments, or rejected;
- (b) discuss any report referred to it by the Minister relating to the structure plan or any review thereof;
- (c) discuss any other plan or policy referred to it by the Minister and report thereon to Parliament. Such a report may also include any dissenting opinion on the plan or policy. The Minister shall take cognisance of the said report and shall forward the report to the

Authority for its consideration in the determination by the Authority of the plan or policy if the said plan or policy has not yet been approved by the Authority:

Provided that where the said Standing Committee fails to report to Parliament within the period by which it was requested to do so, the Minister may request the Authority to finalise the said plan or policy, and the Minister may also approve the said plan or policy as forwarded to him by the Authority.

(3) When notice of a motion, as is referred to in article 53(2), is given by the Minister, that motion shall be referred to the Standing Committee of the House, and the said Standing Committee shall discuss the said motion and report thereon to the House.

(4) Not later than one month after a notice as is referred to in sub-article (3) has been referred to the Standing Committee of the House, the said Standing Committee shall discuss the structure plan or any review thereof, and shall, not later than one month after the said plan or review thereof has been referred to it, report thereon to the House:

Provided that where the said Standing Committee fails to report to the House within the said period of one month, the House may pass on to discuss the motion.

(5) Where the report of the Standing Committee on a motion is unanimous, the House shall proceed to vote on such motion and on any amendments that are proposed in the said report without debate.

**35.** (1) There shall be a commission, to be known as the Environment and Planning Commission, which may have such number of divisions as the Prime Minister may by order in the Gazette prescribe. Each division shall deal with such types of applications, not being specific to a geographical area, as the Minister may after consulting the Authority prescribe:

Environment and  
Planning  
Commission.

Provided that no two divisions thereof shall deal with the same types of applications.

(2) Each division of the Commission shall be appointed by the Prime Minister and shall consist of five members, included its Chairman. Each division shall be composed of members chosen from amongst persons of known integrity and with knowledge of and experience in matters relating to environment and development. The members of the Commission shall hold office for a period of four years. They shall be eligible for reappointment of another term of four years. The provisions of article 6(4) shall apply to the members of the Commission, and its members may also be removed by the Authority for reasons of gross misconduct or breach of their duties.

(3) Subject to sub-article (1) and to article 72 the functions of the Commission shall be such of the functions of the Authority with respect to environment and development control, including enforcement, as the Authority may from time to time delegate to it and require it to perform, subject to such conditions as the Authority may deem appropriate.

(4) The decisions of the Commission including any permission or licence issued by it, shall be deemed to be, and shall have the same force and effect as the decisions of the Authority, except in respect of matters which the Authority expressly reserves to itself or requires to be referred to it for determination, and the expression "decision of the Authority" wherever it appears in this Act, shall be construed accordingly.

(5) The decisions of the Commission shall only be binding if they are supported by the votes of not less than three of its members; and they shall be published as soon as practicable after the meeting at which they are taken.

(6) The Commission shall transmit to the Chief Executive Officer and the Directors a copy of the agenda of its meeting prior to the meeting and a copy of the minutes and relative enclosures of its meetings immediately after the meeting. The Chief Executive Officer and any Director, or his representative, may attend the meeting of the Commission and may make submissions on any matter under consideration.

(7) Subject to the foregoing provisions, and to any rules that may be prescribed by the Authority, the Commission may regulate its own procedures.

(8) The staff of the Commission shall consist of officers and employees of the Authority detailed to service the Commission; and the Authority shall further provide the Commission, out of its own resources, with such other support as the Commission may reasonably require to carry out its functions.

(9) The Commission may at any time draw up reports, which shall be discussed by the Authority:

- (a) on any issue relevant to environment and development planning, including on any application;
- (b) concerning the environment protection and development control process; and
- (c) on any subject which should be addressed by the Authority by means of a new policy or an amendment to an existing one.

Establishment of  
the Users'  
Committee.

**36.** (1) There shall be a Committee, to be known as the Users' Committee, which shall consist of not less than seven and not more than eleven members being not more than one representative from each of the interested national constituted bodies recognized by the Minister for the purpose of this article. The Users' Committee shall be autonomous from the Authority and shall be appointed by and be responsible to the Minister to whom it shall report at least every six months, or earlier as the need arises.

(2) The Users' Committee shall supervise the general functioning of the Authority particularly to ensure, in the interest of the general public an expeditious and fair process and transparency and uniformity in the Authority's decisions and acts. For these purposes the Users' Committee shall monitor the running of the Authority and shall propose, to the Authority or the Minister

as the case may be, such changes to administrative processes and practices as it may deem appropriate.

**37.** (1) There shall be a committee to be styled the Heritage Advisory Committee, which shall consist of two panels.

The Heritage  
Advisory  
Committee.

(2) One panel shall deal with Cultural Heritage and shall be known as the Cultural Heritage Panel, and shall be constituted as follows:

- (a) a chairman and three other members appointed by the Minister responsible for culture, and
- (b) three other members appointed by the Minister after consulting the Authority.

(3) One panel shall deal with Natural Heritage and shall be known as the Natural Heritage Panel, and shall consist of a chairman and six other members appointed by the Minister after consulting the Authority.

(4) Four members of a panel shall constitute the quorum at the meetings of a panel and eight members shall constitute a quorum at a joint meeting of the two panels. The chairman at a meeting shall have an original vote and, in the case of equality of votes, a casting vote.

(5) It shall be the function of the panel, each in the field dealt by it, to provide professional and expert advice to the Authority on matters relating to the conservation of the cultural and natural heritage in an integrated process. Each panel shall also provide advice on the application process in particular with regard to the conservation of property or areas that may be affected by an application for permission.

(6) Each panel shall make available for public inspection any recommendation made by it to the Authority and shall, every six months, report to the Authority and to the Committee of Guarantee set up under the [Cultural Heritage Act](#).

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(7) Each panel may call upon any person to give it expert or professional advice on any matter being dealt by it.

(8) Either chairman shall convene a joint meeting of both panels when matters affecting both the cultural and the natural heritage are involved, and in such case the joint meeting of the two panels shall be chaired by the chairman of the panel convening the meeting. The provisions of sub-article (7) shall apply also to such meetings.

(9) Subject to the foregoing provisions of this article and to any rules prescribed by the Minister with the concurrence of the Minister responsible for cultural heritage, the committee and the panels may regulate their own procedure.

**38.** (1) The Authority shall set up a fund, hereinafter referred to as the Environment Fund.

The Environment  
Fund and other  
funds.

(2) The Environment Fund shall be administered by the Authority.

(3) The Environment Fund shall be used to finance projects, programmes and schemes related to, and costs intended to enforce and manage, the aims and objectives of this Act, as well as works which may be needed for that purpose or to remedy any harm caused to the environment in connection with any contingency or emergency plan, or to finance such other activities, including activities organised by nongovernmental organizations, as the Minister in consultation with the Authority may prescribe:

Provided that, without prejudice to the aforesaid, the Environment Fund shall not be used to finance other costs of the Authority:

Provided further that the Authority may charge the Environment Fund for any services rendered by it to the Environment Fund.

(4) There shall be paid into the Environment Fund:

- (a) any sums appropriated by Parliament for the purpose;
- (b) any donations or grants made to the Environment Fund by individuals or institutions;
- (c) sums received by the Authority for the purpose of being placed in the Environment Fund;
- (d) such other sums or monies as may from time to time be provided by or under this or any other law or regulations.

(5) The Environment Fund shall keep a proper account of its revenue and expenditure and the Authority shall, without prejudice to the powers of the Auditor General and of the Minister responsible for finance under any law, each year cause the accounts of the Environment Fund to be audited by suitably qualified public auditors and accountants appointed by it with the concurrence of the Minister.

(6) The Environment Fund shall every financial year deliver to the Minister, through the Authority, a copy of its duly audited balance sheet together with a report of its activities during the previous financial year. The Minister shall lay a copy of the balance sheet and of the report on the Table of the House within a month of the receipt of the same from the Authority.

(7) The revenue of the Environment Fund shall not be subject to tax under the [Income Tax Act](#) and the Environment Fund shall not be liable to tax under the [Duty on Documents and Transfers Act](#).

(8) The Minister after consulting the Authority may make regulations prescribing the procedure to be followed by the Authority and otherwise regulating the Environment Fund.

(9) The Authority may set up other funds and prescribe what shall be paid into such funds and how the said funds shall be administered and used. The provisions of sub-articles (4), (5), (6), (7) and (8) shall apply *mutatis mutandis* to such other funds.

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Mediators.

39.\* (1) There shall be such officers, to be known as the

Mediators, whose function shall be to act as a mediator between an applicant for permission or licence and the Authority.

(2) The Authority shall appoint a mediator at the request of either the applicant for permission or licence or at the request of any of the Chief Executive Officer or of Directors of the Authority.

(3) There shall be a panel of Mediators appointed by the Minister after consultation with the Authority and the Malta Mediation Centre. A Mediator shall be appointed from among persons versed in environmental matters or in planning or in architecture and civil engineering or in any other relevant discipline.

(4) Subject to the foregoing provisions and to any regulations made under sub-article (7), a Mediator may regulate his own proceedings.

(5) No appeal shall lie to the Tribunal in terms of article 41 from anything done by the Mediator.

(6) If a mediator has been appointed, all the submissions in relation to the procedures that have or ought to have been followed, including the commissioning of studies related to the matter under the Authority's consideration, shall be made before the said mediator.

(7) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may:

- (a) establish the procedure to be followed by a Mediator;
- (b) prescribe those types of applications which an applicant may not refer to a Mediator;
- (c) prescribe the procedure to be followed by the Director during consultation meetings with the applicant and his representative;
- (d) prescribe the procedure to be followed in the formulation of an application report by the Director.

**40.** (1) There shall be a Tribunal, to be known as the Environment and Planning Review Tribunal, consisting of three members, one being a person versed in environment or development planning, who shall preside, and a lawyer and an architect, each of whom shall be appointed by the President acting on the advice of the Minister.

Environment and  
Planning Review  
Tribunal.

(2) The President, acting on the advice of the Minister, may also appoint panels of members and in such case the composition of the Tribunal for any one or more appeals to be heard by it shall be the responsibility of the secretary to the Tribunal who shall, as far as is practicable, determine such composition on the basis of rotation.

(3) A member of the Tribunal shall be disqualified from

hearing an appeal in such circumstances as would disqualify a judge in a civil suit; and in any such case the member shall be substituted by another person either appointed for the purpose by the President acting on the advice of the Minister or chosen from the appropriate panel so appointed.

(4) The members of the Tribunal shall hold office for a period of four years. They shall be eligible for reappointment of another term of four years.

(5) In the exercise of their functions under this Act, the Chairman and the members of the Tribunal shall not be subject to the control or direction of any other person or authority, and may be removed from office by the President acting on the advice of the Minister for the reasons provided for in article 97(2) of the [Constitution](#).

(6) The Tribunal shall have an administrative secretariat independent from the Authority, consisting of a secretary and such other officers or employees as may be necessary for a prompt and efficient determination of the matters within the Tribunal's jurisdiction. The secretary shall be appointed by the Minister and the other members of the secretariat shall be chosen and appointed by the secretary.

(7) The expenses incurred in connection with the administration of the Tribunal, including the payment of the honorarium to the Chairman and members of the Tribunal and the salary of the Tribunal's Secretary and the Tribunal's staff shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Functions and  
procedures of the  
Tribunal.  
*Amended by:*  
*L.N. 223 of 2014.*

**41.** (1) Subject to those articles which specifically exclude the right to appeal before the Tribunal, and to articles 81(14), 82(4) and 86, the Tribunal shall have jurisdiction to:

(a) hear and determine all appeals made by the applicant or a person aggrieved by a notice issued under the provisions of Part VI on any decision of the Authority on any matter of development control, including the enforcement of such control, or appeals made by any person on any decision of the Authority relating to environment protection, including environment assessments, access to environmental information and the prevention and remedying of environmental damage:

Provided that the Authority shall not be construed as any person for the purposes of this paragraph;

(b) exercise such functions as are vested in it in terms of Articles 48, 49, 57, 58, 63 and 77 and hear and determine appeals made in terms of articles 42, 76, 77, 81, 91, 92 u 93 and such other functions assigned to it under the provisions of this Act;

(c) hear and determine an appeal lodged by an interested third party from a decision of the Authority on any matter of development control, provided that:

- (i) such an appeal may only be made by an interested third party who had submitted written comments in terms of article 68(4) when the application to carry out the development is published,
- (ii) no appeal shall lie by an interested third party from any development control decision concerning a development which is specifically authorized in a development plan,
- (iii) a local council in whose locality the development is intended to be carried out shall always be deemed for all intents and purposes of law to be an interested third party provided that the said council has complied with the provisions of article 68(4) and it is acting in the interests of the locality,
- (iv) the Government and any department, agency, authority or other body corporate wholly owned by the Government shall always be deemed for all intents and purposes of law to be an interested third party:

Provided that the Authority shall not be construed as an interested third party for the purposes of this sub-paragraph.

(2) Unless otherwise provided under any provision of this Act, an appeal may be lodged before the Tribunal within thirty days from date of notification of the decision or order by the Authority.

(3) The Tribunal may, at the request of the appellant made concurrently with the application for the appeal, suspend through a partial decision, in whole or in part, the execution of any development or the operation of any installation, pending a decision being delivered by the said Tribunal, under those terms, conditions and other measures as it may deem fit:

Provided that the application, with the exception of applications relating to developments or installations which relate to environmental impact assessment and, or integrated pollution prevention and control ('IPPC') matters, is not for a development which, in the opinion of the Minister is of strategic significance or of national interest, related to any obligation ensuing from a European Union act, affects national security or affects interests of other governments.

(4) In the cases referred to in sub-article (3), the Tribunal shall hold its first hearing be within six working days from receipt of the appeal, and shall not suspend the execution of such a permit unless it is satisfied, after hearing all the parties, that unless the execution of the permit is suspended the prejudice that would be caused would be disproportionate when compared with the actual doing of the thing so permitted or if the request is deemed as frivolous or vexatious:

Provided that the Tribunal shall justify the decision suspending the execution of the development and shall grant its

final decision on the merits of the appeal within three months from the date of the first hearing of the appeal:

Provided further that the suspension of the execution of such a permit may not be more than three months from the date of the first hearing of the Appeal before the Tribunal, and the suspension order shall be deemed to have elapsed *ipso iure* after the lapse of such a period.

(5) In all other appeals, the first hearing of the Tribunal shall be held within three months from receipt of the appeal.

(6) The decisions of the Tribunal shall be final. An appeal by the appellant or any of the appellate parties to the appeal shall lie to the Court of Appeal constituted in terms of article 41(6) of the [Code of Organization and Civil Procedure](#) from such decisions only on points of law decided by the Tribunal in its decision. An appeal from a partial decision of the Tribunal may only be filed together with an appeal from the final decision of the Tribunal. An appeal to the Court of Appeal (Inferior Jurisdiction) shall be submitted within twenty days from when the decision of the Tribunal is delivered in public and such an appeal shall be regulated by the rules of court made under article 29 of the [Code of Organization and Civil Procedure](#).

Cap. 12.

(7) The decisions of the Tribunal shall be binding if they are supported by the opinion of two of its members, and the dissenting member, if any, may express his opinion separately; and all decisions of the Tribunal shall be delivered in public and shall be published as soon as practicable after the sitting at which they are given.

(8) Where a hearing is held by the Tribunal, other than in those cases referred to in sub-articles (3) and (4), advance notice of not less than fourteen days shall be given of the first sitting of the Tribunal to the parties, and those interested third parties who registered their interest during the processing of the application before the Authority, in such manner as the Tribunal may deem appropriate or as may be provided in the Second Schedule:

Provided that in cases of urgency the said time limit of fourteen days may be abridged by order of the Tribunal if the Tribunal is satisfied that the party requesting urgency has given a valid reason in writing therefor.

(9) The sittings of the Tribunal shall be open to the public, subject to the power of the Tribunal to exclude any member of the public if it deems it necessary so to do for the maintenance of order.

(10) The Tribunal may require any department or agency of the Government to provide the Tribunal with such information or advice as the Tribunal may deem necessary for the proper execution of its functions.

(11) Subject to the above and to article 74, appeals to the Tribunal and the conduct of the business of the Tribunal shall be made in accordance with the rules contained in the Second Schedule; and in the absence of such rules on any matter, the

Tribunal may regulate its own procedure.

(12) Where judicial proceedings are instituted against the Tribunal before a court of civil jurisdiction, the Secretary shall represent the Tribunal in such proceedings; and, saving the provisions of article 46 of the [Constitution](#) and article 4 of the [European Convention Act](#), no precautionary act may be issued against the Tribunal by any court.

Cap. 319.

(13) The Tribunal, if it decides to grant a permission or licence may impose a penalty, the payment of fees and contributions and other conditions, which the Authority may impose when granting a permission or licence; and the Tribunal shall ensure that it complies with the provisions of article 69 in reviewing decisions of the Authority.

(14) When the Tribunal modifies a decision taken by the Authority and orders the issue of a permission or licence, or in any other manner changes the decision of the Authority, the Authority shall, unless an appeal has been lodged to the Court of Appeal (Inferior Jurisdiction) from the Tribunal's decision, issue the permission or licence or comply with the decision of the Tribunal within one month from the Tribunal's decision, or, if in the Tribunal's decision a condition has been imposed or a penalty inflicted, within one month from compliance by the appellant with such condition or payment of such penalty inflicted by the Tribunal in its decision.

(15) Appeal proceedings before the Tribunal pursuant to sub-article (1) shall be conducted in a timely manner, without undue delay, and shall not be prohibitively expensive.

(16) Appeal proceedings before the Court of Appeal pursuant to sub-article (6) shall be concluded in a timely manner and shall not be prohibitively expensive. Legal and judicial costs and fees in the said proceedings shall be taxed in accordance with paragraph (7) of item 3 of Tariff A and with paragraph (b) of item 15 Tariff E in Schedule A to the [Code of Organization and Civil Procedure](#).

Cap. 12.

**41A.** (1) Members of the public concerned having sufficient interest shall have access to a review procedure before the Tribunal to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment ('EIA') or an integrated pollution prevention and control ('IPPC') permit.

Access to review procedure.  
Added by:  
L.N. 223 of 2014.

(2) Such an appeal may be lodged before the Tribunal within thirty days from the date of notification of the final decision by the Authority:

Provided that such an appeal may relate to or include an objection to any act or omission committed at any time during the process of the EIA or IPPC leading to the decision in question.

(3) For the purposes of sub-article (1), the interest of any non-governmental organisation promoting environmental protection and which is registered under the [Voluntary Organisations Act](#) shall be deemed sufficient.

Cap. 492.

(4) The provisions of article 41 shall, *mutatis mutandis*, apply to review procedures pursuant to this article.

The Registration Board.

42. (1) There shall be a Registration Board whose function shall be to evaluate applications for registration in the Register of Consultants eligible to carry out environment assessments and other assessments.

(2) The Board shall be composed of a minimum of three members and a maximum of five members, one of whom shall be the Chairman and who shall be appointed by the Minister.

(3) The members of the Board shall be independent members and who are not involved in any way in the preparation of environmental or other assessments falling within the jurisdiction of the Board.

(4) The Board shall assess applications for such registrations and approve those that meet the requirements for registration. The Board shall give reasons for its decisions.

(5) The decision of the Board to grant or to refuse an application for registration in the Register kept by the Authority shall be notified in writing to the applicant without delay.

(6) The Board may direct the Authority to update the Register at such regular intervals as it may deem fit by the inclusion of other disciplines in the Register, which disciplines might have in the meantime evolved.

(7) The decisions of the Board shall be final. An appeal shall lie to the Tribunal only on the grounds that the Board has, in its decision, wrongly applied the provisions of this Act or any regulations issued thereunder, or the decision of the Board constitutes an abuse of discretion or is manifestly unfair, and without prejudice to the aforesaid, the discretion of the Board may not, so long as it has been exercised properly, be queried by the Tribunal. An appeal from a partial decision of the Board may only be filed together with an appeal from the final decision of the Board.

(8) The decision of the Board shall be binding if it is supported by the opinion of a majority of its members, and the dissenting member or members, if any, may express his opinion separately; and all decisions of the Board shall be delivered in public and shall be published as soon as practicable after the sitting at which they are given.

(9) The Minister may, after consultation with the Board, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may:

- (a) establish criteria that applicants are expected to meet in order to qualify for registration;
- (b) establish the procedure to be followed by a Board;
- (c) prescribe a tariff of fees for registration with the Board.

**43.** (1) The Registration Board may, out of its own motion, or at the request of the Authority, cancel any certificate granted under the provisions of article 42 or refuse any application for a renewal of the registration, when the holder of that certificate:

Powers of the Registration Board.

- (a) is found guilty by a court of criminal jurisdiction of a crime being a crime committed through imprudence, carelessness, un-skillfulness in an art or profession, or non-observance of regulations; or
- (b) is found guilty by a court of criminal jurisdiction of any offence under the provisions of the Act or of any regulations made there under; or
- (c) has, in the opinion of the Authority and the Board, submitted sub-standard or deliberately misleading work in an assessment; or
- (d) has participated in the preparation of an assessment when he was not registered in the Register; or
- (e) was the recipient of a certificate issued under the provisions of article 42 based on information given by the applicant which is false or misleading; or
- (f) fails to pay the yearly renewal fee.

(2) Notwithstanding the provisions of sub-article (1), the Board may opt for a suspension, rather than cancellation of the certificate, in the circumstances specified in sub-article (1)(d) and (f).

(3) Notwithstanding the provisions of sub-article (1), if a person participates in the preparation of an assessment without being registered in the Register, he shall subsequently be barred from registering or participating in any assessments in Malta for a period to be decided by the Board which period shall in no case be less than three years.

### 3. Common Provisions

**44.** (1) For the purposes of the [Criminal Code](#) and of any provision of a penal nature in any other law, the members of the Authority and of any committee, board, commission or other body or office established by this Act, and every officer or employee thereof, shall be deemed to be and be treated as a public officer.

Members of the Authority, etc., to be deemed public officers for certain purposes.  
Cap. 9.

(2) The members, officers and employees of the Authority in the performance of their functions under this Act or under any other law administered by the Authority, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or of any other law.

**45.** The Authority, any commission, committee, tribunal or Board may consult with any officer of the Authority or any other person or entity whose advice is considered relevant to any matter under its consideration. Such consultations shall be duly recorded.

Consultations.

**46.** (1) Every member of the Authority, the Environment and Planning Tribunal, the Environment and Development Planning Commission, The Chief Executive Officer and each Director shall submit a declaration of assets in accordance with the procedures

Declaration of assets, code of conduct and publication of names.

established for this purpose by the Minister.

(2) The Minister shall in consultation with the Authority and the Environment and Planning Tribunal, issue, publish and review a code about the conduct expected of the members of the Authority, the members and officers of the Environment and Planning Tribunal and of the Environment and Planning Commission and any other committee, board, commission or other body established by this Act, The Chief Executive Officer, Directors and officers of the Authority in connection with the performance of the Authority's functions.

(3) The provisions of the code of conduct shall be taken into account in deciding whether any such member or officer is unfit to perform the duties assigned to him under this Act or whether his term of office is to be renewed.

(4) The names of all the members of the Authority, and of any committee, board, commission or other body established by this Act, including the panels from which the Tribunal is constituted, and any other change in such membership shall be published in the Gazette.

## PART IV

### Environment and Development Planning

#### 1. Plans and Policies

Plans, policies and regulations.

**47.** Without prejudice to the provisions of this Act, the effective management and planning of the environment and development shall be regulated by plans, policies and regulations, which are prepared and amended from time to time in accordance with the provisions of this Act.

Request by the Minister to the Authority to prepare a plan or policy.

**48.** (1) The Authority shall, either out of its own motion, but after consultation with the Minister, or if so requested by the Minister, make a plan or a policy on any matter relating to the environment and development planning.

(2) The Authority may also, either out of its own motion, but after consultation with the Minister, or if so requested by the Minister, review a plan or a policy which is already in force.

(3) The Minister shall, upon making such a request in writing, send to the Authority the reasons for making such a request together with a statement of goals and objectives to be attained by the plan or policy or a revision of such plan or policy.

(4) The preparation and review of the structure plan shall be regulated by the provisions of articles 51 to 53 whereas the preparation or review of any other plan or policy shall be regulated by the provisions of article 58:

Provided that the Minister may, without prejudice to the provisions of articles 51 to 53 and article 58, set out any additional procedure that the Authority ought to follow, including the carrying out of assessments, and may also carry out any assessments and, or consultations, including public consultations, he may deem necessary.

(5) If the Authority, upon a request by the Minister in terms of sub-article (1), informs the Minister, within thirty days of receipt of such a request, that it is unable, for whatever reason, to prepare such a plan or policy, the Minister shall instruct the Authority to delegate such functions in terms of article 9 with regard to that particular plan or policy and in so doing it shall ensure that the provisions of this Part are complied with.

49. (1) Where the Authority is unable to prepare a plan or policy or fails to delegate such function as is envisaged in article 48(5), the Minister shall request any person, including any government agency, other than the Authority, to prepare on his behalf a plan or policy or a revision of such a plan or such policy.

Minister may request the preparation by any person of a plan, policy or revision thereof.

(2) The Minister shall consult the Authority on the terms of reference which are to form the basis of the preparation of a plan or a policy or a revision of such plan or policy by the said person. The Minister shall then furnish the said person with the relative terms of reference and shall also indicate to the said person the documentation which shall be presented to the Minister when the plan, policy or a revision of such plan or policy is drawn up. On receipt of such documentation, the Minister shall forward a copy of such documentation to the Authority.

(3) The Minister shall also request the said person to comply with article 58(2)(a) and (b) and, for the purposes of the said paragraphs, the expression "the Authority" shall be construed as a reference to the said person and such person shall revise, if necessary, the plan, policy or a revision thereof after taking into consideration the representations he may have received in terms of article 58(2)(b).

(4) If the Authority agrees with such a plan, policy or revision thereof, it shall adopt it for submission to the Minister for his approval; and the provisions of article 58(2) shall, *mutatis mutandis*, apply.

(5) If the Authority does not agree with the said plan, policy or revision of such plan or such policy, it shall draw up a position statement indicating the changes to be made to the said plan, policy or revision thereof and shall refer both the said plan, policy or revision of such plan or such policy and its position statement to the Minister; and the provisions of article 58(2)(i) to (n) shall *mutatis mutandis* apply.

(6) The plan, policy or the revision of such plan or policy shall only be prepared by or under the direction of an expert in the environment or spatial planning having such qualifications as the Minister may prescribe.

50. Without prejudice to his powers under the provisions of this Act, the Minister may direct that the Authority or any department, agency, corporation or authority established by law to subject any plan, policy or strategy adopted or planned to be adopted by it to a Strategic Environment Assessment or any other assessment, and may by regulations prescribe and regulate the procedures and methods to be adopted in such assessments.

Strategic Environment Assessment and other assessments.

The Strategic Plan for the Environment and Development and its preparation and review.

## 2. The Strategic Plan for the Environment and Development

### 51. (1) The Strategic Plan for the Environment and Development:

- (a) is a strategic document regulating the sustainable management of land and sea resources;
- (b) shall be based on an integrated planning system that ensures the sustainable management of land and sea resources together with the protection of the environment;
- (c) must set out policies in relation to the development and use of land and sea and shall be illustrated by diagrams as necessary and accompanied by an explanatory memorandum giving a reasoned justification for each of the policies and proposals contained in the plan;
- (d) must ensure that:
  - (i) plans, policies and programmes issued under this Act are spatial, holistic and comprehensive so that all factors in relation to land and sea resources and related environment conservation are addressed and included and to balance demands for development with socio-economic considerations and the need to protect the environment;
  - (ii) sectoral policies, activities and inputs are integrated and coordinated with each other, combining the inputs of all disciplines and groups;
  - (iii) all actions are based on a clear understanding of the natural and legitimate objectives and needs of individual land users;
  - (iv) it follows other national policies and plans.

(2) The Authority shall monitor the Strategic Plan for the Environment and Development and review it as often as may be necessary, provided such review does not take place within a period of less than five years. Every such review shall be made in accordance with the goals and objectives of a revision of the Strategic Plan for the Environment and Development as may be approved by Cabinet and take effect as provided in the following provisions of this Part. In order to achieve the objectives set out in this article, Cabinet shall take the necessary measures intended to coordinate and improve the spatial impacts of other sectoral policies and their relation to, or inclusion in, the Strategic Plan for the Environment and Development.

(3) Notwithstanding the provisions of sub-article (2), the Strategic Plan for the Environment and Development can be reviewed in parts as the need arises by means of a Resolution of the House of Representatives, and shall come into force in accordance with the following provisions of this Part. Such a partial review of the Strategic Plan for the Environment and Development shall not

adversely affect a development permission validly issued in favour of any person before the date of the coming into force of such a review.

(4) Cabinet may approve a statement of goals and objectives to be achieved by a partial review of the Strategic Plan for the Environment and Development, and, or, a proposal together with a position statement with regard to that review. After such approval, the Minister shall send to the Authority that statement of goals and objectives, and, or, that proposal and position statement. When the Authority receives that statement of goals and objectives and, or, the proposal and position statement, it shall conform with the procedure laid down in sub-articles (5) to (7), if the matters referred to therein have not already been carried out, in the same manner as if the proposal had been initiated by the Authority; and the provisions of sub-article (3) and of article 52 shall apply. If the Authority disagrees with the Minister's proposal or with his position statement, it shall prepare its position statement indicating the changes that it proposes or its reactions thereto. The Minister shall then conform with the provisions of article 53 and, for the purposes of article 52(1), the expression "representations" shall include the Authority's position statement.

(5) For the preparation or review of the Strategic Plan for the Environment and Development the Authority shall carry out surveys of those matters which affect the character and quality of the environment, its conservation and its development, including, but not limited to:

- (a) demographic considerations;
- (b) the agricultural, industrial, commercial, touristic and other existing and, or projected economic activities of the country including the employment patterns arising therefrom;
- (c) leisure and recreation;
- (d) social and community services and facilities;
- (e) communications, traffic and transport;
- (f) public utility services;
- (g) the conservation and preservation of natural and man-made resources;
- (h) the state of the environment report, nitrate vulnerable zone mapping, flood sensitivity mapping, other issues emanating from water, air quality and waste framework regulations;
- (i) such other matters as may be required by the Government or which may be deemed necessary by the Authority.

(6) In preparing or reviewing the Strategic Plan for the Environment and Development, the Authority shall have regard to:

- (a) the current economic policies affecting development;
- (b) the current social policies affecting development;

- (c) the environmental policies affecting development;
- (d) the policies of the Government with respect to the matters set out in sub-article (5);
- (e) the resources likely to be available for the implementation of the plan;
- (f) all possible land and sea-use options in selecting the best use for a given area of land or sea.

(7) During the preparation or review of the Strategic Plan for the Environment and Development the Authority shall make known to the public the matters it intends to take into consideration and shall provide adequate opportunities for individuals and organisations to make representations to the Authority.

(8) A partial review of the Strategic Plan for the Environment and Development which is necessitated by the adoption of or an amendment to a subsidiary plan need not comply with the provisions of sub-articles (5) and (6) if the matters referred to therein and that are relevant to the partial review have already been carried out in the preparation of the subsidiary plan.

Publication of the strategic plan of the Environment and Development or its reviews.

**52.** (1) When the Strategic Plan for the Environment and Development or a review thereof has been completed, the Authority shall publish the plan together with a statement of the representations it has received and the responses it has made to those representations.

(2) The Authority shall invite representations on the plan to be submitted to it within a specified period of not less than six weeks.

(3) The Strategic Plan for the Environment and Development, or any review thereof, together with all representations made to the Authority, shall, as soon as practicable, after the expiry of the period specified in sub-article (2), be referred to the Minister.

(4) The Minister may refer back the Strategic Plan for the Environment and Development, or review thereof to the Authority where he does not agree with the Strategic Plan for the Environment and Development, or any review thereof and he shall prepare a position statement stating the changes he proposes to it or his reactions to the Strategic Plan for the Environment and Development, or review thereof.

(5) Where the Strategic Plan for the Environment and Development, or any review thereof, has been referred back to the Authority, the same procedure as far as practicable shall be followed with respect to any further draft prepared and published by the Authority, except that reference back to the Authority shall not be made more than once.

Final consideration and approval of plan or review.

**53.** (1) At the conclusion of the procedures set out in the foregoing provisions, the Strategic Plan for the Environment and Development, and any review thereof, shall be considered by the Cabinet of Ministers together with the Minister's position statement and the representations made with respect to the plan or its review.

(2) Subject to article 34(2)(a), (3) and (4), the Minister shall then cause the Strategic Plan for the Environment and Development, or a review thereof as originally prepared, or as revised, by the Authority, together with the Minister's position statement, to be laid before the House together with a motion for a resolution that the Strategic Plan for the Environment and Development, be approved by the House, with such amendments, if any, as may be specified in the resolution.

(3) The Strategic Plan for the Environment and Development, and any review thereof as approved by the House shall have effect as from such date as may be specified for that purpose by the Minister by order in the Gazette; and for the purposes of this Act, other than those provisions relative to the preparation, consideration and submission of the Strategic Plan for the Environment and Development, or its review, the expression Strategic Plan for the Environment and Development and any reference to a review thereof means the Strategic Plan for the Environment and Development, and any review thereof, as approved by the House of Representatives.

### 3. Subsidiary Plans and Policies

**54.\*** (1) A subject plan is a plan that deals with a specific environmental or development planning policy or matter setting out detailed specifications intended for its implementation.

Subject Plan.

(2) A subject plan shall consist of a written statement supported by such documents, maps and diagrams as may be considered necessary.

(3) Except as otherwise stated in the plan, a subject plan shall apply to all relevant areas of the environment and of the Strategic Plan for the Environment and Development, whether or not such areas are also covered by another plan or policy.

**55.†** (1) A local plan is one which is made by the Authority for any area where the Authority considers that the rate of development or re-development cannot be satisfactorily managed, or where special factors cannot be taken into account solely on the basis of the Strategic Plan for the Environment and Development.

Local Plan.

(2) A local plan shall consist of a map or maps of a suitable scale supported by a written statement and by such diagrams as may be necessary.

**56.** (1) An action plan or a management plan is made by the Authority for an area where the Authority considers that it has to pay particular attention in order to better manage it or where special factors have to be taken into account which otherwise cannot be taken.

Action plan or  
management plan.

(2) An action plan may form part, or be the whole of, a local plan.

\*this article is not yet in force.

†this article is not yet in force.

(3) In addition to the information required to be contained in a local plan, an action plan made in terms of sub-article (1)(b) shall also show the land which is in public ownership and the land which is intended to be brought into public ownership.

Other policies or plans.

57. (1) Where the Authority considers that for the proper and effective management and protection of the environment and of development or for the proper protection and development of land and sea it is necessary to prepare more detailed policies or plans and guidance other than those already contained in a plan or policy, the Authority may prepare and adopt such policies or plans as it considers appropriate subject to the provisions of this article.

(2) Such policies or plans shall be in a form which the Authority considers appropriate to the subject matter, and may be supported by such documents, assessments, maps, diagrams, drawings and illustrations as may be considered necessary by the Authority.

(3) When the Authority adopts a policy or plan (be it a new policy or plan or a revision of an existing policy or plan), it shall refer it to the Minister for his approval and the procedure mentioned in article 58(2) shall *mutatis mutandis* apply.

Procedure for subsidiary plan and policies.

58. (1) In the preparation or review of a subsidiary plan or policy, the procedure set out in this article shall be followed with respect to the said plan or policy.

(2) Where the Authority prepares a subsidiary plan or policy or review thereof as aforesaid, it shall seek the Minister's approval in terms of the following procedure:

- (a) during the preparation or review of a subsidiary plan or policy, the Authority shall make known to the public the matters it intends to take into consideration and shall provide adequate opportunities for individuals and organisations to make representations to the Authority;
- (b) when the subsidiary plan or policy or a revision thereof has been prepared, the Authority shall publish the plan or policy together with a statement of the representations it has received and the responses it has made to those representations. The Authority shall invite representations on the plan or policy to be submitted to it within a specified period of not less than six weeks; where in such a subsidiary plan or revision thereof it is proposed that any land be excluded from a development boundary as indicated in a local plan, the Authority shall publish in the Gazette and in two local daily newspapers a notice showing the land that is to be excluded:

Provided that where minor modifications not affecting the substance of a planning policy are being proposed, the said period shall be a period of not less than three weeks;

- (c) the Authority shall adopt the subsidiary plan or policy

- after taking into consideration all the representations submitted to it as aforesaid;
- (d) the Authority shall refer the subsidiary plan or policy to the Minister. It shall also forward to the Minister:
    - (i) the statement of representations;
    - (ii) the responses and amendments it has made as a result of those representations;
    - (iii) a precise indication of all other amendments it has made to the plan or policy; and
    - (iv) all the relative documentation and studies in relation to the preparation of the subsidiary plan;
  - (e) the Authority shall also publish the plan or policy and invite representations on the matters indicated in paragraph (d)(iii) to be submitted within a specified period of not less than six weeks;
  - (f) the Authority shall adopt the subsidiary plan or policy after taking into consideration all the representations submitted to it as aforesaid and shall refer the subsidiary plan or policy to the Minister for his approval. It shall also forward to the Minister:
    - (i) the statement of representations;
    - (ii) the responses and amendments it has made as a result of those representations;
  - (g) where the Minister agrees with the subsidiary plan he shall approve it as submitted by the Authority and the Authority shall upon such approval publish the same together with the statements, responses, documentation and studies referred to in paragraphs (d) and (f);
  - (h) where the Minister does not agree with the subsidiary plan as adopted by the Authority in accordance with paragraph (f), he shall prepare a position statement stating his proposed changes or his reactions to the Authority's subsidiary plan and shall refer back the subsidiary plan to the Authority together with his position statement; where in such a subsidiary plan or revision thereof it is proposed that any land be excluded from a development boundary as indicated in a local plan, the Authority shall publish in the Gazette and in two local daily newspapers a notice showing the land that is to be excluded;
  - (i) where the Authority does not agree with the Minister following the referral back to it of the subsidiary plan by the Minister, it shall draw up a position statement and shall refer it back to the Minister;
  - (j) the Minister shall then issue a final position statement. He shall forthwith communicate it to the Authority;
  - (k) the Authority shall forthwith amend the subsidiary plan in accordance with the Minister's final position statement and submit the same for the Minister's final

approval;

- (l) Upon such approval by the Minister, the Authority shall publish the subsidiary plan together with its own position statements and those of the Minister together with the advice of the Tribunal given in terms of paragraph (n), if any, and together with the statements, responses, documentation and studies referred to in the preceding paragraphs;
- (m)\* where the subsidiary plan or any part thereof extends the scope of or is in conflict with the Strategic Plan for the Environment and Development, the Minister shall comply with the provisions of articles 51 to 53 with regard to such subsidiary plan or any part thereof, provided that those parts of the subsidiary plan that do not extend the scope of or are not in conflict with the Strategic Plan for the Environment and Development shall come into force on the date of approval by the Minister;
- (n)† if doubt arises as to which procedure should be followed in respect of a subsidiary plan or as to whether a subsidiary plan or a position statement extend the scope of, or are in conflict with, the substance of the structure plan, the matter may be referred at any time by the Authority or by the Minister to the Tribunal, provided that where the Authority is of the opinion that the Minister's final position statement extends the scope of or is in conflict with the substance of the Strategic Plan for the Environment and Development, it may refer the matter to the Tribunal within one month from the date of receipt of the Minister's final position statement. The Tribunal shall rule within one month from the date of referral to it of the matter as to which procedure shall apply and the decision of the Board shall be final.

Review of  
Subsidiary Plan or  
policy.

**59.‡** (1) Every subsidiary plan or policy shall be reviewed as frequently as may be necessary or as may be made necessary by a review of the structure plan:

Provided that subject to the provisions of sub-article (3), a local plan may not be reviewed before the lapse of two years from its last review unless such review is necessitated by a review of the structure plan:

Provided further that in the case of a partial review of the local plan, the above-mentioned two-year moratorium shall only apply to that part of the plan forming part of the partial review.

(2) Where as a result of such a review the Authority proposes to alter a plan or policy in any significant respect, or where it is proposed that a plan or policy be withdrawn, any such proposal

\*this paragraph is not yet in force.

†this paragraph is not yet in force.

‡this article is not yet in force.

shall be subject to the same procedures, and shall be treated, as a new plan or policy.

(3) Minor modifications not affecting the substance of a local plan may be carried out by the Authority at any time either on its own motion when it considers to do so in the interests of proper planning of the area or following a minor modifications application submitted to it by any person. Modifications shall not be considered to be minor when they would alter the general thrust of the plan or affect a development boundary indicated in a local plan.

(4) For the purpose of sub-article (3), the following shall be considered to constitute minor modifications:

- (a) changes in the alignment of roads and buildings in a local plan; and
- (b) changes in zoning, other than:
  - (i) changes in height limitations; and
  - (ii) changes in zoning of a site which is not designated for the purpose of development.

(5) Where the Authority is considering a minor modification in terms of sub-article (4)(a), the provisions of article 68 shall apply *mutatis mutandis* to such a modification.

(6) Where the Authority is considering a minor modification in terms of sub-article (4)(b), it shall follow the following procedure:

- (a) where the proposal for such a minor modification originates from the Authority itself, it shall comply with the provisions of article 58(2);
- (b) where the proposal for such a minor modification originates in a minor modifications application, the Authority shall publish such proposal and invite representations on the said application within a specified period of not less than six weeks. The Authority shall then decide the application after taking into consideration all representations submitted to it. The provisions of article 49(4) and (5) shall also apply.

(7) No appeal from a decision concerning a minor modifications application shall lie to the Tribunal.

#### 4. Regulations and Orders

**60.** Without prejudice to the provisions of article 6 of the [Interpretation Act](#), any power conferred by this Act to make regulations, rules, orders, lists, schedules and any other instrument of like nature, includes the power from time to time to revoke, replace, amend, alter or add to any such instrument as aforesaid.

Power to make regulations, etc., to include power to revoke etc. Cap. 249.

**61.** (1) The Minister may, acting in accordance with the provisions of article 62, make regulations for the better carrying out of the provisions of this Act and may in particular by such regulations appoint the Authority or any person or body to be the designated authority for the purposes of any international obligation to which Malta may be a party.

Power to make regulations.

- (2) Without prejudice to the generality of the provisions of sub-article (1) such regulations may, in particular:
- (a) prescribe the charges and fees that may be levied by the Authority for services rendered by it under this Act, or in respect of any matter for which it is considered that a fee should be payable;
  - (b) provide for the procedure to be applied by the Authority and the applicant before and after the submission of an application for permits or licences under this Act, as well as fees chargeable therefor, as well as the procedures to be used by the applicant and the Authority in processing of the said application, including, but not limited to, the advertising, communication and vetting of the said application, and the general conditions under which the Authority may require the giving of financial guarantees or the provision of assurance to make good for any damage that may be caused to the environment by any activity which may require a licence under this Act;
  - (c) prescribe what type of information held by the Authority shall be accessible to the public as well as to establish the procedure concerning access thereto and the relative fees to be paid to obtain copies of such information;
  - (d) give effect to any international treaty or instrument, including directives, regulations and decisions, relating to any matter governed by this Act to which Malta may from time to time be a party or subject and to set up structures and make other provisions for the implementation thereof;
  - (e) establish, co-ordinate and enforce environment quality control systems and make provisions for the carrying out of assessments of environmental risks of both new and existing establishments as well as to provide for the effective prevention and remedying of environmental damage;
  - (f) provide for the collection, processing, comparison and interpretation of data related to the environment and to provide that such persons carrying out such activities that may affect the environment as may be prescribed give such information and data to the Authority in a regular or other basis as may be prescribed in order to enable the Authority to monitor and safeguard the quality of the environment;
  - (g) prescribe the techniques to be used in the monitoring of the environment;
  - (h) prescribe, in collaboration with the Civil Protection Department, the circumstances in which an environmental emergency may be declared, and the effect of such a declaration may have on any activity requiring a licence under this Act;

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- (i) set objectives, issue directives and establish codes of practice, all in relation to the environment, to the reduction, reuse, recovery, treatment, storage and disposal of materials as may be prescribed, to all human activity which effects the environment and to ensure sustainable development, and such regulations may in particular:
    - (i) formulate objectives laying down quantitative and qualitative terms, the goals to be achieved in the effort to control the environment;
    - (ii) give directives with regard to such uses of the environment as may be prescribed;
    - (iii) establish the maximum quantities or concentrations of discharge or emission, or use of such substances as may be prescribed during works, undertakings or activities of any nature and ensure the enforcement and monitoring of these standards;
    - (iv) establish codes of practice determining procedures, methods, limits of discharge and emission of substances applicable to works and activities as may be prescribed both with regard to the time when such works and activities are taking place as well as with regard to the time when the works and activities have been completed; and
    - (v) establish for the purposes of this Act, the best available technique not entailing excessive cost with regard to any work, activity or process;
  - (j) with regards to integrated pollution prevention and control:
    - (i) establish systems which ensure such prevention and control;
    - (ii) prescribe measures to control, prevent, manage or reduce pollution and degradation of the environment;
    - (iii) control the keeping, management, trading in or use of substances and other activities which may cause or facilitate pollution;
    - (iv) set standards including maximum of permitted levels in quantitative or qualitative terms, of discharge and emissions into the environment of materials, substances or energy and with regard to the use of any technology, equipment, matter, substance, method or procedure in relation thereto;
    - (v) establish methodologies to be used in the monitoring of discharge and emission of substances and, or energy into the environment and to regulate the use of information gathered during such monitoring;

- (vi) prevent, control, reduce, remedy or otherwise manage situations which may lead to environmental emergencies and to prevent, control, reduce, remedy or otherwise manage any adverse effects on the environment resulting therefrom;
- (k) in relation to waste management:
  - (i) classify waste and prescribing rules in relation thereto in accordance with the type and category thereof;
  - (ii) regulate the management and disposal thereof;
  - (iii) establish quotas, in quantitative and qualitative terms, of permitted generation of waste, as well as otherwise provide for the prevention and reduction of waste;
  - (iv) provide for the registration and, or, licensing of waste management operations;
- (l) in relation to the protection of biodiversity:
  - (i) provide for the monitoring and management thereof;
  - (ii) declare any species to be a protected species and establish rules for its protection;
  - (iii) declare any species to be an invasive species and establish rules for its control;
  - (iv) regulate the use of and otherwise protect specimens of fauna or flora; and in particular prohibit and, or, control possession, exhibition, artificial propagation or captive breeding of such specimens of flora and fauna as may be prescribed;
  - (v) provide for the conservation, protection and management of protected sites and particular habitats or categories thereof in order to safeguard biological diversity;
  - (vi) declare any areas or sites on land or in the internal or territorial waters, or beyond such waters where Malta may have jurisdiction for the purpose of the protection and control of the environment, to be protected areas and to provide for their protection and to regulate their management;
  - (vii) control and regulate any activity that may interfere with the conservation status of biological diversity;
  - (viii) regulate trade in and the transit, import or export of specimens of flora and fauna as may be prescribed;
- (m) control, manage and regulate the transport, introduction of, use (including contained use), release or placing on the market or in the environment of

genetically modified organisms;

- (n) in relation to environmental audits and assessments:
  - (i) require any person conducting such activities as may be prescribed or running or operating such facilities as may be prescribed to carry out environmental audits and assessments and to submit to the Authority environmental audit and assessment reports; which shall include:
    - 1. a detailed description of the activity or facility;
    - 2. a detailed description of the environmental impact of the activity or facility;
    - 3. plans to prevent and reduce risks of adverse effects and to remedy any adverse effects caused; and
    - 4. a contingency plan to deal with any emergency;
  - (ii) require any person to comply with any plan provided for in points 3 and 4 of sub-paragraph (i);
- (o) in relation to development planning, in order to regulate or otherwise provide for any matter relating to development or other activities affecting land or sea, and to give fuller effect to the provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid:
  - (i) regulate buildings and the construction, demolition or alteration thereof, as well as any other matter relating thereto, taking account of all relevant considerations, including safety, aesthetics, health, environment and sanitation;
  - (ii) prescribe the manner in which a building levy or other charge made under this Act is to be established, made, reviewed, collected, utilised or otherwise dealt with;
- (p) in relation to enforcement:
  - (i) to authorise and regulate clamping, towing, removal and storage by the Authority of any object used for or in connection with anything contrary to the provisions of this Act or any regulation issued thereunder;
  - (ii) to exclude the Authority from any liability, other than liability for gross negligence, incurred in connection with the execution of its duties under the said regulations;
  - (iii) providing for the disposal of such objects when the said objects are not claimed by their owners within such time as may be prescribed;
  - (iv) establishing fees payable to the Authority for the removal of clamps, for towing, for the storage of

Cap. 9.  
Cap. 446.

- such objects and for the auction or other form of disposal of such objects;
- (v) establishing the circumstances where such objects can be confiscated and to establish the relative procedure for their confiscation and disposal;
  - (vi) establishing offences and the relative punishments in relation to matters referred to in sub-paragraphs (i) to (v), which punishments shall not exceed a maximum fine (*multa*) of twelve thousand euro; and
  - (vii) specifying the type of illegal activity the provisions of articles 90 and 93 shall apply to and for establishing the relative penalty;
  - (viii) article 21 of the [Criminal Code](#) and the provisions of the [Probation Act](#) shall not apply to any offence established under paragraph (vi);
  - (q) amend, substitute, add to or otherwise alter anything contained in the Schedules;
  - (r) for any other purpose for which regulations are authorized or required to be made otherwise than by the Authority;
  - (s) prescribe the form of any notice, order or other document authorised or required by this Act to be made, served or given;
  - (t) to regulate how any notice or communication to or from the Authority which in terms of this Act shall be in writing may be made in electronic form;
  - (u) provide that any person who acts in contravention of any regulation under this Act shall be guilty of an offence against this article, and establishing such penalty, being a penalty not greater than a fine (*multa*) of two hundred and thirty-three thousand euro or to imprisonment for a term not exceeding two years, or both such fine and imprisonment, to which any person so guilty may be liable:

Provided that such regulations may provide that a person, who having been sentenced for an offence against the same regulation by a judgement which has become absolute, commits a further offence in contravention of the same regulation within such time as may be prescribed, shall be liable to pay a higher fine (*multa*), not exceeding double the fine (*multa*) which would otherwise have been inflicted, and for the purpose of this proviso the maximum fine that may be established by such regulations shall be four hundred and sixty-six thousand euro:

Provided further that such fine shall in all cases be due to the Government as a civil debt, and that where the person guilty of the offence is a director, secretary or

manager of a body corporate for the economic benefit of whom the offence was committed, such body corporate shall be liable *in solidum* with the offender for the payment of the said civil debt; and

- (v) prescribe any other matter that is to be or may be prescribed.

(3) Notwithstanding the other provisions of this Act or of any other law, Schedules annexed to regulations made under this Act may be made or published in the English language only.

**62.** (1) Regulations under this Act shall be made by the Minister after consultation with the Authority and except for regulations under article 61(2)(a), (b) and (u) and in the cases referred to in sub-article (2) hereof shall not be made unless a draft of the said regulations has been issued for public consultation thereby allowing any person a period of at least four weeks to make representations to the Minister or to the Authority or to both stating how in his opinion the proposed regulations could be improved to reach their ultimate aim.

Procedure for making of regulations.

(2) The provisions of sub-article (1) with regard to consultation with the Authority and with regard to the publication of a draft of the regulations for public consultation shall not apply in respect to any regulations, which the Minister declares to be urgent or when a form of public consultation was carried out before the date of coming into force of this Act.

(3) Any person may, in the circumstances referred to in sub-article (1) in respect of draft regulations, not later than six weeks after the promulgation of any regulations made in accordance with sub-article (2) make submissions to the Minister and, or to the Authority stating why and how the regulations should be revoked or amended.

(4) The Authority shall consider any representations made to it under sub-articles (1) and (3) and shall report thereon, after hearing such persons or taking such expert advice as it considers expedient, to the Minister together with any other views it may have on the draft published under sub-article (1) or the regulations made under sub-article (2), and the Minister may, upon receipt of the report by the Authority and any representations received by him, proceed to revise the draft regulations and to promulgate such regulations in accordance with such revision, or to amend any regulations already promulgated; provided that where the Authority has not after the lapse of four weeks after the end of the period for representation referred to in sub-article (1) has elapsed, not made the report or has not given its views to the Minister, the Minister may proceed to promulgate the regulations contained in the draft with or without changes as he may deem expedient, without prejudice to the possibility of making any changes upon the receipt of such report and views when made.

(5) When the Minister makes regulations concerning the procedure before the Authority or any board, commission or other body established under this Act, he shall also consult the Authority or such board, commission or body:

Provided that regulations concerning the procedure before the Court of Appeal and appeals before it under this Act shall be made by the Minister responsible for Justice who shall not be required to consult with the Authority:

Provided further that regulations concerning the establishment or variation of any fee shall be made by the Minister with the concurrence of the Minister responsible for finance.

Orders.

**63.** (1) The Authority may make orders regulating development and other activities which may otherwise require the submission of an application prior to their carrying out, including any notification thereof, or any aspect thereof, in such circumstances and under such conditions as may be specified in the order, being development and activities within the scope of, and not in conflict with, the proposals contained in any plan or policy approved under this Act.

(2) An order shall be published in the Gazette and shall have effect from the date specified or indicated therein. The development or any aspect thereof regulated by such an order shall be called "exempt works" or "exempt activity" and an order regulating development shall be called "development order".

(3) The provisions of article 58(2)(n) shall apply to an order as they apply to subsidiary plans.

(4) An order may include works and activities of a relatively minor or temporary nature, or works and activities deemed compatible with the area in which they are being carried out, and may include internal works, minor additions to existing buildings, minor variations during construction, repairs to dangerous structures, and reconstruction of damaged buildings which repairs and reconstruction are to be carried out in the existing style or according to development plans or planning policies.

(5) The order may enable the Authority to require the removal of an illegal development of whatever nature, or the discontinuance of an activity has been carried out in breach of the provisions of this Act and in contravention of any order or provision aforesaid, and for applying any of the provisions of this Act with respect to enforcement, subject to such adaptations and modifications as may be specified in the order, or otherwise provide for the enforcement of the order and of any notices issued thereunder.

(6) The Authority shall periodically review the orders.

(7) Development orders shall be made and reviewed by the Authority after consultation with the Chamber of Architects and the Chamber of Planners.

(8) Works carried out under development orders, under the supervision of a person holding a warrant of perit or under the supervision of such other persons who are competent for the purpose as the Minister may by regulations prescribe and where required in the order, exempt works and activities, are to be notified in writing to the Authority.

(9) An order may regulate:

- (a) development or an activity described as permitted in an order which does not require that written notification of such development or activity be given to the Authority;
- (b) development or an activity described as permitted in an order provided that written notification of such development or activity is to be given to the Authority;
- (c) development or an activity described as permitted in an order provided that written notification of such development or activity is to be given to the Authority and the Authority has endorsed such development as being permitted.

(10) No new development or activity in terms of an order may be carried out on a site if on the said site there exists an illegal development of whatever nature, or if an activity has been carried out in breach of the provisions of this Act, unless that new development or activity is one which the Authority may prescribe and which is covered by an order as mentioned in sub-article (9).

**64.** (1) The Minister shall, in consultation with the Authority, by regulations under this article provide that members of the public or such categories of persons as may be prescribed shall be entitled to request from such Government departments, authorities, public corporations or other persons as may be prescribed such information that they may have in their possession and relating to the environment and development planning. Without prejudice to the generality of the foregoing, such regulations may prescribe:

Access to  
information.

- (a) the nature of the information that may be requested;
- (b) the circumstances in which such information may be requested;
- (c) the circumstances in which such information may be withheld by the requested entity and the publication of the reasons for which such information is withheld;
- (d) the fees that may be charged in respect of any such information; and
- (e) the time within which such information is to be supplied.

(2) Without prejudice to the generality of sub-article (1), the Authority shall keep and make available for public inspection at such reasonable times as it may determine, a register or registers:

- (a) of all applications for a licence or development permission received by it containing the name of the applicant and details of the proposal including documents and detailed plans; and
- (b) of all decisions including documents and detailed plans made on such applications.

## 5. Environment and Development Brief

Environment and  
Development  
Brief.

**65.** (1) An Environment and Development Brief is a document setting out detailed planning guidance for the development of a specific site or small area where the Authority, either of its own motion, or at the request of an applicant, considers such guidance is necessary to secure proper and orderly environmental management or development of that site or area, or to implement a policy or policies in a plan.

(2) A brief shall consist of a written statement supported by such maps and diagrams as may be considered necessary.

(3) A brief shall contain guidance and information on the following matters as may be considered necessary:

- (a) a description of the site and its location;
- (b) guidelines on the development of the site, including:
  - (i) land uses and site layout,
  - (ii) building form, heights and design,
  - (iii) any building and landscape features to be retained,
  - (iv) access, parking and circulation requirements,
  - (v) landscaping and nature conservation aspects;
- (c) environmental matters and constraints including the necessity of any environmental assessment;
- (d) tenure of the site;
- (e) services and infrastructure;
- (f) the format and content of submission requirements;
- (g) any other information which may be relevant to the site and to the purpose of the development brief.

(4) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may:

- (a) establish the procedure to be followed by an authority in its consideration and determination of the Brief;
- (b) prescribe those matters on which a brief may be prepared;
- (c) prescribe a tariff of fees.

## PART V

### Environment Protection and Development Control

#### 1. Requirement of licences and permission

Licences.

**66.** No person shall carry out any of the following activities unless he is in possession of a licence from the Authority:

- (a) in relation to biodiversity:
  - (i) for whatever purpose, trade in, sell, buy, exchange, transfer or dispose, transport, import, export or re-export such specimens of flora or fauna, as may be prescribed whether dead or

- alive in whole or in part, including any derivatives thereof;
- (ii) have such specimens of flora or fauna as may be prescribed in transit;
  - (iii) have in his possession such specimens of flora or fauna as may be prescribed;
  - (iv) handle such specimens of flora and fauna as may be prescribed, in any manner including the ringing and tagging thereof;
  - (v) mount/stuff, trap, shoot or capture such specimens of fauna as may be prescribed;
  - (vi) deliberately pick, collect, cut, destroy, kill, pursue, take, damage, capture such specimens of flora or fauna as may be prescribed;
  - (vii) uproot, fell, prune or carry out any surgical interventions on such specimens of flora as may be prescribed;
  - (viii) use prohibited means of capture and killing as may be prescribed;
  - (ix) manage invasive and alien species as may be prescribed;
  - (x) introduce or reintroduce species as may be prescribed;
  - (xi) carry out activities in protected areas considered to have an effect on biological diversity and the integrity of the site;
  - (xii) carry out any activity which goes counter to the principles of ecological restoration or species and protected area management, as may be prescribed, including but not limited to:
    - 1. activities which are expected to cause permanent alterations to the protected area,
    - 2. afforestation or planting,
    - 3. activities expected to generate noise and light,
    - 4. activities involving fires/fireworks,
    - 5. activities considered to have an effect on biological diversity,
    - 6. off-roading activities or events;
  - (xiii) modify, endanger the stability of or demolish rural structures affording a habitat for flora and fauna as may be prescribed;
  - (xiv) manage biological diversity as may be prescribed;
- (b) in relation to waste management:
- (i) store, treat, collect, transfer, recover or otherwise manage or handle such waste as may be prescribed;

- (ii) act as broker for the carrying out of the functions mentioned in sub-paragraph (i);
- (iii) trade in, import or export waste;
- (iv) have such waste as may be prescribed in transit;
- (v) operate waste management facilities;
- (c) in relation to pollution control, conduct operations that discharge or cause or permit to be discharged such substance or energy as may be prescribed into the environment;
- (d) in relation to genetically modified organisms:
  - (i) trade in genetically modified organisms;
  - (ii) manage or otherwise have in his possession genetically modified organisms;
- (e) in relation to any other activity as may be prescribed by regulations.

Development to  
require permission.

**67.** (1) Subject to the provisions of this article and to the following provisions of this Part, no development shall be carried out except with development permission.

(2) For the purposes of this article, and, unless the context otherwise requires, for all other purposes in this Act, "development" means the carrying out of building, engineering, quarrying, mining or other operations for the construction, demolition or alterations in, on, over, or under any land or the sea, the placing of advertisements, or the making of any material change in use of land or building other than:

- (a) maintenance operations, which affect only the interior of a building or do not materially affect the external appearance of the building:
 

Provided that such maintenance works are not contrary to any order made under this Act in relation to the building:

Provided further that maintenance operations shall not include demolition and rebuilding works, irrespective of where such demolition and rebuilding works are carried out;
- (b) the use of land for agriculture, animal husbandry and forestry (including afforestation), except where such use consists of:
  - (i) the erection of buildings or amounts to intensive raising of crops or animals; or
  - (ii) the reclamation of land for agriculture by the deposit of material on such land; or
  - (iii) the conversion to agricultural use of land which is not currently used for agricultural purposes; and
- (c) in the case of buildings or other land that are used for a purpose of any class specified in an order made by the Authority under this Act, the use thereof for any other

purpose of the same Class.

- (3) For the purpose of this article:
- (a) the use of a building resulting in an increase or a reduction in the number of dwelling units in which the building was previously used; or
  - (b) the deposit of materials on land; or
  - (c) the use for the display of advertisements of any external part of a building that is not normally used for the purpose,

involves a material change in the use of that building or land, or part thereof, without prejudice, in the case of advertisements, to any regulations or order made under this Act with respect to their control.

(4) For the purpose of this article, development includes clearing of valleys from accumulated sediment and development in relation to the sea includes land reclamation from the sea, aquaculture and beach developments and their related uses.

**68.** (1) Any person, including a department of government or a body corporate established by law, wishing to carry out any activity referred to in article 66 or a development referred to in article 67, not being an activity or development for which a licence or permission is given in an order and to be carried out in accordance with the provisions thereof, shall apply to the Authority for such licence or permission, in such manner, on such form and giving such information as the Authority may prescribe.

Application for  
licences and  
permission.

(2) Any person may also apply to the Authority for a determination as to whether a proposal requires a licence or development permission.

(3) An applicant for development permission shall certify to the Authority that:

- (a) he is the owner of the site or that he has notified the owner of his intention to apply by registered letter of which a copy has been received by the Authority and that the owner has granted his consent to such a proposal, or
- (b) he is authorised to carry out such proposed development under any other law or through an agreement with the owner:

Provided that where:

- (i) the applicant is the Government of Malta, or any department, agency, authority or other body corporate wholly owned by the Government; or
- (ii) the applicant is not the owner of the site, but he holds the site under title agricultural lease, or holds the premises under a title of lease and he is carrying out the works under a scheme of a Government entity,

the applicant must still notify the owner of his intention to apply by registered letter of which a copy has been received by the Authority, but need not certify that the owner has granted his consent to such a proposal.

(4) Any person may declare an interest in a development and, on the basis of issues relevant to environment and planning, make representations on the development. Such declaration of interest and representations shall be in writing and is to be received by the Authority within such period as established by the Authority.

(5) During the processing of the application, the Authority shall consider representations made by interested registered parties in accordance with the provisions of sub-article (4).

(6) The Authority shall inform the registered interested parties where fresh plans have been filed and the registered interested party shall be notified of the Authority's sitting when such application shall be discussed:

Provided that such submissions may be made in any format deemed appropriate by the Authority, and shall include submissions received by post or by hand and electronic submissions:

Provided further that if the last day for submissions as set out by the Authority is a public holiday or a day when the offices of the Authority are closed for the public, the time limit for such submissions shall be deemed to expire on the next following working day.

Licence and permits.

**69.** (1) In its determination upon an application the Authority shall:

(a) with respect to an application for a development permission apply the following:

(i) plans:

Provided that the height limitation may only be modified by applying a policy which deals with the maximum building height which may be permitted on a site, which policy may take into consideration the site coverage, the building volume which may be permitted on a site or any other material consideration;

(ii) policies:

Provided that subsidiary plans and policies shall not be applied retroactively so as to adversely affect vested rights arising from a valid development permission;

(b) with respect to any other application apply such plans, policies and regulations issued under this Act as it may deem relevant and appropriate.

(2) In its determination upon an application the Authority shall also have regard to:

(a) any other material consideration, including, environmental, aesthetic and sanitary considerations,

which the Authority may deem relevant:

Provided that no such material consideration including commitment from other buildings in the surroundings may be interpreted or used to increase the height limitation set out in a plan;

- (b) representations made in response to the publication of the development proposal.

(3) The Authority shall have power to grant or to refuse a licence or development permission, and in granting such licence or permission the Authority shall be entitled to impose such condition which it may deem appropriate:

Provided that upon a refusal or the imposition of particular conditions, the Authority shall give specific reasons based on existing plans, policies and regulations or other material considerations for such refusal or for any particular conditions that may have been imposed:

Provided further that the execution and validity of a permit in case of a development mentioned in the Seventh Schedule shall be automatically suspended and no works as approved by the said development permit may commence before the lapse of the time period established in paragraph (1) of the Second Schedule, and shall remain so suspended until the Tribunal appoints its first hearing on an appeal from such a permit, if any, under the provisions of article 41(3), and this without prejudice to the provisions of article 41(3).

(4) A licence or a development permission may be granted for a limited period or in perpetuity, but shall in all cases cease to be operative if activity or development has not been completed within five years of its issue, provided that the Authority may, on the application of the person holding the licence or development permission, extend the said licence or permission to such further period or periods as it may consider reasonable.

(5) In granting a licence or development permission, the Authority may require the activity or development to be completed within a specified period of time as it may establish provided that the Authority shall state the reasons justifying such requirement.

(6) Except as may be otherwise provided in the permission, a development permission shall ensure for the benefit of the land and for all persons for the time being interested therein, but without prejudice to the other provisions of this Act affecting its validity or operation. The permission shall automatically pass on to new owners.

(7) In granting a licence or development permission, the Authority may require the applicant to carry out the activity or development in stages. The Authority shall inform the applicant in the said licence or permission which are the said stages and, following the completion of each stage, the applicant shall request the Authority to carry out an inspection of the activity or works carried out; and, if following such an inspection, it is found that the activity or works have been carried out in terms of the licence or

development permission, the Authority shall authorize the applicant to carry out the next stage of the activity or development.

(8) Where the Authority, in the case of major projects, considers it appropriate to closely monitor specific conditions in a licence or development permission by appointing a person competent for the said purpose, it shall do so at the expense of the applicant.

(9) Without prejudice to the provisions of this article, where an application to develop land consists in the mining of minerals the Authority may, and, where planning and environmental standards so require, shall, require the applicant to provide a scheme for the treatment of the working and surrounding areas during the working period and for the treatment of the said areas when working is completed.

(10) The Authority shall not grant permission for the mining of minerals unless it is satisfied that planning and environmental standards will be met and the site will be kept and eventually left in acceptable conditions.

(11) Where the Authority has required a scheme to be submitted as provided in sub-article (1), the scheme, as accepted by the Authority, shall be made a condition of any permission granted by it; and the Authority shall further require such guarantees to be given by the applicant as it deems necessary to ensure that the scheme will be adhered to.

Supplementary provisions regarding permissions and licences.

**70.** (1) In any case in which the Authority may under this Act grant permission to develop land, other than in the case of a development listed in the Sixth Schedule, it may grant permission for the retention on land of any buildings or works constructed or carried out thereon, or for the continuance of any use of land, without permission under this Act or after such permission has ceased to be valid or operative; and references in this Act to permission to develop land or carry out any development on land, and to applications for such permission, shall be construed accordingly:

Provided that any application or permission under this sub-article shall not be processed or granted unless the applicant or his predecessor in title has:

- (a) forthwith upon being required so to do, ceased to carry out any works he was required to interrupt; and
- (b) paid such fines or made such other payments as may be due on the site subject of the application.

(2) A permission under this article may be granted so as to take effect from the date on which the buildings or works were constructed or carried out or the use was commenced, or from the date the development permission ceased to be valid or operative, as the case may be.

(3) A development permission may specify the purposes for which a building may be used; and if no purpose is specified the permission shall be construed as including permission to use the

building for the purpose for which it is designed.

(4) Where a development permission is given for a limited period only, nothing in this Act shall be construed as requiring permission to be obtained thereunder for the resumption, at the expiration of that period, of the use of the land for the purpose for which it was normally used before the permission was granted, but no account shall be taken of any use made in contravention of this Act.

(5) The Authority may, prior to the issue of or in issuing a development permission or licence, demand from the person in whose favour the permission or licence will be issued, as a condition for the issue of the development permission or licence, to provide a bond in favour of the Authority in order to guarantee compliance with the conditions of the permission or licence once issued, or in order to guarantee payment in respect of damages which may be caused to the environment or to the infrastructure. The Authority may, after the issue of a development permission or licence, if the development or activity is not being carried out in accordance with the permission or licence, or is otherwise causing damage to the environment or the infrastructure, demand the said person in whose favour the permission or licence has been issued, as a condition for the continuance of the development permission or licence, to provide a bond in favour of the Authority in order to guarantee compliance with the conditions of the permission or licence, or in order to guarantee payment in respect of damages which may be caused to the environment or to the infrastructure:

Provided that nothing in this sub-article shall be interpreted as authorizing the Authority to demand a bond in an amount not commensurate with the nature of the development project or activity:

Provided further that such a bond may only be forfeited by the Authority if there is clear evidence that the applicant has not complied with the conditions of the development permission or licence and the reasons for forfeiting the bond shall be communicated in writing to the applicant.

**71.** (1) Decisions on applications shall be taken without delay.

Decisions to be taken without delay.

(2) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may:

- (a) establish the procedures to be used by the Authority and the applicant in the processing and determination of applications;
- (b) establish the procedures to be used by an applicant prior to the submission of an application;
- (c) establish time limits within which submissions have to be made and decisions have to be taken and communicated.

Applications the decisions of which cannot be delegated.

**72.** The Authority shall not delegate to the Commission or to any other body or person the determination of the following applications:

- (a) applications in respect of an activity or development of a national or strategic significance or affecting matters of national security or other national interests;
- (b) applications in respect of an activity or development which could affect the interests of other governments;
- (c) applications in respect of development which is subject to an environmental impact statement;
- (d) requests for reconsideration where the decision to be reconsidered was taken by the Authority itself.

Reconsideration.

**73.** (1) If an applicant considers that conditions imposed upon a licence or a development permission is unreasonable, he may, without prejudice to his right of appeal, request the Authority or the Commission, as the case may be, to reconsider such conditions.

(2) A request for a reconsideration shall be made within thirty days from notification of the decision of the Authority or of the Commission, as the case may be, and may not be made concurrently with an appeal. The request for a reconsideration shall include a written document containing the reasons for such a request.

(3) The Authority shall inform the registered interested parties where a request for a reconsideration has been filed and the registered interested party shall be notified of the Authority's sitting when such a request for a reconsideration shall be discussed.

(4) No reconsideration may be demanded by a registered interested party, even if such interested party has made written objections in accordance with the provisions of article 68(4).

Appeal.

**74.** (1) If an applicant considers that the conditions imposed upon a licence or a development permission, or a refusal of such an authorisation or permission, is unreasonable, he may lodge an appeal with the Tribunal under article 41. An appeal under this sub-article, shall be made within thirty days of notification of the decision of the Authority or of the Commission, as the case may be. The request for an appeal shall include a written document containing the reasons for such a request.

(2) Where a request for reconsideration has been made, an appeal may be made to the Tribunal within thirty days of notification of the decision taken in the reconsideration.

Call in procedure.  
*Amended by:*  
*L.N. 223 of 2014.*

**75.** (1) Where an appeal is lodged by an applicant or by an interested third party from any decision of the Authority referred to in sub-article (2), the Secretary of the Tribunal shall inform the Minister of such an appeal within fifteen days from its receipt. In such case, the Minister may, within fifteen days from the date when he has received such information, either instruct the Tribunal to proceed with the determination of the appeal or decide to refer the application to the Cabinet of Ministers for determination. Where

the Minister does not decide to refer an application to the Cabinet of Ministers as aforesaid within the said period, it shall be deemed for all purposes and effects of law that he has opted to refer the said appeal to the Tribunal for its decision.

(2) The Minister may refer to the Cabinet of Ministers applications called in by him in terms of sub-article (1) where such applications are:

- (a) applications in respect of development which appears to him to be of a strategic significance;
- (b) applications in respect of development which appears to him to affect matters of national security or national interests;
- (c) applications in respect of development which appears to him likely to affect the interests of other governments;
- (d) applications in respect of development which is subject to an environmental impact assessment and which in his opinion is of national interest;
- (e) applications in respect of which the applicant is a department of Government or a body corporate established by law.

(3) Where the Minister decides to refer to the Cabinet of Ministers an application called in by him, he shall request the Tribunal to draw up its recommendation on that application after having heard the parties and the Tribunal shall send its recommendation on that particular application to the Minister who shall refer it to the Cabinet of Ministers. Such recommendation shall be available to the public.

(4) The Cabinet Secretary shall, within fifteen days from the date of such decision, communicate the decision of the Cabinet of Ministers to the Authority together with the reasons in justification thereof and the Authority shall comply therewith, publish the decision of the Cabinet of Ministers in such manner as it may deem fit or as it may be prescribed and shall communicate the decision of the Cabinet of Ministers to the parties within fifteen days from the receipt of such decision.

Cap. 492. (5) A decision by the Cabinet of Ministers, pursuant to this article, which relates to a development or an installation which is subject to an environmental impact assessment and, or an IPPC permit, may, upon an application by the appellant or by an interested party, which may include a non-governmental organization having as one of its purposes the promotion of environmental protection and is registered under the [Voluntary Organisations Act](#), be subject to appeal on matters of substantive and procedural legality to the Court of Appeal in its superior jurisdiction. An appeal in terms of this sub-article shall be made by an application to be filed within ten days from the date of communication of the decision of the Cabinet of Ministers to the parties. The appeal proceedings shall be concluded by the Court of Appeal within four months from the filing of the appeal and shall not be prohibitively expensive. Legal and judicial costs and fees in the said proceedings shall be taxed in accordance with paragraph (7) of item 3 of Tariff A and with paragraph (b) of item 15 Tariff E in Schedule A to the [Code of Organization and Civil Procedure](#).

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(6) The execution of any development or the operation of any installation which is subject to an environmental impact assessment and, or an IPPC permit, and which is pending a decision by the Cabinet of Ministers in terms of this article shall be suspended until the decision of the Cabinet is taken.

Cap. 492. (7) Where a decision of the Cabinet of Ministers is subject to an appeal in accordance with sub-article (5), the Court of Appeal may, upon a request of the appellant or of an interested party, which may include a non-governmental organization having as one of its purposes the promotion of environmental protection and which is registered under the [Voluntary Organisations Act](#), order that the execution of the development or the operation of the installation be suspended whilst proceedings before the said Court are pending.

Obligations. **76.** (1) An environment and planning obligation may be entered into in those cases where the Authority, in connection with a grant of a licence or development permission, seeks to impose on the applicant an obligation:

- (a) to carry out an activity or works:
  - (i) on the land in respect of which development permission is sought, or
  - (ii) on any other land or area, or
  - (iii) on the land or area mentioned in both subparagraphs (i) and (ii); or
- (b) to make some payment or confer some extraneous right or benefit, where the Authority considers it to be more appropriate. The Authority shall seek to obtain these benefits or gains by means of conditions attached to a grant of the licence or development permission or by means of an environment and planning obligation entered into by a public deed made by the applicant for the licence or development permission with the Authority.

(2) Any person may, by agreement with the Authority, enter

into an environment and planning obligation:

- (a) restricting the development or use of that land in any specified way;
- (b) requiring specified operations or activities to be carried out, in, on, under or over that land or area;
- (c) requiring that land or area to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the Authority on a specified date or dates or periodically.

(3) The Minister may, in consultation with the Authority, make regulations for giving better effect to the provisions of this article and may, without prejudice to the generality of the foregoing:

- (a) prescribe the procedure how an environment and planning obligation may be entered into, enforced, modified and discharged;
- (b) establish any restrictions, conditions or the payment of any sums of money which may be imposed in such an environment and planning obligations; and
- (c) regulate appeals to the Tribunal made in terms of sub-article (4).

(4) The applicant and any person interested in land may appeal to the Tribunal from a planning obligation entered into in terms of sub-article (1).

2. Revocation or modification of permission,  
licence or authorisation and Discontinuance or removal orders

77. (1) The Authority or the Tribunal may, only in the cases of fraud or where public safety is concerned or where there is an error on the face of the record, by a decision revoke or modify any licence or development permission granted under this Act, including any clearance issued by the Authority under an Order, stating in such decision its reasons for so doing; and, prior to deciding to revoke or modify a licence or development permission in terms of this sub-article, the Authority or the Tribunal, as the case may be, shall inform the person who will be affected by its decision of the date and time of its meeting where the Authority or the Tribunal shall also hear the said person's submissions if the latter opts to attend, and any other person's submissions:

Revocation and  
modification.

Provided that the Authority or the Tribunal may in relation to any licence or development permission, including any clearance issued by the Authority under an Order, issued after the date of coming into force of this Act commence proceedings to revoke or modify any such licence or development permission, including any clearance issued by the Authority under an Order, within five years from the date of issuing of the licence or development permission, including any clearance issued by the Authority under an Order.

(2) For the purposes of sub-article (1):

"fraud" means the submission to the Authority of any information, declaration or plan on the basis of which the Authority

has approved a licence or development permission, where such information, declaration or plan is false, misleading or incorrect, irrespective of whether such deceit is the result of a wilful or negligent act:

Provided that the Authority shall not revoke or modify a licence or development permission on the basis of fraud where the fraudulent information did not have a material bearing on the issuing of the licence or development permission; and

"error on the face of the record" means an error on the face of a record which offends against the law.

(3) The applicant shall, if the decision is taken by the Authority, have a right to appeal the Authority's decision to the Tribunal within thirty days from the date of service of a revocation decision or a modification decision.

(4) No compensation shall be payable by the Authority when it acts under the provisions of sub-article (1) where the reason for the revocation or a modification of a licence or development permission is based on fraud or error of law on the face of the record.

(5) Where the reason for revocation or modification of a licence or development permission is public safety, the following rules shall apply:

- (a) any demolition or other work that may be necessary for compliance with the order shall be carried out by, or at the expense of, the Authority;
- (b) if on a claim made to the Authority within twelve months of the date of the revocation decision or the modification decision, it is shown that any person interested in the land has incurred expenditure that is rendered useless by the revocation or modification, or has otherwise sustained loss or damage that is directly attributable to the revocation or modification, the Authority shall, subject to paragraph (c), pay to that person compensation in respect of that expenditure, loss or damage;
- (c) no compensation shall be payable under this article:
  - (i) in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of the revocation or modification,
  - (ii) in respect of any work carried out before the grant of the licence or permission that is revoked or modified, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence or permission;
- (d) where compensation is payable under this article in respect of expenditure incurred in carrying out any work on land, if the competent authority under the [Land Acquisition \(Public Purposes\) Ordinance](#) acquires any interest in that land, any compensation

payable in respect of the acquisition of that interest shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under this article.

**78.** (1) The Authority may, having regard to the provisions of this Act, regulations, plans, policies and to other material considerations, by notice served on the owner or occupier of any land, require any existing use or activity or any works to be discontinued or any building, plant, equipment or other thing whatsoever to be removed from any land, or requiring both such discontinuance and removal.

Discontinuance  
and removal  
orders.

(2) Where a discontinuance or removal order is made in respect of an activity, works or use, or of a building, plant, equipment or other thing lawfully carried on or in existence on the land mentioned in the notice the Authority shall be liable to pay compensation for any losses sustained as a result of the notice:

Provided that any benefits derived from the same notice shall be offset against the losses aforesaid:

Provided further that no such compensation is due if the authorisation or permission itself allows the Authority to request the discontinuance of any existing use or activity or any works to be discontinued or any building, plant, equipment or other thing whatsoever to be removed from any land, or if such an order is made by the Court.

### 3. Charges and contributions

**79.** (1) The Authority shall have power to levy a charge in respect of any permission to carry out development, to be known as the Development Permission Fee, including any application therefor, in accordance with a schedule of charges established by it with the concurrence of the Minister and of the Minister responsible for finance, taking account of the nature of the development, the timing of the development in relation to the planned phasing thereof, of the conditions attaching to the permission and of any other relevant consideration.

Charges and  
contributions.

(2) The Authority shall have power to levy a contribution towards the cost of the infrastructure services and other services or facilities arising from any permission to develop land, to be known as the Infrastructure Service Contribution, from the person applying for such permission or carrying out such development, in accordance with such rates as the Authority may, with the concurrence of the Minister and of the Minister responsible for finance, from time to time determine, taking account of the services involved, the areas of development and other material considerations.

(3) The sums collected by the Authority under sub-article (2) shall be paid to the Government each year after a deduction therefrom is made to cover the reasonable costs incurred in the determination and levying of the contribution:

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Provided that with respect to contributions leviable by the Authority on behalf of the Authority for Transport in Malta in terms of article 20 of the [Code of Police Laws](#), such regulations shall be made with the concurrence of the Minister responsible for the Authority for Transport in Malta and the Minister responsible for finance, and such contributions leviable, as aforesaid shall, notwithstanding anything contained in this Act, be paid by the Authority to the Authority for Transport in Malta each year after a deduction therefrom is made to cover the reasonable costs as may be agreed between the two authorities incurred in the determination and levying of the contributions.

(4) The Authority shall have power to levy a charge in respect of any other application for a licence or authorisation made to it.

(5) The schedule of charges and the rates of contributions established under this article, as from time to time in force, shall be published as regulations and shall have effect as so published.

(6) The charges and contributions levied under sub-articles (1) and (2) shall be collectively known as the "building levy".

Payment of fee and contribution.

**80.** No licence or development permission shall be granted, and no activity or development authorised by an order shall be carried out, unless and until any fee or contribution payable under article 79 has been paid to and received by the Authority; and any activity or works carried out without such payment having been made and received shall be deemed to be an activity or development carried out without the permission of the Authority.

#### 4. Scheduling and Conservation

Scheduling and conservation orders.

**81.** (1) The Authority shall prepare, and from time to time review, a list of areas, buildings, structures and remains of geological, palaeontological, cultural, archaeological, architectural, historical, antiquarian, or artistic or landscape importance, as well as areas of natural beauty, ecological or scientific value (hereinafter referred to as "scheduled property") which are to be scheduled for conservation and may in respect of all or any one or more of the scheduled property make conservation orders to regulate their conservation:

Provided that upon the issue of a conservation order the owner shall have the right to immediate access at reasonable times to all documentation of the Authority concerning the said order for the purpose of studying the relative findings and considerations and the owner may contest the said decision in writing with the Authority within thirty days from the date when the order is notified to him or is published in the Gazette, whichever is the later.

(2) The list of conservation orders, and any additions or amendments thereto, shall be published in the Gazette and in a local newspaper. The Authority shall also notify any one of the owners of any property subject of a conservation order of the fact of its inclusion in the list and of any conservation order made with respect to it. Notice of such conservation order shall also be affixed on site. If none of such owners is known, or if it is not reasonably

possible to effect service on such owners, the said notice shall only be affixed on site and no service on such owners as aforesaid need be made. Notice of such conservation order shall be registered in an index held for that purpose which identifies the property subject to that order. The said index shall be held in an electronic form in such a way that researches to determine whether a property is subject to such an order may be carried out. The Authority shall keep a copy of the said index in the office of the Land Registry and shall issue a certificate which indicates whether a particular property is subject to the said order on the payment of such fee as may be prescribed.

(3) Where the Authority has scheduled property in terms of this article, it shall register the said property in the index mentioned in sub-article (2) indicating the said property as having been scheduled, and the provisions of the said sub-article concerning the indexing of conservation orders shall *mutatis mutandis* apply. The list of scheduled property, and any additions or amendments thereto, shall be published in the Gazette and in a local newspaper. The Authority shall also notify any one of the owners of the scheduled property of the fact of its inclusion in the list. A notice of the said scheduling shall also be affixed on site. If none of such owners is known, or if it is not reasonably possible to effect service on such owners, the said notice shall only be affixed on site and no service on such owners as aforesaid need be made.

(4) For the purposes of sub-articles (2) and (3), "site" means a single property or more than one property, irrespective of who is the owner of that property, which forms part of the land which is scheduled or which is subject to a conservation order in terms of this article.

(5) The carrying on of any work in, and the demolition, alteration or extension of, any scheduled property is prohibited or restricted as provided in this article or in a conservation order.

(6) No works of any description shall be carried out in or on any scheduled property and no scheduled property shall be demolished, altered or extended except with the permission of the Authority granted on an application made to it and giving such details as the Authority may require or in accordance with the provisions of a conservation order; and for the purpose of this article, damage to or destruction of any part of a scheduled property shall be deemed to be a demolition thereof.

(7) A permission of the Authority and a conservation order granted or made under this article may contain such conditions and other provisions as the Authority may deem necessary or expedient; and a conservation order may regulate any matter affecting scheduled property.

(8) In respect of any scheduled property, the Authority shall also have power to require the owner, by notice in writing, to undertake such works generally, or as may be specified in the notice, as may be necessary to ensure that no further deterioration occurs. In default, the Authority may give a further notice to the owner to carry out and complete the works within a specified time,

and if the owner is still in default it may itself carry out, or cause to be carried out, the necessary works and recover the cost thereof from the owner of the scheduled property.

(9) If any scheduled property is demolished in contravention of any of the provisions of this article then, in addition to any penalty or other effect under this Act, every person convicted of such offence shall be liable to pay compensation to the Authority calculated on the basis of whichever is the highest of the following:

- (a) the value of the thing destroyed,
- (b) the cost of restoration or repair,
- (c) the financial benefit which could be achieved as a consequence of the demolition.

(10) An owner of scheduled property has a right to demand the reconsideration of any scheduling of his property. Such demand shall be entered in writing with the Authority within thirty days of notification or publication in the Gazette, whichever is the later, of the scheduling and the Authority shall decide within three months of receipt by it of the demand for reconsideration.

(11) Any person who feels aggrieved by a decision of the Authority under this article may appeal to the Tribunal for a revocation or modification of such a decision.

(12) The Minister's endorsement shall be sought when the Authority deschedules a scheduled property or when it downgrades the protection afforded to a scheduled property, and no such descheduling or downgrading shall be valid before it is endorsed by the Minister.

(13) When the Tribunal decides to deschedule a scheduled property or to downgrade the protection afforded to a scheduled property, the Tribunal shall seek the Minister's endorsement and the period for lodging an appeal from the Tribunal's decision to the Court of Appeal shall commence to run from the date in which the Tribunal would have informed the appellant accordingly of the Minister's decision.

(14) Notwithstanding the provisions of article 41, an appeal to the Tribunal from a scheduling of property or the issue of a conservation order shall not stay the execution of such scheduling or conservation order.

Emergency  
conservation order.

**82.** (1) If a property, site or area which is not scheduled or protected under the provisions of this Act or any regulations made thereunder, but which the Authority believes could have an importance or value sufficient to have it scheduled or protected, is at risk of being demolished, damaged or destroyed, the Authority may make an emergency conservation order and take such further steps for the protection of such property, site or area as it may deem necessary and the provisions of the proviso to article 81(1) shall apply:

Provided that in case of urgency the Chairman of the Authority may make an emergency conservation order without the need of consulting the other members of the Authority.

(2) An emergency conservation order shall be published in the Gazette and shall have effect immediately on its publication.

(3) An emergency conservation order shall, for a period of six months from its publication in the Gazette, have the same effect as the inclusion of the property to which it refers in the list of scheduled property. It shall cease to have any effect on the expiration of the period aforesaid.

(4) Notwithstanding the provisions of article 41, an appeal to the Tribunal from an emergency conservation order shall not stay the execution of such order.

## PART VI

### Powers of the Authority and Enforcement of Control

#### 1. Right of Entry

**83.** Notwithstanding the provisions of any other law, for the purposes of carrying out their functions under this Act, the Board of the Authority, the Commission, the Tribunal and such officer, servant or committee or any other person as may be authorised by the Authority for this purpose, and if so required by the Authority with the assistance of the Police Force, shall have:

Right of entry.

- (a) the right to enter any premises, public or private, at all reasonable time, and in the case of a dwelling house after giving previous notice of at least forty-eight hours and not before nine o'clock in the morning or after seven o'clock in the evening, and inspect or survey any land, or verify whether an illegal development or activity is taking or has taken place;
- (b) board any vehicle or vessel licensed under this Act, or as may otherwise be prescribed;
- (c) examine any article to which this Act or any regulations under this Act may apply and take such samples as it may deem fit for examination;
- (d) make plans of any premises, vehicle or vessel and take photographs of the same after entry or boarding in accordance with paragraphs (a) and (b); or
- (e) do anything that is ancillary or consequential thereto.

#### 2. Enforcement of Control

**84.** (1) The Authority shall monitor all activities falling within the scope of this Act, including all development operations to ensure that all such activities and development is carried out only in accordance with the requirements of this Act and in compliance with the decisions lawfully taken under this Act.

Monitoring of activities and development.

(2) The Authority shall also undertake a review of all such activities and development carried out before the coming into force of this Act, or any other Act preceding this Act, not in compliance with rules, regulations, plans or policies in force at the time the activity or development took place; and in respect of any such activity or development the Authority shall have such powers as it

has in respect of an activity or development carried out after the coming into force of this Act in order to ensure that the rules, regulations, plans and policies aforesaid are enforced or, if this is not reasonably possible, to regularise any such an activity or development to the extent the Authority deems adequate in the circumstances.

Officers.

**85.** (1) The Authority may appoint officers for the purposes of this Act, and such inspectors may upon production of proof of their identity, in order to ensure compliance with this Act or any regulations made thereunder:

- (a) enquire from any person information in connection with any activity or other matter regulated by this Act;
- (b) issue stop or enforcement notices or orders to any person in accordance with the provisions of article 86.

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(2) The provisions of sub-article (1) shall be without prejudice to the powers of the Police, Local Wardens, the Comptroller of Customs or of any other authority under the [Criminal Code](#), the [Customs Ordinance](#) or any other law.

(3) Officers appointed under this article shall notwithstanding any other law have the right to assist the police in the conduct of prosecution for offences under this Act and to plead the case on behalf of the prosecution.

Enforcement  
procedure.

**86.** (1) If it appears to the Authority that an activity is being carried out without the grant of a permission or licence required under this Act or that any conditions subject to which such permission or licence was granted in respect of any such activity are not being complied with or such activity is in contravention to this Act or Regulations issued under this Act, the Authority may issue stop orders to any such person carrying out such an activity:

Provided that the Authority may issue a partial stop order requiring work or activity to be stopped forthwith only in relation to that part of the activity to which the order applies and not in relation to the whole activity.

(2) If it appears to the Authority that any development is being carried out without the grant of permission required under this Act, or that any conditions subject to which such permission was granted in respect of any development are not being complied with, the Authority shall serve a stop notice on the owner of the land or on the occupier of the land or on both, as the Authority deems most expedient, requiring works or the development to be stopped forthwith:

Provided that the Authority may issue a partial stop notice requiring work to be stopped forthwith only in relation to that part of the development to which the notice applies and not in relation to the whole development.

(3) A copy of the order or notice mentioned in sub-articles (1) and (2) may also be served on any representative, builder, contractor or workman on the site and the Authority may also affix such notice in a prominent position at a point of entry onto the site.

(4) The Authority shall, in the case of a notice issued under sub-article (2) also inform:

- (a) the local council in whose locality the land mentioned in sub-article (2) is found;
- (b) the perit responsible for the said works, if known, that a stop notice as aforesaid has been issued by the Authority:

Provided that the non-compliance with the provisions of this sub-article shall in no case invalidate any notice issued under sub-articles (1) and (2).

(5) The Authority shall register all stop orders and notices and all other enforcement notices in terms of this Act in the index mentioned in article 81(2), and the provisions of the said article concerning indexing of conservation orders shall *mutatis mutandis* apply to stop and other enforcement notices in terms of this Act.

(6) Any order or notice made under this article shall contain a detailed description of the infringements being alleged and where applicable, a site plan indicating the land which is the subject of such a notice shall be annexed thereto.

(7) If it appears to the Authority that any development of land has been carried out after the coming into force of this Act without the grant of permission required in that behalf under this Act, or that any conditions subject to which such permission was granted in respect of any development have not been complied with, the Authority may, having regard to the provisions of development plans, planning policies and any other material consideration, serve on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient an enforcement notice and shall inform the persons mentioned in sub-article (4) of such an enforcement notice, requiring such steps as may be specified in the notice to be taken within such time as may also be so specified for restoring the land to its condition before the development took place or for removing such development or for securing compliance with the conditions aforesaid, as the case may be; and in particular, but without prejudice to the generality of the aforesaid any such notice may, for the purpose aforesaid, require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on the land of any building or other operations.

(8) An order or notice given under any of the foregoing provisions of this article shall:

- (a) in respect of any requirement stopping or prohibiting further activity, works or development or requiring the cessation of a use, or in respect of any requirement of the notice if the notice refers to development listed in the Sixth Schedule or if the notice is issued under the provisions of article 88(1) in relation to a development situate on a site listed in the Sixth Schedule, or if the notice is issued under the provisions of article 88(2), take effect immediately upon service of the notice in terms of sub-articles (1) and (2) notwithstanding that

an application for a licence or development permission for the activity or development referred to in the order or notice has been submitted or an appeal has been lodged against the order or notice;

- (b) in respect of any other requirement, shall take effect at the expiration of such period (being not less than fifteen days and not more than thirty days after service thereof) as may be specified therein.

(9) When an application for development permission has been submitted before the expiry of the period mentioned in sub-article (8)(b) -

- (a) for the retention on the land of any buildings or works to which the enforcement notice relates; or
- (b) for the continuance of any use of the land to which the enforcement notice relates,

the operation of the notice, in respect of any requirement other than a requirement stopping or prohibiting any further work or development, or requiring the cessation of a use, shall be suspended pending the final determination of the application, and if the permission applied for is granted on that application and comes into operation, the enforcement notice shall cease to have effect:

Provided that if the notice refers to development listed in the Sixth Schedule, or if the notice is issued under the provisions of article 88(1) in relation to a development situate on a site listed in the Sixth Schedule or if the notice is issued under the provisions of article 88(2), the operation of the notice shall not be suspended pending the final determination of the application.

(10) Any application to regularise an activity or a development shall be dismissed forthwith if a requirement in the order or notice stopping or prohibiting further activity, work or development, or requiring the cessation of a use, has not, both prior or during the pendency of the application, been complied with or if any penalty or other payment for which any person has become liable under this Act in respect of the relevant activity or development has not been paid or if the application is made to regularize a development listed in the Sixth Schedule.

(11) The Authority may exercise its powers under article 90(1) notwithstanding that a second or subsequent application intended to regularize the illegal activity or development may have been filed with the Authority concerning the same or part of the same activity or site, irrespective of whether the said application is filed by the same applicant or by another applicant.

(12) Any person who feels aggrieved by any order or notice served on him may, within fifteen days from the service of the notice, appeal against it to the Tribunal, and on any such appeal the Tribunal:

- (a) if satisfied that a licence or permission was granted under this Act, or under any other law which preceded this Act regulating the activity in question or building permits, for the activity or the development to which

the order or notice relates, or that no such licence or permission was required in respect thereof, as the case may be, and that the conditions subject to which such licence or permission was granted have been complied with, shall quash the order or notice to which the appeal relates or such part thereof in respect of which the Board is satisfied as aforesaid;

(b) in any other case, shall dismiss the appeal.

(13) The appellant shall submit to the Tribunal together with his appeal a copy of all relevant licences or development permissions, other permits or other relevant information in terms of which a licence or a development permission has been granted to carry out the activity or development mentioned in the order or notice served on him which is the subject of the appeal proceedings; and if the Tribunal is satisfied that no such licence or development permission or permits exist or that there is no authorization, howsoever called, in terms of which the activity or the development could have been carried out, the Board shall forthwith dismiss the appeal.

(14) If before an appeal is lodged or during the pendency of an appeal, the appellant submits to the Authority an application for a licence or development permission regarding the activity or land mentioned in the order or notice, the Tribunal shall dismiss the appeal if it is satisfied that the said application is intended to regularize the activity or development mentioned in the order or notice.

(15) Where an appeal is dismissed, the Tribunal may direct that, in respect of any requirement, other than a requirement stopping or prohibiting any further activity or work or development, or requiring the cessation of a use, the order or notice shall not come into force until such date, being a date not earlier than fifteen days after the determination of the appeal, as the Tribunal thinks fit.

(16) The Tribunal may correct any defect or error in the enforcement notice provided that the appellant shall be given sufficient time to prepare and put forward his case.

(17) Where the illegal activity or development is being carried out at sea the provisions of this article shall apply in such manner that any reference therein to the owner of the land or the occupier of the land shall be deemed to be a reference to the person carrying out the activity or development, and any reference to land shall be deemed to be a reference to the area at sea where the activity or development occurs.

(18) All notices or orders issued under this Part shall be accompanied by a site plan.

**87.** If it appears to the Authority that anything which is prohibited or restricted or subject to a condition by or under any of the provisions of article 81 or under regulations made under this Act intended to protect natural habitats and species, is being done or carried on or has been done or carried on in contravention of any such prohibition, restriction or condition or without any permission

Enforcement in  
relation to  
scheduled property.

or other requirement, or without compliance with any condition, mentioned in those articles or any orders made thereunder, the Authority shall serve a notice on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient and shall also inform of the issue of such notice the persons mentioned in article 86(4), requiring such steps as may be specified in the notice, including the discontinuance of anything being done or carried on, to be taken within such time as may also be specified in the notice. The provisions of the proviso to article 86(4) shall also apply to any notice under this article.

Injury to amenity and removal of danger.

**88.** (1) If it appears to the Authority that the amenity of any area is injured by the appearance or condition of any building or any land, being a garden, vacant site or other open land, or by the appearance of a site upon which development or construction or any other works are taking or have taken place, the Authority shall serve an enforcement notice on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient and shall also inform of the issue of such notice the persons mentioned in article 86(4), requiring such steps to be taken for abating the injury as may be specified in the notice. The provisions of the proviso to article 86(4) shall also apply to any notice under this article.

(2) The Minister may, in consultation with the Authority, by regulations under this article provide that property which is in a state of disrepair and, or constitutes a danger, shall be demolished by its owner or by the Authority in accordance with the provisions of article 90. Without prejudice to the generality of the foregoing, such regulations may prescribe:

- (a) the manner through which the state of the property is certified as constituting a danger,
- (b) the methodology and procedures to be used by the Authority in any action it may take as aforesaid.

Other notices.

**89.** A notice under articles 87 and 88 is also in this Act referred to as "enforcement notice" and, unless the context otherwise requires and subject to such modifications and adaptations as may be necessary to give full effect to the provisions of those articles, wherever that expression appears in this Act it shall include a notice given under those articles.

Supplementary provisions as to enforcement and proceedings for debts due to the Authority.

**90.** (1) If any steps or other action, including any discontinuance, stoppage or similar requirement, required to be taken by an enforcement notice have not been taken within the time specified therein, the Authority may enter on the land, or the area at sea and take such steps or other action as aforesaid, including the disabling or removal of any equipment, machinery, tools, belongings, vehicles or other objects that may be on site and the carrying out of any works necessary to comply with what is requested in the enforcement notice and may for such purpose request the assistance of the Police Force, any local council, any department of Government or any agency of Government; and the Police Force shall for such purpose exercise such powers as are vested in them at law.

(2) Where the removal of an illegal development involves by necessity the removal also of a development which is not illegal, the Authority may proceed to remove also such other development, the removal of which is necessary as aforesaid.

(3) Notwithstanding the provisions of any other law and saving the provisions of article 46 of the [Constitution](#) and article 4 of the [European Convention Act](#), no precautionary act may be issued by any court against the Authority restraining it from the exercise of any of the powers conferred upon it by this article.

Cap. 319.

(4) Subject to the provisions of regulations made under this Act, when an enforcement notice has not been appealed or where an enforcement notice has been appealed but has been confirmed by the Appeals Board or by the Court of Appeal, as the case may be, and the owner of the land subject to an enforcement order fails to comply with the said order within the period therein prescribed, such person shall be liable to a maximum penalty of not more than fifty euro for every day the default continues after the expiration of the said period as the Authority may prescribe under the said regulations; and the Authority may recover such penalty from the said person as a civil debt owing to it.

(5) All expenses reasonably incurred by the Authority in the exercise of its powers under this article, or any other amount due to the Authority under any other provision of this Act or regulations made thereunder shall, be recoverable as a civil debt by the Authority from the owner of the land, or from any occupier of the land, or from any person responsible for the acts mentioned in the notice, including a notice of payment, or an applicant, subject to such right of recovery such person may have against any other person. The Authority shall not be liable for any damages as a result of the exercise of its powers under this article unless it is proved that such damage resulted from gross negligence on the part of the Authority, its officers and agents.

(6) Where the Authority desires to sue for the recovery of a debt due to the Authority under any law or regulation which it is entitled to enforce, the Chairman, Chief Executive Officer or an officer of the Authority duly authorised by the Authority to act on its behalf may make a declaration on oath before the Court registrar or before any other officer authorised to administer the oath in judicial matters, wherein he states the nature of the debt and the name of the debtor and confirm that it is due.

(7) The declaration referred to in sub-article (6) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application demanding that the court declare the claim unfounded.

(8) The application filed in terms of sub-article (7) shall be served upon the Authority, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(9) Any debts due to the Authority shall be prescribed by the

lapse of the period of five years from the date on which the debt was due.

Procedure to apply to certain types of development.

**91.** (1) Notwithstanding the other provisions of this Act, any person who is served with an enforcement notice in respect of development referred to in Schedule 8, shall have the right to claim that such notice shall not be executed. The said person shall furnish the Authority with the requisite proof to that effect including any relevant documentary evidence and such other evidence as the Authority considers necessary in accordance with and subject to the procedure established by the Authority.

(2) An enforcement notice falling within the provisions of sub-article (1), the development in question shall not be considered as having been regularised in terms of this Act unless and until a development permission has been granted to cover the development in question and a penalty fixed by the Authority within the limits established in article 93 has been paid:

Provided that a person requested to pay such a penalty may appeal from such request in the manner provided for in article 93.

(3) When the Authority receives an application for development permission requesting amendments, alterations, additions or extensions to a development referred to in Category A of Schedule 8, the applicant shall request the Authority to sanction the said illegal development in terms of the provisions of this Act, if such sanction is possible in terms of law. Where the illegal development has not been sanctioned no further development permission, other than for that type of development which may be prescribed by the Minister, after consultation with the Authority, from amongst the development mentioned in article 63(9)(a) and (b), may be granted with respect to the land in question unless and until the illegal development is removed.

(4) Where any person claims to the Authority that an enforcement notice falls within the provisions of sub-article (1), and the Authority does not accept such claim, the period of fifteen days mentioned in article 86(12) shall commence to run from the date that the Authority serves such person with a notice to the effect that it is not accepting such claim.

(5) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article.

Certificate of development according to permit.  
Cap. 356.

**92.** (1) The following provisions shall have effect with respect to any development which has taken place or is to take place after the date of the coming into force of the Development Planning Act\*, hereinafter referred to as "new development".

(2) No service consisting in the supply of water or electricity to any new development shall be provided by any authority unless there is in respect of such development a certificate issued by the Authority stating that the development is in accordance with a development permission or falls under Category B of the Eighth

\*Repealed by this Act; but see footnote to article 8(2)(a).

Schedule.

(3) In any of the circumstances in which the Authority may serve an enforcement notice or order under any of the provisions of this Act, the Minister shall, in consultation with the Authority, by regulations under this article provide that such a notice is registered with the Land Registry and served on the Director of the Public Registry of Malta in the case of land situated in the Island of Malta and on the Director of the Public Registry of Gozo in the case of land situated in Gozo. Without prejudice to the generality of the foregoing, such regulations may prescribe:

- (a) the procedures to be used by the Authority in making such a registration;
- (b) the prohibition of the transfer *inter vivos* by any title whatsoever of any land in respect of which a notice as aforesaid may be, or has been, served, and the transfer or creation of any real right thereon, by any title *inter vivos* whatsoever and that any transfer of any land and any transfer of any real right thereon, made by an act *inter vivos* under any title whatsoever, shall be null and without effect.

(4) The provisions of article 41 shall apply to an order made under this article, and to any refusal to revoke such an order, as they apply to a decision of the Authority referred to in sub-article (1)(a) of that article.

**93.** (1) Notwithstanding any other law providing for the trial and punishment of offences, where the Authority believes that a person has committed an offence against this Act, other than an offence under article 94(1)(d), the Authority may give notice in writing to such person describing the offence of which the person is accused, indicating the steps to be taken to remedy the offence and a penalty which he is required to pay in respect of that offence:

Special procedure.

Provided that the Authority may not require the payment of a penalty higher than fifty thousand euro and shall be in accordance with a schedule of penalties, which the Minister, after consulting the Authority, and with the concurrence of the Minister responsible for finance, may by regulations prescribe:

Provided further that any person who feels aggrieved by a decision of the Authority under this sub-article, may appeal to the Tribunal for a revocation or modification of such a penalty.

(2) Where a notice under this article has been given, the person named in the notice may, within twenty-one days of the service of the notice, accept responsibility for the offence specified in the notice and within the same period or such further period as the Authority may allow, remedy the offence and pay, or undertake in writing to pay, the penalty indicated in the notice or such other penalty as the Authority may accept in lieu, and in any such case:

- (a) the person named in the notice shall be deemed to have committed the offence and to have admitted his guilt in respect thereof, and the penalty paid, or agreed to be paid, shall be the penalty to which he became liable to

pay;

- (b) if the offence is remedied and the penalty is paid within the period, or further period, aforesaid, no further proceedings may be taken against the said person in respect of the same facts:

Provided that the agreement to pay to the compromise penalty shall not extinguish any civil liability to make good any damages to any person or authority and any liability arising under article 38;

- (c) if the penalty is not paid within the period, or further period, aforesaid, it shall be treated as if it were a penalty ordered to be paid by a court and proceedings may be taken accordingly to recover the same as a civil debt due to the Authority.

(3) Where the person to whom notice is given under sub-article (1) does not accept or, having accepted such responsibility, fails to remedy the offence within the time aforesaid, ordinary criminal proceedings may be taken against him in accordance with the provisions of law applicable to the offence.

## PART VII

### Offences

Offences.

- 94.** (1) Any person who -
- (a) carries out any development on any land or allows any development to be carried out on land of which he is an owner without a development permission as in force at the time of such development, or, if the development is carried out with a development permission, fails to comply or to cause compliance with any condition, restriction or other limitation to which the permission is subject; or
- (b) acts in contravention of any of the provisions of article 81 and 82 in respect of any scheduled property, an emergency conservation order; or
- (c) having been served with an enforcement notice or other notice under articles 78, 86, 87 or 88 fails to comply with any of the requirements of such notice within the time therein specified; or
- (d) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest or interfere with, any officer or employee of the Authority, or any police officer, or any public officer, or any employee or servant of any department of Government or of any agency of Government or of any local council, in the execution of his duties under the law or fails to comply with any reasonable requirement demanded of him by any such person as aforesaid or otherwise to assist him in the carrying out of the said duties, or knowingly furnishes such person with false information or neglects or refuses to give any information required

for the purpose aforesaid; or

- (e) makes a declaration for any of the purposes of this Act which is false, misleading or incorrect in any material respect,

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of not less than one thousand five hundred euro and not exceeding one hundred thousand Euro, and in respect of an offence under paragraph (d) or, in the case of an offence under paragraph (c) if the offender persists in the offence for more than three months, also to imprisonment for a term of not less than three months and not exceeding three years:

Provided that, and without prejudice to the provisions of articles 81(9) and article 90(3) and (4) and without prejudice to the maximum fine above established, the minimum fine (*multa*) to which an offender is liable under this article shall not be less than the value of any work carried out without permission or in violation of any conditions to which such permission was subject.

(2) The Court, besides awarding the punishment referred to in sub-article (1), shall order the offender to remove the causes of the offence and to undo anything which was done without a permission or to comply with the conditions imposed in the permission, as the case may be, within a time sufficient for the purpose, but in any case not exceeding three months from the date of the judgment, to be fixed by the court; and, if the offender fails to comply with any such order within the time so fixed, he shall be liable to a fine (*multa*) of not less than fifty euro and not more than one hundred and thirty euro, as the court may fix, for every day the default continues after the expiration of the said time and may also order the modification, suspension or revocation of any authorisation or permission.

(3) Proceedings against any person for any offence as is mentioned in sub-article (1) shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as courts of criminal judicature in accordance with the provisions of the [Criminal Code](#):

Cap. 9.

Provided that, notwithstanding the provisions of article 376(1)(b) of the Criminal Code, the Court shall, at the request of the prosecution or of the accused, take down evidence given by the witnesses in the manner provided for either in article 390(6) of the said Code or in any law for the time being in force.

Cap. 9.

(4) Article 21 of the [Criminal Code](#) and the provisions of the [Probation Act](#) shall not apply to any offences referred to in this article.

Cap. 9.

Cap. 446.

(5) The filing of an application intended to regularise any illegal development or activity to which a prosecution refers, and the filing of an appeal against a refusal of such an application shall not be a bar to the continuation of such a prosecution and the court shall continue to hear such a case and shall give judgement and shall issue an order in terms of sub-article (2) as if such an application or such an appeal had never been filed:

Provided that where such an activity or development has been regularised no fine under sub-article (2) shall be due in respect of the time after the development has been regularised.

Cap. 9.

(6) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given in proceedings arising out of this Act or of any regulations, rules or orders made thereunder.

Certified copies of documents.

**95.** In any proceeding or prosecution under this Act, a copy of any order, notice, decision or other document purporting to have been made under this Act and purporting to have been signed by the Chairman of the Authority or by the Chief Executive Officer or any Director, shall be accepted as evidence of the order, notice, decision or other document, and of the facts appearing therein, without further proof.

## PART VIII

### Miscellaneous

Service of notices, etc., under this Act.

**96.** (1) Where any notice or other instrument or document whatsoever is required or authorised to be served or given by or under this Act, it may be served or given in any of the following manners:

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person or, if such person has furnished an address for service, at that address; or
- (c) by sending it in a registered letter addressed to that person at the place of abode or the address for service aforesaid; or
- (d) in the case of a body corporate or other body of persons, by delivering it to an officer or servant thereof at the registered or principal office, or sending it in a registered letter addressed to the body aforesaid at that office; or
- (e) in any case in which it is not reasonably possible to effect service in any of the foregoing manners whether on all or on any one or more of the persons on whom service is to be made or notice is to be given, by affixing the document to be served or given in a conspicuous place on the land to which it relates and keeping it so affixed for a period of not less than seven days.

(2) Where the notice or other document is required or authorised to be served or given to any person as having an interest in land, and the name of that person cannot be ascertained after reasonable inquiry, or is required or authorised to be served on an occupier of land, the notice shall be deemed to be duly served or given if it is served or given in any of the manners indicated in sub-article (1) and addressed to the person having an interest in the land

by the description of "owner" or "occupier", or "owners" or "occupiers", as the case may require.

97. (1) The Minister may with effect from such date as may be established by notice in the Gazette repeal the Development Planning Act and the Environment Protection Act\* and different dates, rules and procedures may be so established for the revocation and, or applicability of different provisions thereof.

Savings.  
Cap. 356.  
Cap. 435.

(2) The Minister may by regulations made under this Act, provide that for the words "Director", "Director of Planning" and "Director Environment Protection", wherever they may occur in regulations made under the Development Planning Act or Environment Protection Act, there shall be substituted the word "Authority" and any definition of "Director", "Director of Planning" and "Director Environment Protection" in regulations made under the same Acts shall be deleted.

Cap. 356.  
Cap. 435.

(3) Any order, rule, regulation, bye-law, notice, plan or policy or other instrument having the force of law made under the authority or kept in force under any of the provisions of the Development Planning Act or the Environment Protection Act shall continue in force and shall continue to have effect as if made under this Act and may be amended, substituted or revoked accordingly.

Cap. 356.  
Cap. 435.

(4) Any licence, permission, authority, order, notice or certificate, or any prosecution or charges granted or made under or kept in force under any of the provisions of the Development Planning Act or the Environment Protection Act and still in force immediately before the date of coming into force of this Act shall as from such date continue in force as if it were a licence, permission, authority, order, notice or certificate, or prosecution or charges granted or made under a corresponding provision of this Act, and any such licence, permission, authority, order, notice or certificate, or prosecution or charges as aforesaid shall be treated and dealt with accordingly:

Cap. 356.  
Cap. 435.

Provided that in the case of any such licence, permission, authority, order, notice or certificate issued as operative for a specific period, such licence, permission, authority, order or certificate shall remain operative for such a period from the date such licence, permission, authority, order, notice or certificate was issued.

(5) The Users' Committee established under the provisions of article 36, the Heritage Advisory Committee established under the provisions of article 37, the Environment and Planning Review Tribunal established under the provisions of article 40 and the Environment Fund established under the provisions of article 38, shall perform and succeed all the functions, assets, rights, liabilities and obligations of the Users' Committee, the Heritage Advisory Committee and the Planning Appeals Board respectively established under the provisions of the Development Planning Act and the Environment Fund established under the provisions of the Environment Protection Act.

Cap. 356.  
Cap. 435.

\*but see footnote to article 8(2)(a).

*Amended by:  
L.N. 57 of 2011.*

## FIRST SCHEDULE

### Article 6

#### Provisions with respect to the Authority and the Environment and Planning Commission

1. The provisions of this schedule regulate the procedures to be used by the Authority and the Environment and Planning Commission. For the purposes of this Schedule, wherever the word "Authority" is used, it is to be construed as to include the Environment and Planning Commission, unless the context otherwise requires.

2. The Authority may act notwithstanding any vacancy amongst its members, provided there is a quorum present at the meeting.

3. The quorum of the Authority shall consist of the chairman or deputy chairman and not less than half the number of the other members constituting the Authority at the time of the meeting.

4. The meetings of the Authority shall be called by the chairman either on his own initiative or at the request of any two members of the Authority; and the Authority shall also meet at such times as it may itself decide.

5. The chairman, or the deputy chairman acting in his place, shall have an original vote, and where the votes are equally divided, a second or casting vote. All members of the Authority present at its meetings shall cast their vote in favour or against any motion put to the vote.

6. Without prejudice to the provisions of article 16, a member of the Authority who has a direct or indirect interest in any matter coming before the Authority for consideration shall, not later than the first meeting held after the relevant circumstances have come to his knowledge, disclose the nature of his interest. Such disclosure shall be recorded in the minutes of the meeting and the member:

- (a) shall not take part in any discussion or decision of the Authority with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum for any such discussion or decision.

7. All acts done by any person in good faith as a member of the Authority shall be valid and effective as if he were a member even if some defect in his qualification for appointment is subsequently discovered.

8. Subject to the provisions of this Act, including this Schedule, the Authority may regulate its own procedure.

9. The meetings of the Authority shall be open to the public, and the Authority shall allow the applicant and his representative, or any one of them, and an interested third party who made representations in accordance with the provisions of article 68(4), to make submissions on any matter under consideration. The Chairman, at his absolute discretion, may also allow any other member of the public to make submissions, subject to the power of the Chairman to exclude any member of the public if it deems it necessary so to do for the maintenance of order and to limit the participation of the applicant and his representative or of the interested third party who made representations in accordance with the provisions of article 68(4) or the public as it may deem appropriate.

10. At the request of any member of the Authority, the deliberations of the Authority shall be held in private but every vote shall be conducted in public. No

secret vote shall be allowed. Where the Authority votes against a recommendation, if any, made by the Director, the Chairman of the Authority shall register in the relevant file the specific environmental and planning reasons adduced by the Authority.

11. The Authority shall decide and determine any matter under its consideration during the first sitting at which such a matter is brought for determination. The Authority may request the applicant to file fresh plans and documents, in which case the Authority shall give reasons for such a request provided that the substance of the matter under its consideration shall not change and any person who has made written submissions on the application in terms of article 68(4) shall be informed that such fresh plans and documents have been so filed and shall also be invited to be present at the Authority's sitting, as the case may be, when such application shall be discussed. When the Authority puts off a decision on an application either when the applicant is required to submit fresh plans and documents, or for the furnishing of further information, in which case the Authority shall give reasons for requiring such further information, or when the Authority needs to consult in terms of article 45 in which case the Authority shall give reasons for requiring such consultation, the Authority shall, during the meeting establish the date for the next sitting for the determination of the application, such date being not later than thirty days from the date of the last meeting:

Provided that the Authority may also delegate to the Chairman or any of its members, the power to endorse any revised plans or documents relating to any matter under its consideration.

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## SECOND SCHEDULE

### Article 41

*Amended by:*  
*L.N. 223 of 2014;*  
*L.N. 404 of 2014;*  
*L.N. 470 of 2014.*

#### **Proceedings before the Environment and Planning Review Tribunal and appeals therefrom**

1. (a) The application shall contain the grounds for the appeal and the request of the appellant, and, in the case of an appeal from the refusal of a permission or licence, it should include a copy of the application form and documents and plans submitted for approval together with all documentation which is relevant for the grounds of appeal, including a copy of the Authority's decision appealed from.  
(b) The time period when an appeal can be lodged before the Tribunal as established in this Act shall be suspended only during such period when the Tribunal's administrative secretariat's offices are closed between the 23rd December of any year and the 1st January of the following day, both days included.  
(c) A copy of the appeal and the ancillary documentation shall be communicated to the Authority before the appeal is heard. The Authority shall file its reply within thirty days of service upon it or within such time as established by the Tribunal. The reply shall be served upon the appellant.
2. The appellant shall appear before the Tribunal either in person or by agent

on the day and at the time fixed for the hearing, make his submissions and produce such evidence as the Tribunal may allow:

Provided that the Tribunal may postpone the hearing of the appeal if it is satisfied that the appellant was prevented from appearing before it owing to illness or absence from Malta or other similar reasonable cause.

3. The Tribunal shall give the Authority an opportunity to make its submissions in justification of its decisions, and bring such evidence as the Tribunal may consider necessary.

4. The Tribunal shall have the power to summon witnesses and to administer the oath to any person appearing before it. Should a witness duly notified by a summons signed by the Chairman of the Tribunal fail to enter an appearance before the Tribunal, such person shall be guilty of an offence and liable, on conviction, to a fine (*multa*) of not less than five hundred euro and not more than five thousand euro.

5. The Tribunal shall have power to confirm, revoke or alter the decision appealed against and give such directions as it may deem appropriate:

Provided that the Tribunal may request the appellant to submit fresh documents and plans, in which case the Tribunal shall give reasons for such a request provided that the substance of the matter as presented before the Authority shall not change.

6. The decisions of the Tribunal shall be final and no appeal shall lie therefrom except on a question of law only.

7. If the appellant or the Authority are dissatisfied with any point of law decided by the Tribunal, they may appeal to the Court of Appeal (Inferior Jurisdiction) by an application filed as provided in article 41.

8. All hearings of the Tribunal shall be held in public and all decisions of the Tribunal shall be given in public.

9. Subject to the foregoing provisions and to the provisions of this Act, the Tribunal shall regulate its own procedure.

10. The Minister responsible for justice may by regulations made under this Schedule establish fees payable in the registry of the courts in relation to the filing of judicial acts in connection with appeals before the Court of Appeal (Inferior Jurisdiction) under this Act:

Provided that until such fees have been so established by the Minister, the fees contained in Schedule A to the [Code of Organization and Civil Procedure](#) shall apply.

11. A registered third party in terms of article 68(4) of this Act shall be informed by the Tribunal that an appeal has been filed and he may request the Secretary of the Tribunal to register him as an interested third party in such an appeal. Such a person shall have a right to address the Tribunal and may be requested by the Authority or Commission to give evidence in the appeal proceedings concerning the said appeal. Unless the Tribunal decides otherwise, such a person may be present during all sittings of the Tribunal. Such a person may not attend site inspections where the Tribunal enters upon the property of the appellant if the appellant objects to the presence of such a person entering upon his property. Such a person shall have a right to be given a copy of the Tribunal's decision with regard to those appeal proceedings for which he has been registered with the Secretary of the Tribunal as interested third party. Such a person may file an appeal from a decision of the Tribunal before the Court of Appeal (Inferior Jurisdiction).

12. When an appeal has been lodged by a person other than the applicant, such a person need not prove that he has an interest in that appeal in terms of the doctrine of juridical interest which doctrine shall not apply to such proceedings, but he shall submit reasoned grounds based on environmental and, or planning considerations to justify his appeal.

13. The Tribunal may deem an appeal as abandoned if the appellant shows no interest in the appeal submitted by him.

14. The Tribunal may impose a fine of €2,500 in such cases where it declares such proceedings frivolous or vexatious and in such cases the Tribunal's decision shall be final without any redress before the Court of Appeal (Inferior Jurisdiction).

15. The Tribunal may impose such fees on the party making the request as established for the carrying out of site inspections. Should the Tribunal decide to hold such inspection at its own motion, it will be the appellant who will incur the fee.

16. The Authority shall ensure that detailed information is made available to the public concerning access provided for under this Act to appeal procedures before the Tribunal and before the Court of Appeal, including information on the rights of any person to institute appeal proceedings, and shall give information on legal time limits and on mandatory fees payable in respect of such proceedings, including through publication on the electronic website of the Authority.

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### THIRD SCHEDULE

#### Article 12

##### **The Directorates of the Authority are:**

1. **Environment Protection Directorate** - which shall have the responsibility of Environment Protection, the development and coordination of environmental policies, plans, legislation and guidelines, the processing and determination of applications for activities falling within the jurisdiction of the Directorate, Environmental Audits and Environmental Assessments, the State of the Environment Report, the educational aspects of the environment within the Authority, the development of standards and the coordination of International and European Union affairs.

2. **Development Planning Directorate** - which shall have the responsibility of Development Planning, the development and coordination of development planning plans and policies, the processing of applications relating to development planning and the educational aspects of the development planning within the Authority.

3. **Corporate Services Directorate** - which shall have the responsibility for providing common legal, financial, human resources and administrative services that are required for the proper functioning of the Authority.

4. **Enforcement Directorate** - which shall have the responsibility for the overall enforcement of the provisions of this Act and other laws and regulations regulating the environment and development.

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## FOURTH SCHEDULE

## Article 34

**The Standing Committee on Environment and Development Planning**

The plans and policies that the Minister shall refer to the Committee in accordance with the provisions of article 34(2)(c) are:

- (a) Those plans and policies which refer to the land situate outside areas designated for development as defined in the Structure Plan or in any other plan;
- (b) Those plans and policies which exclusively regulate height limitations and restrictions thereon;
- (c) Local plans, excluding minor amendments to such plans;
- (d) Policies relating to and regulating the certificate of development according to permission.
- (e) The state of the Environment Report.

## FIFTH SCHEDULE

## Article 42

**The Registration Board**

Consultants to carry out the following assessments have to be registered with the Board:

1. Environmental Impact Assessments;
2. Appropriate Assessments in relation to sites falling within a Special Area of Conservation or a Special Protected Area;
3. Strategic Environment Assessments;
4. Assessments in relation to Scheduled property and sites.

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SIXTH SCHEDULE

## Article 70

**Applications which fall under the provisions of article 70**

1. An application to regularise a development which exceeds the approved footprint or, increases the approved volume of the building and is not part of a registered livestock farm and is carried out after May 2008 in an area which falls outside areas designated for development as defined in the Structure Plan or in any other plan; or
  2. An application to regularise a development in a scheduled property; or
  3. An application to regularise a development carried out after May 2008 in an area protected under the provisions of this Act or any regulation made thereunder.
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## SEVENTH SCHEDULE

## Articles 41 and 69

1. Applications which fall under the provisions of articles 41 and 69:
  - (a) Development in an area which falls outside areas designated for development as defined in the Structure Plan or in any other plan; or
  - (b) Development in a scheduled property grade 1 or grade 2; or
  - (c) Development in a property containing archeological remains; or
  - (d) In the case of demolition within Urban Conservation Area which includes demolition of facade; or
  - (e) Development in an area protected under the provisions of this Act or any regulation made thereunder.
2. Subparagraphs (b), (d) and (e) of paragraph (1) shall also apply in such cases where the protection status of the site is still being proposed.

## EIGHTH SCHEDULE

## Article 91

*Amended by:*  
*L.N. 229 of 2012;*  
*L.N. 52 of 2013;*  
*L.N. 121 of 2013.*

## Category A:

1. Development carried out prior to 1st January, 1993 within a Temporary Provisions Scheme development boundary or a development boundary as indicated in a local plan other than:
  - (i) when such development consists in change of use; or
  - (ii) where such development is not in conformity with the alignment of roads or buildings as specified in or interpreted from a Temporary Provisions Scheme or local plan.

## Category B:

1. These provisions shall apply to development in existence on the coming into force of these regulations and shall include the following:
  - (i) Size of internal yards
    - (a) if the length of any side of the internal yard is up to 65% of that required by law and the overall area of the yard is more than 65% of what it should have otherwise been;
    - (b) if the length of any side of the internal yard is between 50% and 65% of that required by law and the overall area of the yard is within the same range, subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation aided, if necessary, but not exclusively limited to artificial lighting and forced mechanical ventilation respectively;
    - (c) premises which have internal yards that are less than half the size of what they should have otherwise been are not included:

Provided that the provisions of sub-category (i) shall be applicable to dwellings in all areas and to premises within development zones limited

to Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(b), (d), (e), (m), (n) and (p) of the [Development Planning \(Use Classes\) Order](#) (S.L.504.09).

(ii) Size of back yard

- (a) if the depth of any back yard is up to 65% of that required by law and the overall area of the yard is more than 65% of what it should have otherwise been;
- (b) if the depth of any back yard is between 50% and 65% of that required by law and the overall area of the yard is within the same range, subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation;
- (c) premises which have a back yard less than half the size of what it should have otherwise been are not included:

Provided that the provisions of sub-category (ii) shall not be applicable to backyards where the remaining distance from the back party wall is less than 1.5 metres at any point, except where requests in terms of the Environment and Development Planning Act, Article 91 Eighth Schedule Category B relating to any level of the backyard was submitted prior to 29th January 2013:

Provided also that the provisions of sub-category (ii) shall be applicable to dwellings within areas zoned for terraced development within the development zone and to premises within development zones limited to Class 2, Class 3, Class 4, Class 5, Class 7, Class 8, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the [Development Planning \(Use Classes\) Order](#) (S.L.504.09):

Provided further that the provisions of sub-category (ii) shall also be applicable to residences in Category 1 and Category 2 Rural Settlements ODZ, and to residences in areas zoned for villa and bungalow developments as long as the statutory site coverage is not being exceeded or conforms with sub-category (viii)(a) and as long as the side curtilage is not being encroached upon in excess of that covered by sub-category (vi)(a).

(iii) Internal height of structures

- (a) premises with a clear floor to ceiling internal height of more than 2.6 metres;
- (b) premises with a clear floor to ceiling height of less than 2.6 metres but more than 2.4 metres subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation;
- (c) premises with a clear floor to ceiling height which is less than 2.4 metres are not included:

Provided that the provisions of sub-category (iii) shall be applicable to dwellings in all areas and to premises within development zones but limited to Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the [Development Planning \(Use Classes\) Order](#)

(S.L.504.09).

(iv) Room in back yards

Rooms at the ground floor level or at the floor level immediately above garage or shop levels of any premises, provided that the room has natural ventilation and natural lighting, as long as the cumulative area of the room and any reduction in size of the backyard does not exceed 35% of the required back yard area, and provided that the external height of the room including any *opramorta* is not higher than 3.4 metres above the finished floor level of the backyard:

Provided that the provisions of sub-category (iv) shall be applicable to dwellings within areas zoned for terraced development within the development zone and to premises within development zones limited to Class 2, Class 3, Class 4, Class 5, Class 7, Class 8, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the [Development Planning \(Use Classes\) Order](#) (S.L.504.09):

Provided further that the provisions of sub-category (iv) shall also be applicable to residences in Category 1 and Category 2 Rural Settlements ODZ, and to residences in areas zoned for villa and bungalow developments as long as the statutory site coverage is not being exceeded or conforms with sub-category (viii)(a) and as long as the site curtilage is not being encroached upon in excess of that covered by sub-category (vi)(a).

(v) Encroachments beyond property

- (a) ramps or steps which do not protrude more than 30 centimetres beyond the official alignment onto the pavement as long as the pavement width of 1.2 metres is retained. This is not applicable in respect of areas schemed with front garden;
- (b) pilasters whose height does not exceed 1.4 metres, which are not wider than 50 centimetres and which do not protrude more than 30 centimetres beyond the official alignment:

Provided that the provisions of sub-category (v) shall only be applicable to:

- (i) residential development within the development zone;
- (ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);
- (iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);
- (iv) Social, Community, Educational, Governmental and Religious facilities within the development zone;
- (v) areas zoned for Industry or Warehousing; and
- (vi) above-mentioned uses located in Category 1 Rural Settlements ODZ:

Provided further that the development identified in this sub-category shall be removed at the request of any public authority, including the Local Council, and nothing contained in the provisions of this Act including this Schedule may prejudice such a request.

(vi) Encroachments within property

- (a) where the facades proper of the buildings themselves, excluding enclosures, porches, and any other structures whose height exceeds 1.25 metres, encroach within the first 1/3 of front gardens, and not more than 25 centimetres within villa or bungalow side gardens;
- (b) structures in front and side gardens and roof setbacks whose height does not exceed 1.25 metres above floor level externally and which are cumulatively not larger than 10m<sup>2</sup> in each of these spaces;
- (c) where the setbacks of permitted roof structures on residences are reduced to not less than 4 metres from the underlying building elevations; and
- (d) where the setbacks of permitted garages in the side curtilage of schemed villa or bungalow development are reduced to not less than 4 metres from the building alignment:

Provided that the provisions of sub-category (vi) shall only be applicable to:

- (i) residential development within the development zone;
  - (ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);
  - (iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);
  - (iv) above mentioned uses located in Category 1 Rural Settlements ODZ.
- (vii) Creation of additional residential units

In areas zoned for terraced residential development or for residential developments in Category 1 Rural Settlements ODZ, the change of use of permitted structures to residential development and, or the creation of additional residential units by the sub-division of a permitted residential unit into two or more, or by the creation of new residential unit/s underlying existing permitted residential development without any excess in footprint larger than 1m in any direction. This shall be applicable as long as any room larger than 5.6m<sup>2</sup> in the unit has an aperture fronting on an open space. Furthermore, this shall not be applicable to the creation of or change of use to residential units situated at penthouse level if this involves a change of use from washrooms, and to residential units at basement level unless more than 50% of the façade area of the unit is above public road level or in cases where the back elevation of the residence fronts on and above an internal unroofed drive or larger open space that cannot be developed or that has an open outlook overlooking diminishing terrain levels. The change of use from a permitted residential unit (or part thereof) to a private car garage:

Provided that for cases of change of use of a permitted structure into a residential unit, the provisions of sub-category (vii) shall only be applicable if contractual or other valid proof is provided to the Authority's satisfaction to the effect that the change of use to a residence had already occurred by the 29th January 2013:

Provided also that for cases of sub-divisioning of a permitted residential unit into two or more, the provisions of sub-category (vii) shall only be applicable if contractual or other valid proof is provided to the Authority's satisfaction to the effect that by the 29th January 2013 the

subdividing had already occurred, AND:

- (i) that the present owner of the unit is not its original owner; OR
- (ii) that if the present owner of the unit is still its original owner, the provisions of sub-category (vii) shall only be applicable if the original owner does not still own any unit adjacent to the unit under consideration on the same floor such that these units can be amalgamated into one larger unit:

Provided further that the six-month grace period granted hereunder, wherein an architect's declaration is deemed to suffice for the purposes of these provisions, shall not be applicable to this sub-category:

Provided further that the limitations specified in the provisions of sub-categories (i) and (ii) are not applicable to requests which include the provisions of sub-category (vii).

(viii) Site area and coverage

- (a) built site coverage not exceeding 15% of that permissible and as long as any encroachment into front and side gardens and backyards is not larger than that specified in the provisions of this Schedule;
- (b) inadequate plot or site area where the resultant plot area is not less than 75% of the minimum permissible area and as long as the provisions in paragraph (a) of this sub-category relating to both coverage and setbacks are also respected:

Provided that the provisions of sub-category (viii) shall only be applicable to residential development in areas zoned for villa and bungalow development.

(ix) Increase in height

An increase in the height of the overall building development, or parts thereof (except in the height of any roof structure), as long as:

- (a) the overall height, including parapet wall, is not increased by more than 1.25 metres from that approved in the development permit;
- (b) the increase in height does not involve additional floors;
- (c) in the case of a ground floor garage in terraced development, the garage is not roofed over in excess of 4.1 metres and the garage door lintel does not exceed 3.3 metres; and
- (d) the external garage height in the side curtilage of a schemed villa and, or bungalow development or in an internal garage development does not exceed 3.3 metres, including any *opramorta*, and the garage door lintel does not exceed 2.8 metres:

Provided that in paragraph (c) of this sub-category, the owner of an overlying residence may also submit an application for the provisions of these regulations to apply with respect to the underlying garage even if such person is not the owner of the garage. In any such case the applicant shall inform the owner of the garage:

Provided further that the provisions of sub-category (ix) shall only be applicable to:

- (i) residential development within the development zone;
- (ii) Social, Community, Educational, Governmental and Religious

facilities within the development zone; and

- (iii) areas zoned for Industry or Warehousing, in which areas the limitations relating to door lintel heights aforementioned are not applicable.

(x) External modifications

Excluding cases falling under sub-category (vi), external elevational additions, modifications and alterations (including materials) existing on the facades and, or on elevations fronting on public areas, except for:

- (a) the creation or enlargement of projecting rooms on road facades;
- (b) balcony extensions exceeding 25 centimetres of that permitted in any direction;
- (c) porches;
- (d) air-conditioning units and telecommunication equipment affixed to facades;
- (e) solid front or side garden walls which exceed 1.6 metres in height:

Provided that extensions to property in schemed villa or bungalow areas are only applicable as per sub-category (viii). Any other extensions in this sub-category are not applicable to footprints exceeding 10m<sup>2</sup> and, when within statutory front or side gardens, not to encroach beyond the limits set out in sub-category (vi)(a) and (d) as applicable:

Provided further that the provisions of sub-category (x) shall only be applicable to:

- (i) residential development within the development zone excluding within UCAs;
- (ii) Class 5 offices (with <75m<sup>2</sup> usable office floor-space and at ground floor level) within the development zone excluding within UCAs and Design Priority Areas;
- (iii) for Class 4 shops, Class 5 offices, and residential development, balcony extensions not exceeding 25 centimetres of that permitted in any direction and solid front or side garden walls which do not exceed 1.6 metres in height.

(xi) External modifications not visible from public roads

Excluding cases falling under sub-category (vi), external elevational additions, modifications and alterations (including materials) for elevations that are not fronting on public areas and that are not visible from and conspicuous from public areas:

Provided that extensions to property in schemed villa or bungalow areas are only applicable as per sub-category (viii). Any other extensions in this sub-category are not applicable to footprints exceeding 10m<sup>2</sup> and, when within statutory front or side gardens, not to encroach beyond the limits set out in sub-category (vi)(a) and (d) as applicable:

Provided further that the provisions of sub-category (xi) shall only be applicable to:

- (i) residential development within the development zone;
- (ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);

- (iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);
- (iv) Social, Community, Educational, Governmental and Religious facilities within the development zone; and
- (v) above-mentioned uses located in Category 1 Rural Settlements ODZ.

(xii) Garage level modifications

Internal alterations and, or modifications to garage levels and to circulation therein as long as no entries and, or exits are eliminated, the development is in use, and in cases with more than one level of parking: insofar as the changes are confirmed by a Fire Safety Report and a Transport Safety Report (covering manoeuvrability, exits, etc.) as not affecting the safety of users and, or third parties. These provisions are not applicable to major developments. Furthermore, these provisions are also not applicable in cases where there is a difference in the number of garage levels or in the amount of garages from what was approved in the development permit:

Provided that the provisions of sub-category (xii) shall only be applicable where the overlying development is limited to:

- (i) residential development within the development zone;
- (ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);
- (iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);
- (iv) above-mentioned uses located in Category 1 Rural Settlements ODZ,

or a mix of the above.

(xiii) Internal modifications

Internal planimetric alterations and, or modifications within units:

Provided that these provisions shall only be applicable as long as these alterations and, or modifications -

- (i) are contained within the permitted built footprint;
- (ii) do not give rise to additional units;
- (iii) do not include a change of use;
- (iv) do not run counter to permit conditions;
- (v) do not run counter to sanitary requirements:

Provided that the above limitations in items (i), (ii), (iii), (iv) and (v) shall not be applicable if they are covered by other provisions in this Schedule:

Provided further that the provisions of sub-category (xiii) shall only be applicable to:

- (i) residential development;
- (ii) Class 4 shops (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);
- (iii) Class 5 offices (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);

- (iv) Social, Community, Educational, Governmental and Religious facilities; and
- (v) Industry or Warehousing development.

Applicability.

2. The provisions of paragraph 1 shall apply subject to the following:

- (a) the provisions listed in paragraph 1 shall not apply to scheduled buildings and to development that involved excavations within Areas of Archaeological Importance;
- (b) if a request, under the provisions of article 91 of the Act in respect of developments in paragraph 1 in sub-categories (i), (ii), (iii) and (iv) within residences within areas zoned for terraced development in the development zone, is made to the Authority by the 31st January 2013, it shall be presumed that the development to which the request refers to existed prior to 1st August 2012 as long as the architect submitting the request certifies that the development to which the request relates had existed prior to 1st August 2012, and the same request includes photographic evidence that shows the same development as existing on site, and as long as there is no evidence to the contrary, or that no such evidence to the contrary subsequently emerges:

Provided that if such a request is not submitted by the 31st January 2013, the onus of proof that the development in question existed before the 1st August 2012 lies with the applicant or his architect;

- (c) if a request under the provisions of article 91 of the Act in respect of all other of the developments in paragraph 1 that are not included in paragraph (b) above, is made to the Authority by the 28th July 2013, it shall be presumed that the development to which the request refers to existed prior to 29th January 2013 as long as the architect submitting the request certifies that the development to which the request relates had existed prior to 29th January 2013, and the same request includes photographic evidence that shows the same development as existing on site, and as long as there is no evidence to the contrary, or that no such evidence to the contrary subsequently emerges:

Provided that if such a request is not submitted by the 28th July 2013, the onus of proof that the development in question existed before the 29th January 2013 lies with the applicant or his architect.

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