

## CHAPTER 549

## ENVIRONMENT PROTECTION ACT

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

31st January, 2016;  
4th April, 2016\*  
1st February, 2019†

*ACT I of 2016, as amended by XXIII of 2018.*

## PART I

## Preliminary

1. The short title of this Act is the Environment Protection Act. Short title.
2. In this Act, unless the context otherwise requires: Interpretation.  
Amended by:  
XIII.2018.2
- "application" means a permission application or authorisation application submitted in the manner prescribed by the Authority;
- "application report" means the final permission application report or authorisation application report;
- "the Authority" means the Environment and Resources 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 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;
- "the Chairperson" means the Chairperson of the Authority appointed in terms of article 6;
- "the Chief Executive Officer" shall mean such an officer so appointed who is vested with the executive management of the Authority;
- "conservation" 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

\* articles 1, 2, 6, 7, 9 to 30 and 35 to 38 were brought into force as from 31st January 2016 by [Legal Notice 50 of 2016](#);  
articles 3, 4, 5, 8, 31, 32, 39 to 44, 48 to 87 and the Schedule were brought into force as from 4th April, 2016 by Legal Notice 106 of 2016.

† articles 45, 46 and 47 were brought into force as from 1st February, 2019 by Legal Notice 37 of 2019

possible and includes examining, testing, treating, recording and preserving any such cultural property or any part thereof;

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

"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;

"entity of Government" means a body corporate established by law or 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;

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

- (a) the air, water, land, soil and sea, including their bedrock, aquifers and subsurface features;
- (b) all the layers of the atmosphere;
- (c) all biodiversity; and
- (d) the landscape and its features;

"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;

"Gazette" means the Government Gazette;

"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;

"guardianship" and "guardianship deed" shall have the same meaning as assigned to them in article 70A;

"land" includes the air, water, land, sea and soil, including their bedrock, aquifers and subsurface features, and extends to the proper use of resources found in such so as to ensure protection of the environment in general and use of the air, water and soil in a

sustainable manner;

"local council" means a local council established under the [Local Government Act](#); Cap. 363.

"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;

"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;

"officer" includes any employee or member of staff of the Authority;

"person" means a body or other association of persons whether granted legal personality or not and shall include Environmental Voluntary Organisations;

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

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

"pollution" means the direct or indirect introduction by man, or due to natural processes, into the environment of substances, energy, organisms or genetic material that cause or are likely to cause hazard to human health, or harm to living resources or to the environment;

"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;

"protected area" means all areas that are afforded protection under this Act;

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

"sea" includes the water column, seabed, marine sedimentary subsoil, sediment and bedrock;

"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 the Environment and Development Planning established in terms of the Development Planning Act;

"subsidiary plans" includes strategies, plans, programmes and

guidance under this Act;

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

"Tribunal" means the Environment and Planning Review Tribunal referred to in article 3 of the Environment and Planning Review Tribunal Act;

"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:

Provided that if a definition provided for under this article is amended through a European, International or multilateral directive or legislative instrument, the Minister shall have the authority to amend such a definition in accordance with such a directive or legislative instrument by means of a Regulation issued under the provisions of article 54.

## PART II

### Duty to Protect the Environment

Duty of every person and entity to protect the environment.

**3.** It shall be the duty of every person and entity, whether public or private, 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. (1)** 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 and policies on land use, socio-economic, educational and other matters;
- (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, to

promote the reduction of waste and the proper use, re-use and recovery of matter;

- (g) to safeguard biological diversity;
- (h) to combat all forms of pollution and environmental degradation;
- (i) to consider the environment as the common heritage and common concern of mankind;
- (j) to provide incentives leading to a higher level of environmental protection; and
- (k) to promote research and development in the environmental field by different institutions.

(2) In the course of its daily responsibilities, it shall be the duty of every Government entity to implement the objectives and provisions of this Act and its subsidiary legislation. In doing so, Government entities shall also have regard to national environmental targets when carrying out their respective plans, programmes and projects.

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 Environment and Resources Authority, which shall consist of not less than eight and not more than ten members, of whom one shall be the Chairperson of the Authority.

Establishment of the Malta Environment Authority.

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

- (a) two public officers representing the Government, one of whom has experience or qualifications in matters concerning the environment, and another who has experience or qualifications in matters concerning environmental health or social policy;
- (b) six 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 who shall be nominated by the said Voluntary Organisations; and
  - (ii) the rest being persons with knowledge of and experience in matters relating to the functions of the authority, for good governance;
- (c) a member nominated by the Leader of the Opposition.

(3) The Chairperson of the Authority shall be chosen by the Minister from amongst the independent members of the Authority.

(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 Chairperson shall not be considered as a public officer for the purposes of this sub-article; or

(b) is an officer of any department, entity, 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; or

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

(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](#).

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(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 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 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 Minister, and as long as they remain public officers.

(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 years.

(9) The Minister may by regulations establish the manner in which the proceedings of the Authority shall be regulated.

(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 vest in the Chairperson:

Provided that the Authority may appoint any one or more of its other members or any one or more of its officers 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 Chairperson.

(3) In the absence of the Chairperson, or if the Chairperson 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 chairpersonship 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.

(2) The functions of the Authority shall be:

- (a) to perform and succeed in the functions, assets, rights, liabilities and obligations of the competent authority established under the provisions of article 6 of the [Environment and Development Planning Act](#) and under the provisions of article 3 of the Malta Resources Authority Act in so far as such functions, assets, rights, liabilities and obligations refer to the role of the competent authority established under the said Act in relation to the protection and management of the environment and sustainable management of natural resources, and the prevention, mitigation, offsetting or remediation of adverse effects on the environment;
- (b) to formulate and implement policies relating to the 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) to carry out and or commission surveys, studies, assessments, investigations, audits, monitoring and promote research on any matter relating to the environment and the natural resources regulated by or under this Act;
  - (d) to provide information and issue guidelines to the public and to commercial and other entities on matters relating to the environment and the said natural resources;
  - (e) to establish measures for the protection of the environment and to promote the efficient use of natural resources in, and through, the practices, operations, activities and functions regulated by or under this Act;
  - (f) to ensure that national and international obligations relative to the matters regulated by or under this Act are entered into force and complied with;
  - (g) to permit, assess, investigate, audit, monitor, and take action on, any activity, intervention, project, operation or land use that may have an effect on the environment;
  - (h) to advise the Minister on international legislation and on the formulation of national policy in relation to matters regulated by this Act and on matters having a bearing on this;
  - (i) otherwise to advise the Minister on any matter connected with its functions under this Act;
  - (j) to carry out, review or request others to carry out environmental assessments, environmental audits and environmental monitoring of activities and works having an impact on the environment;
  - (k) to perform such other functions as may from time to time be assigned to it by the Minister.
- (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 implement or 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, plans and policies under this Act as well as advise on the formulation and implementation of contingency and emergency plans, led by other authorities, to safeguard the environment;
  - (d) issue or withhold any authorisation or conduct or oversee any assessment, monitoring or other action 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 or which may potentially impact the environment;

- (e) establish threshold levels of discharge from production, management, use, possession or any other activity involving products and substances, their waste products and pollution;
  - (f) monitor the quality of the environment and for such purpose establish indicators and methodologies, and maintain and disseminate information related to the environment; and
  - (g) publish, at intervals not more than four 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, environmental assessments and environmental monitoring 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, public entities, local councils, non-governmental organizations, private organizations and international organizations and other persons relating to environmental protection and the sustainable management of the environment and natural resources, 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 programs relating to environmental protection, conservation and the sustainable management and monitoring of the environment;
  - (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 article 51 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, including European obligations and bilateral agreements entered into by Malta relative to matters regulated by this Act.

(5) In the execution of its functions under this Part and Part V, the Authority shall consult with the Minister, and it shall have and may exercise all or any one of 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 as may from time to time be delegated to it in writing by the Minister on behalf of any department or entity 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 the environment, 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 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 processes, including all documentation and reports.

(11) The Authority may require any holder of environmental information to provide it with any information, including financial information that the Authority considers necessary for the purpose of ensuring compliance with the provisions of this Act, regulations prescribed thereunder and decisions or directives made in accordance with this Act, regulations prescribed thereunder or any other law which the Authority is entitled to enforce. Any person who fails or refuses to provide such information shall be in contravention of this Act and shall be liable to the imposition of an administrative fine as may be prescribed by the Authority.

Delegation of power.

**9.** 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. Notice of any such delegation shall be published in the Gazette. The Authority shall have the right to retract such delegation at its sole discretion with immediate effect.

**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.

Appointment of advisory boards and committees.

**11.** (1) The Authority shall, after a public call, appoint a Chief Executive Officer. Such appointment shall be for a period of three years which may be extended for further periods of three years each.

Conduct of the affairs of the Authority.

(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 shall not be a member of the Board of the Authority. He shall however have the right to attend meetings of the Board of the Authority to report to the said Board.

(4) 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.

**12.** (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 officers 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.

Appointment of officers.

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

Disclosure of interests.

**13.** (1) Where any member of the Authority, or an officer 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 -

- (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) Without prejudice to the provisions of sub-article (6) of article 6, 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.

Appointment and functions of officers of the Authority.

**14.** The Authority shall appoint and employ, at such remuneration and upon such terms and conditions as it may, in accordance with article 12, determine, such officers of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detailing of public officers for duty with the Authority.

**15.** (1) The Prime Minister may, upon request by the Authority, from time to time, direct that any public officer shall be detailed for duty with the Authority in such capacity and under such conditions and with effect from such date as he may prescribe.

(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:

- (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 17; or
- (b) the revocation of such direction by the Prime Minister

or Minister:

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 or 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 duration of such detailing by any such further direction in relation to such officer.

**16.** (1) Where any public officer is detailed for duty with the Authority under any of the provisions of article 15, 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.

Status of public officers detailed for duty with the Authority.

(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 Government appointment held by him at a date on which he is so detailed; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the Government appointment held by him at 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:

Provided that such terms and conditions shall not be deemed to be less favourable because they are not in all respects identical or superior to those enjoyed by the officer concerned at the date of such detailing, if in the opinion of the Prime Minister, such terms and conditions, taken as a whole, offer substantially equivalent or greater benefits; 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 be entitled, and shall be liable to any liability to which he would be liable, but

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for the fact of his being detailed for duty with the Authority:

Provided that in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions, no account shall be taken of any allowances, bonuses or gratuities paid to such officer by the Authority in excess of what he is entitled to as a public officer.

(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.

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

17. (1) The Authority may, with the approval of the Prime Minister or Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 15, permanent employment with it at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer, in either case the officer needs to have adequate experience in the area of operation.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with 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 or Minister offer substantially equivalent or greater benefits.

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(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 35, 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 was service with the Government.

(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) For the purposes of the [Pensions Ordinance](#), the pensionable emoluments of such public officer on retirement shall be deemed to be the pensionable 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. Cap. 93.

(7) (a) For the purposes of this article, posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government by reference to job description, skills, responsibilities and other analogous factors.

(b) The classification referred to in paragraph (a) shall be carried out by a board composed of a Chairman appointed by the Minister responsible for finance and two other members, one appointed by the Minister responsible in general for personnel policies 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.

(c) Such classification shall take place within three months of any adjustment of salaries of officers in Government service and, or of officers of the Authority.

(d) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.

(e) Without prejudice to article 113 of the [Constitution](#), no person may, following a classification as aforesaid, be entitled to rights under the [Pensions Ordinance](#) less favourable than those to which he would have been entitled prior to such classification. Cap. 93.

**18.** The Authority may engage such consultants or advisers, as it may consider necessary to assist it in the fulfilment of its functions. For the purpose of this clause, all Environmental Voluntary Organisations shall automatically be deemed eligible as consultants and advisers that can assist the Authority in the fulfillment of its functions. Engagement of consultants and advisers.

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

Power to borrow or raise capital.

**20.** (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.

(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 and this in accordance with the procedure established under sub-article (1).

Advances from Government.

**21.** 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.

Borrowing from Government.

**22.** (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.

(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.

**23.** (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:

Estimates of the Authority.

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.

**24.** (1) No expenditure shall be made or incurred by the Authority unless provision thereof had been made in the estimates approved as provided in article 23.

Expenditure to be according to approved estimates.

(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;
- (d) this shall not apply to certain emergency actions that may need to be taken by the authority, if no provision for such action is available in the budget.

Publication of approved estimates.

25. 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.

Accounts and audit.

26. (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.

(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, in accordance with regulations published by the Minister, 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.

**27.** (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.

**28.** 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.

Contracts of supply or works.

**29.** The Authority shall, in accordance with regulations made by the Minister, 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 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 part of the estimates prepared in accordance with the provisions of article 25.

Annual Report.

**30.** 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.

Exemption from tax.

## 2. Committees, Boards and Funds

Standing  
Committee on the  
Environment and  
Development  
Planning.

**31.** The Minister shall refer the following to the Standing Committee on the Environment and Development Planning:

- (a) any plan referred to the House of Representatives in terms of this Act; the Standing Committee on the Environment and Development Planning shall also recommend to the House whether the plan should be approved, with or without amendments, or rejected;
- (b) the National Strategy for the Environment and the State of the Environment Report;
- (c) any other report, plan or policy as the Minister may deem necessary:

Provided that where the said Standing Committee fails to report to the House within the stipulated period in the Development Planning Act, the Minister for the Environment shall make a formal request to the House to discuss the strategy, plan or policy.

The Environment  
Fund and other  
funds.

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

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

(3) The Environment Fund shall be used to finance projects, programs and schemes related to, and costs intended to achieve and manage, the aims and objectives of this Act, studies, as well as works which may be needed for that purpose or to remedy any harm caused to the environment, 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:

Provided that the Authority shall implement all relevant safeguards to ensure that the implementation of this sub-article does not result in any actual or perceived conflict of interests in the performance of its regulatory functions, and does not otherwise tarnish its reputation or public trust. Such safeguards shall include, *inter alia* and as deemed most relevant:

- (a) appropriate functional and operational separation;

- (b) internal administrative firewalling; and
- (c) rejection of donations or grants offered to it, financially or in kind, which may introduce a likely or foreseeable conflict of interests.

(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](#).

Cap. 123.

Cap. 364.

(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.

**33.\*** (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 environmental assessments, audits, monitoring and studies as required by the Authority.

The Registration Board.

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

(3) The members of the Board shall be independent members 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 seek the opinion of the Authority, which shall make appropriate reference to applicable standards and regulations regarding the quality of assessments audits, monitoring, studies and associated environmental information required by the Authority to fulfil its function, following which it will assess applications for such registrations and approve those that meet the requirements for registration. The Board shall give reasons for its decisions.

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\*not yet in force.

(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 the Board;
- (c) prescribe a tariff of fees for registration with the Board.

Powers of the  
Registration  
Board.

**34.\*** (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 33 or refuse any application for a renewal of the registration, when the holder of that certificate:

- (a) is found guilty by a court of criminal jurisdiction of a crime committed through fraud, corruption, false declaration, imprudence, carelessness, unskillfulness 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 this Act or of any regulations made thereunder; or
- (c) has, in the opinion of the Authority and the Board, submitted sub-standard or deliberately misleading work in an environmental assessment or other studies; or

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\*not yet in force.

- (d) has participated in the preparation of an environmental assessment in a consultant role when he was not registered in the Register; or
- (e) was the recipient of a certificate issued under the provisions of article 33 based on information 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 a consultant role in the preparation of an environmental 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

**35.** (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, or other body or office established by this Act, and every officer 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 and officers 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.

**36.** The Authority, or any committee 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.

**37.** (1) Every member of the Authority Board, the Chief Executive Officer and each Director of the Authority or any other member of the Authority as prescribed by the Minister, shall submit a declaration of assets in accordance with the procedures established for this purpose by the Minister.

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

(2) The Minister shall, in consultation with the Authority, issue, publish and review a code about the conduct expected of the members of the Authority and any other committee, board or other body established by this Act, and of 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 or other body established by this Act, and any

other change in such membership shall be published in the Gazette.

#### PART IV

##### Transfer of Officers and Assets to the Authority

Transfer of officers and assets to the Authority.

**38.** (1) The officers, property and undertakings owned by the Malta Environment and Planning Authority and which are to be transferred to or vested in the Authority shall be transferred to and vested in the Authority in accordance with regulations prescribed by the Minister.

(2) The transfer and vesting in the Authority as aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality of the aforesaid, shall include all plant, equipment, apparatus, instruments, vehicles, buildings, structures, installations, land, works, stocks and other property, movable and immovable assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

Construction of laws, etc.

**39.** Subject to other provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements, subsisting immediately before the date of the coming into force of this Part of this Act affecting or relating to any of the properties or undertakings transferred to the Authority by or under this Act and in which the Government or a government authority is a party thereto or is named therein shall have full force and effect against or in favour of the Authority, and shall be enforceable freely and effectively, in such manner as if instead of the Government or governmental authority the Authority has been named therein or had been a party thereto in substitution of the Government or governmental authority in question.

Transitory provisions.

**40.** (1) Anything relating to any of the properties or undertakings or any right or liability transferred to the Authority by or under this Act which has been commenced by or under the authority of the Government or the Malta Environment and Planning Authority before the date of the coming into force of this Part of this Act may continue to be carried on and completed by or as authorised by the Authority on or after such date.

(2) The Minister may by order make such incidental, consequential and supplemental provisions as he may deem necessary or expedient for the purpose of determining, as appropriate, the assets transferred to the Authority by this Act and securing and giving full effect to the transfer of any property or undertaking or any right or liability to the Authority by this Act and make such orders as may be necessary to make any powers and duties exercisable by the Government or the Malta Environment and Planning Authority in relation to any of the transferred property or undertakings exercisable by or on behalf of the Authority.



## PART V

## Environment Protection

## 1. Plans and Policies

41. Without prejudice to the provisions of this Act, the protection and effective management of the environment 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.

Plans, policies and regulations.

42. (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.

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

(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 National Strategy for the Environment shall be regulated by the provisions of articles 45 to 47 whereas the preparation or review of any other plan or policy shall be regulated by the provisions of article 51:

Provided that the Minister may, without prejudice to the provisions of articles 45 to 47 and article 51, 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 function 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.

43. (1) Where the Authority is unable to prepare a plan or policy or fails to delegate such function as is envisaged in article 42(5), the Minister shall request any person, including any government entity 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 the provisions of article 51. 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.

(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 51 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 51 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 having such qualifications as the Minister may prescribe in consultation with the Authority.

**44.** Without prejudice to his powers under the provisions of this Act, the Minister may direct that the Authority or any department, entity, 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.

## 2. The National Strategy for the Environment

**45.** (1) The Authority shall prepare the National Strategy for the Environment. In preparing such document the Authority shall consult with all the entities set up under this Act and those other entities, whether public or otherwise including ministries, as the Authority may deem proper.

(2) The Minister shall review the said strategy as often as may be necessary, and in any case not less than once every four years:

Provided that if the Authority is unable, for whatever reason, to prepare the National Strategy or its review, shall inform the Minister as soon as practicable and the Minister shall instruct the Authority to delegate such function in terms of article 9 in so doing it shall ensure that the provisions of this Part are complied with.

Provided further that the first Strategy Document shall be drawn up within twenty four months from the coming into force of this Act.

(3) The National Strategy for the Environment is a strategic

Strategic  
Environment  
Assessment and  
other assessments.

The National  
Environment  
Strategy and its  
preparation and  
review.

governance document which sets the policy framework for the preparation of plans, policies and programs issued under this Act or under any other Act for the protection and sustainable management of the environment, including land and sea resources.

(4) In preparing or reviewing the National Strategy for the Environment, the Minister shall have regard to:

- (a) the environmental policies and the State of the Environment Report;
- (b) the current economic and financial policies;
- (c) the current social policies;
- (d) the policies of the Government;
- (e) the environmental issues and concerns of material relevance to the strategy;
- (f) the resources likely to be available in all relevant government entities for the implementation of the strategy; and
- (g) the European Union Environment Acquis and other international environmental convention obligations to which Malta is a party.

(5) During the preparation or review of the National Strategy for the Environment the Minister shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations.

**46.** (1) When the National Strategy for the Environment or a review thereof has been completed, the Minister shall publish the strategy together with a statement of the representations received and the responses made to those representations.

Publication of the National Strategy for the Environment or its reviews.

(2) Representations on the strategy are to be submitted to it within a specified period of not less than six weeks.

**47.** (1) At the conclusion of the procedures set out in the foregoing provisions, the National Strategy for the Environment shall be considered by the Cabinet of Ministers together with the Minister's position statement and the representations made with respect to the strategy or its review.

Final consideration and approval of strategy or review.

(2) The Minister shall then cause the National Strategy for the Environment, or a review thereof as originally prepared, or as revised, together with the Minister's position statement, to be laid before the House together with a motion for a resolution that the National Strategy for the Environment be approved by the House, with such amendments, if any, as may be specified in the resolution.

(3) The National Strategy for the Environment, 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 presentation of the National Strategy for the Environment or its

review, the expression "National Strategy for the Environment" and any reference to a review thereof means the National Strategy for the Environment, and any review thereof, as approved by the House of Representatives.

### 3. Subsidiary Plans and Policies

Subsidiary plans.

**48.** (1) A subsidiary plan is a plan that deals with a specific environmental policy or matter setting out detailed specifications for its implementation.

(2) A subsidiary 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 subsidiary plan shall apply to all relevant areas of the environment and of the National Strategy for the Environment, whether or not such areas are also covered by another plan or policy.

Effect of subsidiary plans.

**49.** (1) A subsidiary plan is made by the Authority for any matter or subject or any area that falls under the remit of the Authority and 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.

(2) Such a plan may include details on the implementation tools and measures that are required to reach the objectives of the plan, and may also include provisions intended for the enforcement of such tools, in which case, such provisions shall be construed as enforceable in the same manner as any provision of any regulation issued under the Act.

Other policies or plans.

**50.** (1) Where the Authority considers that for the proper and effective management and protection of the environment or for the proper protection of land and sea it is necessary to prepare more detailed policies, plans or guidance other than those already contained in a plan or policy, the Authority may prepare and adopt such policies, plans or guidance 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, environmental or other 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 51 shall *mutatis mutandis* apply.

Procedure for subsidiary plan and policies.

**51.** In the preparation or review of a subsidiary plan or policy, the following procedure shall be followed:

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
  - (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 documentation and studies relative 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; and
    - (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;

- (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 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 National Strategy for the Environment, the Minister shall comply with the provisions of articles 45 to 47 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 National Strategy for the Environment shall come into force on the date of approval by the Minister.

Review of subsidiary plan or policies.

**52.** (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 National Strategy for the Environment.

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

#### 4. Regulations and Orders

Power to make regulations, etc., to include power to revoke, etc.  
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**53.** 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.

**54.** (1) The Minister may, acting in accordance with the provisions of article 55, 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.

(2) Without prejudice to the generality of the provisions of sub-article (1) such regulations may, in particular:

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- (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 followed by the Authority, the applicant and any other relevant parties before and after the submission of an application for authorisation under this Act, or otherwise involving any assessment under this Act; as well as the procedures for, *inter alia*, advertising, communication, vetting and screening of, and consultations, representations and decision-making on, the said application or assessment, and the general conditions under which the Authority may in relation to any activity which may require an authorisation or assessment under this Act require the giving of financial or other guarantees or the provision of assurance to:
    - (i) prevent, deter, mitigate or remedy any damage to the environment or deterioration of environmental quality;
    - (ii) make good for any damage that may be caused to the environment; and
    - (iii) secure adherence to any commitments made toward environmental improvement or environmental benefits;
  - (c) provide for any aspect relating to the conditions that may be imposed in relation to any authorisation under this Act or otherwise involving any assessment under this Act including where applicable any grant, renewal, transfer, suspension, cancellation and duration, the manner in which submissions and applications are to be made, the content and form of such applications and submissions and how they may be granted, rejected, renewed or transferred, the fees payable, and the manner in which renewals or transfers thereof are to be indicated;
  - (d) prescribe what type of information held by the Authority or otherwise falling within the scope of this Act 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;
  - (e) 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;
  - (f) establish, co-ordinate and enforce environment quality control systems and make provisions for the carrying out of assessments of environmental impacts and risks

- of both new and existing establishments as well as to provide for the effective prevention and remedying of environmental damage;
- (g) provide for the collection, processing, comparison, management 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;
  - (h) prescribe the techniques or the parameters in the monitoring of the environment;
  - (i) prescribe, in collaboration with the Civil Protection Department, or any other relevant public entity, the circumstances in which an environmental emergency may be declared, and the effect that such a declaration may have on any activity requiring an authorisation under this Act;
  - (j) 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 affects the environment, and such regulations may in particular:
    - (i) formulate objectives laying down in 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; and
    - (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;
  - (k) in relation to pollution prevention, control and environmental quality:
    - (i) establish systems which ensure such prevention and control;
    - (ii) prescribe measures to control, prevent, manage, reduce or remedy 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 and degradation of the environment;
  - (iv) set standards including maximum permitted levels in quantitative or qualitative terms, of discharge and emissions into the environment of materials, substances and disturbances 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 discharges and emissions into the environment and to regulate the use of information gathered during such monitoring;
  - (vi) prevent, control, reduce, mitigate, remedy or otherwise manage situations which may lead to environmental emergencies and to prevent, control, reduce, mitigate, remedy or otherwise manage any adverse effects on the environment resulting therefrom;
- (l) 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, recycling and disposal;
  - (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, control and, or, licensing of waste management operations;
- (m) in relation to the protection of biodiversity and other natural features:
- (i) provide for the monitoring, assessment, management, conservation and protection thereof;
  - (ii) declare any species, ecosystem or feature to be protected and establish rules for its control, protection, management, reintroduction and or its return into the natural environment;
  - (iii) declare any species to be an invasive species and establish rules for its assessment, monitoring, control and, or, eradication, and other prevention and management mechanisms to control the introduction and spread of such species;
  - (iv) regulate the taking, exploitation and other use of specimens of fauna, flora and, or natural features; and in particular prohibit and, or, control possession, collection, exhibition,

- transport, trade, propagation or captive breeding of such specimens as may be prescribed;
- (v) provide for the conservation, protection and management of protected sites and particular habitats or categories thereof and other natural features 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, fauna and other natural features as may be prescribed;
  - (ix) declare prohibited means of capture, exploitation and killing of species or specimens and provide rules for their monitoring and control;
  - (x) regulate access to genetic resources and their benefit-sharing;
  - (xi) provide measures for the conservation, protection, management and regulation of geological, geomorphological, hydrological, edaphic and other features and areas containing them;
  - (xii) provide measures for the protection, management and conservation of landscapes, landscape features and landscape diversity;
  - (xiii) provide measures for the prevention, management and control of desertification, land degradation and damage to or deterioration of natural features;
- (n) 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;
- (o) in relation to environmental assessments, audits and monitoring:
- (i) provide for the carrying out of environmental assessments, screenings, audits and monitoring, for the review of ancillary submissions, reports and documentation, and for the screening and evaluation of any activities or development that may affect the environment;
  - (ii) regulate the procedures to be followed, and

- require any person to undertake or commission and to submit to the Authority any studies, technical investigations, assessments, audits, monitoring, reports or documentation as may be deemed appropriate; and
- (iii) provide for the formulation of plans and measures to prevent, deter, reduce, mitigate, offset or remedy any adverse environmental effects and risks;
- (p) in relation to the Authority's functions, including monitoring, compliance and enforcement:
- (i) after consultation with the Authority, make regulations to give better effect to the provisions of article 75(1)(a);
  - (ii) authorise and regulate clamping, towing, removal, impounding, confiscation, seizure 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 made thereunder;
  - (iii) 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;
  - (iv) provide for the disposal of objects without liability, when the said objects are not claimed by their owners within such time as may be prescribed;
  - (v) establish fees payable to the Authority for the removal of clamps, for towing, for the storage of objects and for the auction or other form of disposal of such objects;
  - (vi) establish the circumstances where objects can be confiscated and establish the relative procedure for their confiscation and disposal;
  - (vii) order remediation of site or situation to original state;
  - (viii) establish offences and the relative punishments in relation to matters referred to in subparagraphs (i) to (vii), which punishments shall not exceed a maximum fine (*multa*) of two hundred and fifty thousand euro (€250,000):  
Provided that article 21 of the [Criminal Code](#) and the provisions of the [Probation Act](#) shall not apply to any offence established under this subparagraph;
- (q) amend, substitute, add to or otherwise alter anything contained in the Schedule;
- (r) provide for any other purpose for which regulations are authorized or required to be made otherwise than by the Authority;

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- (s) prescribe the form of any notice, order or other document authorised or required by this Act to be made, submitted, served or given;
- (t) regulate how any notice or communication to or from the Authority which in terms of this Act shall be in writing may be made or submitted 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 fifty thousand euro (€250,000) 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 five hundred thousand euro (€500,000):

Provided further that such fine shall in all cases be due to the Authority 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;

- (v) introduce measures relative to the liability to be incurred by any individual who shall, in any manner be deemed responsible for any action that may cause environmental damage. Such regulations may also include measures relating to the prevention and remedying of such environmental damage;
- (w) provide for the making of any deposit or the giving of any guarantee to ensure the performance of any obligation by any person as imposed as a condition of any permit, authorisation or licence under this Act;
- (x) prescribe the practices to be adopted in regard to safety, and the protection of the environment in relation to any matter regulated by this Act, including any norms in relation to the liability of any person who causes damage to the environment as a result of any activities regulated by or under this Act undertaken by that person;
- (y) make provisions regarding a contingency plan in the event of any crisis relating to any matter regulated by

this Act;

- (z) provide for administrative infringements and fines, including out of court settlement arrangements;
- (aa) provide for economic instruments and schemes to promote positive environmental behaviour;
- (bb) make provisions regarding cooperation with other authorities and the relationship between the Authority and other public authorities including consultations, provision of information and any other matter of mutual interest;
- (cc) provide for prescribing anything which may be or is required to be prescribed by this Act.

(3) Notwithstanding the other provisions of this Act or of any other law, the Authority reserves the right to publish certain Schedules annexed to regulations made under this Act in the Maltese language only, the English language only or both.

55. (1) Regulations under this Act shall be made by the Minister after consultation with the Authority and, except for regulations under article 54(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 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 one month 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 or other body established under this Act, he shall also consult the Authority or such board 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 in concurrence with the Minister:

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.

**56.** (1) Without prejudice to any other provisions of this Act, the Authority may make orders regulating 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 activities within the scope of, and not in conflict with 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 activity or any aspect thereof regulated by such an order shall be called "exempt activity" and an order regulating activity shall be called "activity order".

(3) The order may enable the Authority to prohibit the commencement of an activity, or require the discontinuance of an activity that 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.

(4) The Authority shall periodically review the orders.

(5) An order may regulate:

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

Provided that the Authority shall have the right to:

- (i) reject any such notification given under

paragraphs (b) and (c), *inter alia* on grounds of non-compliance with any provisions of the order or of this Act, or in the event of any incorrect, incomplete or misleading content, or other broadly similar material consideration relating to the wider case context; and

- (ii) where its endorsement is required, to refuse, partially endorse or conditionally endorse the activity, as appropriate.

(6) No activity in terms of an order may be carried out on a site if on the said site an activity has been carried out in breach of the provisions of this Act, unless that activity is one which the Authority may prescribe and which is covered by an order as mentioned in sub-article (5).

57. (1) The Minister shall, in consultation with the Authority, by regulations under this article provide that the Authority, 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 and registers, in their entirety or in part that they may have in their possession and relating to the environment and, or required to ensure the Authority's effective implementation of its functions relating to environmental protection. 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 an authorisation received by it containing the name of the applicant and details of the proposal including documents and detailed plans;
- (b) of all decisions, including documents and detailed plans, made on such applications; and
- (c) of all reports and assessments compiled in accordance with the provisions of this Act, including any Environmental Impact Assessment reports.

(3) The State of the Environment Report shall be prepared by the Authority and shall be passed on to the Commissioner for Environment and Planning within the Office of the Ombudsman.

The Commissioner for Environment and Planning within the Office of the Ombudsman shall have the right to ask the Environment and Resources Authority and other authorities and entities to furnish his office with any information that he requires in order to analyse the report and to compile his opinion on such a report. The Commissioner shall deliver the report together with his opinion to the Speaker of the House within eight weeks from when the said report was passed on to him and within a month from the tabling of the report there shall be a dedicated sitting during which the report is discussed.

## PART VI

### 1. Requirement of Authorisations

Authorisations.

**58.** (1) Save as may otherwise be prescribed, no person shall carry out any activity or operation, or be engaged in such activity or operation, relating to or affecting the environment, unless such person is in possession of an authorisation from the Authority under this Act.

(2) The activities and operations referred to in sub-article (1) include, amongst others, the activities and operations listed in the Schedule.

(3) An authorisation granted to a person under this Act shall not relieve such a person from the requirement at law to apply for any other authorisation however so described, or from any other obligation arising under any other law, or any obligation arising from a condition emanating from an authorisation.

Application for authorisation.

**59.** (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 58, not being an activity for which an authorisation is given in an order and to be carried out in accordance with the provisions thereof, shall apply to the Authority for such authorisation, in such manner, on such form and giving such information including environmental assessments and studies, as the Authority may prescribe.

(2) Any person may also submit a written request to the Authority for a determination as to whether a proposal requires an authorisation, environmental assessment or other relevant submission.

Determination of authorisations.

**60.** (1) Any application or authorisation shall not be processed or granted unless the applicant or his predecessor in title would have paid such fines, or civil debts to the Authority, or made such other payments as may be due on the site or operation subject to the application.

(2) In its determination upon an application the Authority shall apply such plans, policies and regulations issued under this Act as it may deem relevant and appropriate.

(3) In its determination upon an application the Authority shall also have regard to any other material consideration which the Authority may deem relevant.



(4) The Authority shall have power to grant, partially grant, or to refuse an authorisation, and in granting or partially granting such an authorisation the Authority shall be entitled to impose such terms, conditions, limitations and approved specifications which it may deem appropriate:

Provided that upon a refusal, the Authority shall give specific reasons for such refusal.

(5) The Authority shall have the power to carry out inspections, in connection with the permit application process or any ancillary assessment or monitoring, for all authorisation types, including inspections preceding submission, during the processing of applications and after the decision-taking.

(6) An authorisation shall be granted for a limited period provided that the Authority may, on the application of the person holding the authorisation, extend the said authorisation to such further period or periods as it may consider reasonable.

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

**61.** (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 submission, processing and determination of applications;
- (b) establish the procedures to be used by an applicant prior to the submission of an application;
- (c) establish minimum or maximum time limits or both within which submissions, consultations and representations have to be made and decisions have to be taken and communicated as relevant.

**62.** Any person holding an existing authorisation has the right to request a modification to such authorisation to include further operations, or changes in operational parameters as may be required. Such requests shall be considered and processed as a new application, not in any way conditioned by previous authorisations issued by the Authority.

Reconsideration.

**63.** Any aggrieved party may appeal from any decision of the Authority to the Tribunal in accordance with the provisions of the Environment and Planning Review Tribunal Act and any regulations made thereunder.

Appeals.

**64.** (1) An environment obligation may be entered into in those cases where the Authority, in connection with a grant of an authorisation, seeks to impose on the applicant an obligation:

Obligations.

- (a) to carry out an activity benefiting the environment in line with the objectives of this Act; or
  - (b) to make some payment, financial or in kind, toward an environmental purpose, or confer some extraneous right or benefit to the environment, as the Authority considers it to be more appropriate in the public interest and in line with the objectives of this Act. The Authority shall seek to obtain these benefits or gains by means of conditions attached to a grant of the authorisation or by means of an environment obligation entered into by a public deed made by the applicant for the authorisation with the Authority.
- (2) Any person may, by agreement with the Authority, enter into an environment obligation, which may include:
- (a) mutually agreed terms in relation to the access of genetic resources and benefit-sharing;
  - (b) restricting the use of that land or operation in any specified way;
  - (c) requiring specified operations or activities to be carried out, in, on, under or over that land or area;
  - (d) requiring that land or area to be used in any specified way; or
  - (e) 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 environmental obligation may be entered into, enforced, modified and discharged; and
  - (b) establish any restrictions, conditions or the payment of any sums of money which may be imposed in such environment obligations.
- (4) The imposition of, or agreement to enter into, an environmental obligation shall:
- (a) not constitute an entitlement to an authorisation, licence or permit which would otherwise, considering the merits of the case, not be granted or would only be partly granted; and
  - (b) in the case of the granting of an authorisation, licence or permit, be additional and without prejudice to the imposition of any relevant conditions, limitations and approved specifications.

2. Revocation or modification of authorisations and Discontinuance or removal orders

- 65.** (1) The Authority may -
- (a) in the cases of fraud; or

- (b) where public safety or significant environmental damage or risk is concerned; or
- (c) where there is an error on the face of the record; or
- (d) where there is a breach of a material condition contained in an authorisation,

by a decision revoke or modify any authorisation 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 an authorisation in terms of this sub-article, the Authority shall inform the person who will be affected by its decision of the date and time of its meeting where the Authority shall also hear the said person's submissions if the latter opts to attend, and any other person's submissions.

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

"fraud" means the submission to the Authority of any information or declaration on the basis of which the Authority has approved an authorisation, where such information or declaration 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 an authorisation on the basis of fraud as long as:

- (a) the fraudulent information did not have a material bearing on the issuing of the authorisation; and
- (b) the Authority's authorisation does not confer any undue or fraudulent benefit to the applicant under any other law or regulation, or potentially implicate the Authority in any breach of such law or regulation;

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

"material condition" means any condition which is of specific relevance to the activity covered by the authorisation.

(3) The applicant shall, if the decision is taken by the Authority, have a right to appeal the Authority's decision 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 an authorisation is based on fraud, or error of law on the face of the record, or breach of a material condition contained in an authorisation.

**66.** (1) Where the sole reason for revocation or modification of an authorisation is public safety and, or significant environmental damage, the following rules shall apply:

Reasons for  
revocation.

- (a) any activity 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 such interested person 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 by virtue of the revocation or modification; or
  - (ii) in respect of any work carried out before the grant of the authorisation 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 authorisation, or in respect of any works that are not in accordance with the authorised specifications or in breach of the terms, conditions and limitations attached to the authorisation;
- (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.

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### 3. Charges and contributions

Charges and contributions.

**67.** (1) The Authority shall have power to levy a charge in respect of any authorisation to carry out an activity, or environmental assessments, environmental auditing or environmental monitoring, to be known as the processing 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 activity, the timing of the activity, of the conditions attaching to the authorisation and of any other relevant consideration.

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

(3) 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.

Payment of fees and contributions.

**68.** No authorisation shall be granted, and no activity authorised by an order shall be carried out, unless and until any fee or contribution payable under article 67 has been paid to and received by the Authority; and any activity carried out without such

payment having been made and received shall be deemed to be an activity carried out without the permission of the Authority.

#### 4. Protection and Conservation

**69.** (1) The Authority shall prepare, and from time to time review, a list of protected areas, habitats and species which are to be protected for conservation and may in respect of all or any one or more of the protected areas, habitats or species make protection and conservation orders to regulate their protection, conservation and management. Such orders shall be published in the Gazette and on the Authority's website.

Conservation orders.

(2) Any additions or amendments to such orders thereto, shall be published by the Authority in the Government Gazette and on the Authority's website. The Authority shall set up a mechanism to 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.

(3) The carrying out of any activity and/or works in any protected area may be prohibited or restricted as provided in relevant regulations or in a conservation order.

(4) Subject to the provisions of this article, further detailed procedures regulating the application of this article shall be established in regulations issued under this Act.

(5) In respect of any site in a protected area, the Authority shall also have power to require the owner, by notice in writing, to undertake such works or actions 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 or actions 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 or actions and recover the cost thereof from the owner.

(6) An owner of a site in a protected area has a right to request the reconsideration of any protection of his land. Such request shall be entered in writing with the Authority within thirty days of notification or publication in the Gazette, whichever is the later, of the protection and the Authority shall decide within three months of receipt by it of the request for reconsideration.

(7) The Minister's endorsement shall be sought when the Authority decides to remove or downgrades the protection afforded to a protected area, and no such removal of protection or downgrading shall be valid before it is endorsed by the Minister.

(8) 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 in accordance with the procedure established under article 63.

(9) An appeal to the Tribunal from the protection of an area or the issue of a protection or conservation order shall not stay the execution of such an order.

(10) If a site or area which is not 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 protected, is at risk of being damaged or destroyed, the Authority may make an emergency conservation order and take such further steps for the protection of such site or area as it may deem necessary:

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

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

(12) 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 area to which it refers in the list of protected areas. It shall cease to have any effect on the expiration of the period aforesaid, provided that the Authority shall within such period undertake any further studies or investigations as it deems necessary and thereupon decide to revoke or amend the order or replace it with a more definitive protection or conservation order in line with sub-article (1). Where such studies or investigations and decision-making cannot be satisfactorily completed within the aforesaid six-month period, the Authority may renew the emergency conservation order for further periods as it deems reasonable or indispensable, justifying its decision.

(13) An appeal to the Tribunal from an emergency conservation order, or from an extension of time in line with sub-article (12), shall not stay the execution of such order.

Liability for  
environmental  
damage.

**70.** The Minister may, from time to time, by means of regulations introduce measures relative to the liability to be incurred by any individual who is, in any manner deemed responsible for any action that may cause environmental damage, whether in relation to a protected area, or in general. Such regulations may also include measures relating to the prevention and remedying of such environmental damage.

## 5. Guardianship

Guardianship and  
guardianship deed.  
*Added by:*  
*XXIII.2018.3*

**70A.** (1) The Minister may, with the prior approval in writing of the Minister responsible for lands, enter by public deed, into a guardianship contract with a local council or with a non-governmental organisation whereby the custody and administration of immovable property is passed over to the local council or non-governmental organisation, as the case may be, so that it may be used to secure an environmental objective such as those set in article 4, and in accordance with the provisions of this Act and of such regulations as may be prescribed and with such conditions not inconsistent therewith as may be included in the deed. The guardianship deed shall state the term for which it is entered following careful consideration of the feasibility and scale of undertaking of each proposal.

(2) The Minister shall, however, within four weeks after its

publication or if the House is not then in session, within four weeks of the date when the House next meets, lay a copy of the guardianship deed on the Table of the House, and the guardianship deed shall be subject to the condition that if on a motion tabled not later than twenty eight days after the laying on the Table of the House of the copy of the guardianship deed, the House resolves that the guardianship deed shall be rescinded, the deed shall be automatically rescinded upon the passage of the resolution.

(3) Before entering a guardianship deed, the Minister shall seek the views of the Authority as to the conditions to be included in the guardianship deed; such conditions shall in particular address the following matters:

(a) the measures that are to be taken to attain the environmental objective for which the guardianship agreement is intended;

(b) the organisational, operational and financial arrangements in connection therewith, and the organisational, operational and financial resources to be dedicated therefor.

(4) A guardianship deed shall not prejudice any powers of any public authority under this Act with regard to the immovable property subject to the guardianship deed.

(5) The property subject to the guardianship deed shall remain the property of the Government.

(6) The Minister after consulting the Authority may at any time by Order in the Gazette rescind a guardianship deed if any conditions stipulated therein or the provisions of this Act or of any regulations made thereunder are not observed by the other party.

(7) Not later than six weeks after each anniversary of a guardianship deed the party in whose custody the immovable property is placed shall transmit to the Minister and the Authority a report of its activities in relation to the immovable property and on the way it has executed the guardianship deed during the previous year. A copy of such report shall be laid on the Table of the House by the Minister.

(8) The Minister may make regulations generally prescribing rules in relation to guardianship.

## PART VII

### Powers of the Authority, Monitoring, Compliance Action and Enforcement of Control

#### 1. Right of Entry, Inspections and Monitoring

71. (1) Notwithstanding the provisions of any other law, for the purposes of carrying out their functions under this Act, the Board of the Authority, and such officer or committee or any other

Right of entry.

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, may enter any premises, public or private, vehicle, vessel or any other place, for the purposes of:

- (a) the making of investigations, inspections, surveys, tests or measurements, or lifting of samples;
- (b) ascertaining that nothing contrary to the provisions of this Act, to the regulations made thereunder or to any term, condition, limitation or specification attached to any authorisation issued under this Act is taking or has taken place, and taking any action accordingly;
- (c) ascertaining or reproducing such data or information as the Authority may require;
- (d) making plans of any premises, vehicle or vessel and taking photographs of the same after entry or boarding in accordance with this article; or
- (e) doing anything that is ancillary or consequential thereto.

(2) In the case of a dwelling house, such right of entry, inspection and monitoring as provided for in this article, will be subject to giving previous notice of at least forty-eight hours and shall not apply before half past seven in the morning or after seven o'clock in the evening.

(3) Any person who obstructs, threatens, attacks or impedes any officer of the Authority in the exercise of his duties under this Act shall be guilty of an offence and shall, on conviction, be liable to imprisonment not exceeding three years or to a fine (*multa*) of not more than one hundred thousand euro (€100,000) or to both such fine and imprisonment.

Compliance monitoring.

**72.** (1) The Authority shall have the power to carry out inspections and investigations on any occasion and for any purpose related to the responsibilities pertaining to the Authority under this Act and subsidiary legislation made thereunder.

(2) In exercising the duties in sub-article (1), the Authority shall be granted the right of entry as defined in article 71.

(3) In the event that non-compliance is proven, further action under this Act and subsidiary legislation made thereunder shall be undertaken by the Authority as considered necessary.

## 2. Monitoring, Compliance Action and Enforcement of Control

Monitoring.

**73.** (1) The Authority shall monitor any aspect and, or activity falling within the scope of this Act, particularly for the purposes of environmental surveys, audits and assessments and of ensuring compliance with the requirements of this Act and with the decisions lawfully taken under this Act.

(2) For this purpose, the Authority may appoint officers to, amongst other matters, collect data, survey, surveil and, or monitor any activity, aspect or authorisation for the purposes of environmental surveys and audits and of compliance with



legislation and authorisations.

74. The Authority may also undertake a review of any such activities carried out before the coming into force of this Act, or any other Act preceding this Act, not in compliance with rules, regulations, plans, policies or authorisations in force at the time the activity took place; and in respect of any such an activity the Authority shall have such powers as it has in respect of an activity carried out after the coming into force of this Act in order to ensure that the rules, regulations, plans and policies aforesaid are complied with or to regularise any such an activity to the extent the Authority deems adequate in the circumstances, or, if this is not reasonably possible, to enforce said compliance.

Review of activities.

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

Officers.

- (a) enquire from any person information in connection with any activity, ownership or other matter regulated by this Act;
- (b) order moving vehicles or vessels to stop and open any cargo or goods area and displace goods as instructed to enable the officers to carry out immediate, on the spot inspections, investigations and monitoring;
- (c) take compliance action including the issuing of stop or compliance orders to any person in accordance with the provisions of article 76 and the issuing of fines;
- (d) in line with the precautionary principle, issue temporary stop orders, for a maximum of ten days every calendar year, for investigations as to the legality of any activity or for any necessary monitoring.

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

Cap. 9.  
Cap. 37.

(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.

(4) The Authority may request the assistance of the Police Force, of the Armed Forces of Malta, of Transport Malta and any other competent government entity, and in acceding to such requests, each of these shall for such purpose exercise such powers as are vested in them at law.

76. (1) If it appears to the Authority that an activity is being carried out without the grant of an authorisation required under this Act or that any conditions subject to which such authorisation was granted in respect of any such activity are not being complied with or such activity is in contravention to this Act or regulations made

Compliance procedure.

under this Act, or if an activity is causing environmental damage or is contrary to subsidiary environmental legislation, the Authority may issue stop orders to any such person carrying out such an activity, or on the owner of the land or on the occupier of the land, or on all, as the Authority deems most expedient, requiring the activity to be stopped forthwith:

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:

Provided further that an official may verbally order activities to stop, and such verbal stoppage orders are to be considered as legally valid and effective for the successive three days following the issuing of the verbal stoppage order. Such stoppage orders would cease to be valid if the Authority does not either deliver a copy of a signed stop order at an address (postal or digital) that would have to be given to the compliance officer by the person responsible for the activity or affix the stop order at the site of the activities, by the end of the third day following the issuing of the verbal stoppage order:

Provided further that if it eventually transpires that the activity should not have been stopped, the Authority or any of its officers shall not be liable for any damages incurred, unless such stoppage was *prima facie* and manifestly unjustified:

Provided also that the Authority is not to await the passage of three days prior to informing the owner or occupier or person responsible, if the stoppage order can be lifted and the activity can continue.

(2) A copy of the order or notice mentioned in sub-article (1) which includes an activity relating to a site, may also be served on any representative on the site and the Authority may also affix such notice in a prominent position at a point of entry onto the site.

(3) If it appears to the Authority that any activity has been carried out after coming into force of this Act without the grant of authorisation required in that behalf under this Act, or that any conditions subject to which such authorisation was granted in respect of any activity have not been complied with, the Authority may, having regard to the provisions of legislation and any other material consideration, serve on the owner of the land or on the occupier of the land or on who was responsible for the unauthorised activity or on all as the Authority deems most expedient a compliance order, requiring such steps as may be specified in the compliance order to be taken within such time as may also be specified for remedial action to restore the situation and, or the land to its condition before the activity took place or for removing the resultant consequences of the activity 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 removal of objects and substances, the demolition or alteration of any works or buildings, the discontinuance of any operations or uses, and

remedial action to counteract the effects of the unauthorised activities.

(4) The Authority shall register all stop orders and all compliance orders in terms of this Act and the provisions of the said article concerning indexing of conservation orders shall *mutatis mutandis* apply to stop and other compliance orders in terms of this Act.

(5) Any order made under this article shall contain a detailed description of the infringements and where deemed appropriate, a site plan indicating the land which is the subject of such an order shall be annexed thereto.

(6) An order given under any of the foregoing provisions of this article shall:

- (a) in respect of any requirement stopping or prohibiting further activity or requiring the cessation of a use, take effect immediately upon service of the notice in terms of sub-article (1) notwithstanding that an application for an authorisation for the activity referred to in the order has been submitted or an appeal has been lodged against the order; and
- (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.

(7) Any application to regularise an activity may be dismissed forthwith if officers establish that a requirement in the order stopping or prohibiting further activity or requiring the cessation of a use, has not, both prior or during the pendency of the application, been complied with or in all cases where any penalty or other payment for which any person has become liable under this Act in respect of the relevant activity has not been paid.

(8) The Authority may exercise its powers under article 77(1) notwithstanding that a second or subsequent application intended to regularise the illegal activity may have been filed with the Authority concerning the same or part of the same activity, irrespective of whether the said application is filed by the same applicant or by another applicant.

(9) Any person who feels aggrieved by any order served on him may, within fifteen days from the service of the order, appeal before the Tribunal and on any such appeal the Tribunal:

- (a) if satisfied that an authorisation was granted under this Act, or under any other law which preceded this Act regulating the activity in question, for the activity to which the order relates, or that no such authorisation was required in respect thereof, as the case may be, and that the conditions subject to which such authorisation was granted have been complied with, shall quash the order to which the appeal relates or such part thereof in respect of which the Tribunal is satisfied as aforesaid;

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

(10) The appellant shall submit to the Tribunal together with his appeal under sub-article (9) a copy of all relevant authorisations, other permits or other relevant information in terms of which an authorisation has been granted to carry out the activity mentioned in the order served on him which is the subject of the appeal proceedings; and if the Tribunal is satisfied that no such authorisation exists, in terms of which and in terms of the conditions of which the activity could have been carried out, or that any authorisation had expired, the Tribunal shall forthwith dismiss the appeal.

(11) If before an appeal under sub-article (9) is lodged or during the pendency of such appeal, the appellant submits to the Authority an application for an authorisation regarding the activity mentioned in the order, the Tribunal shall dismiss the appeal if it is satisfied that the said application is intended to regularise the activity mentioned in the order.

(12) Where an appeal under sub-article (9) is dismissed, the Tribunal may direct that, in respect of any requirement, other than a requirement stopping or prohibiting any further activity or requiring the cessation of a use, the order 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.

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

(14) Where the illegal activity 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, and any reference to land shall be deemed to be a reference to the area at sea where the activity occurs.

Powers of  
enforcement.

77. (1) If any steps or other action, including any discontinuance, stoppage, removal or remediation or similar requirement, required to be taken by a stop order or a compliance order or other provisions of this Act or regulations made thereunder have not been taken within the time specified therein, the Authority will have the power to take enforcement action so as to enforce the relevant stop order or compliance order or other provision of this Act or regulations made thereunder and for this purpose 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 compliance order, or the sealing, confiscation or impoundment of items whose possession is illegal according to provisions of this Act or regulations made thereunder, and may for such purpose request the assistance of the Police Force, the Armed Forces of Malta, the Department of Customs, any local council, any department of Government or any entity of Government.

(2) 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.

(3) At its discretion, the Authority may not return to their owners any objects whatsoever which are the cause of the activity subject to the compliance order, and which are confiscated, impounded, seized or in any way removed by the Authority. The Authority may also dispose of such objects, where applicable at the contravenor's expense, in line with regulations that the Minister may make.

(4) Where the enforcement by the Authority of the stop order or the compliance order involves by necessity the passage also over third party property, and, or the removal of a development or the cessation or disruption of an activity that is not itself illegal, or any other impact on the said activity, the Authority may, under exceptional circumstances, proceed to pass over such property and, or to remove such development or to force the cessation of or to disrupt or to otherwise impact also such other activity.

(5) 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 or other restraining act may be issued against the Authority hindering it from the proper exercise of the powers conferred to it by this article.

Cap. 319.

(6) The Authority may issue orders for action to remedy environmental damage without the need to apply for authorisation from the Authority.

(7) Subject to the provisions of sub-article (3), any items legitimately confiscated, impounded, seized or in any way removed during the exercise of the powers contained in this article, may only be released by the Authority following the payment of any dues from these debts resulting from the said action, and only when such payment happens within five calendar months from the date when the responsible parties were notified by the Authority of these dues, or according to payment terms as agreed by the Authority within ninety days from this date of notification of dues.

(8) If the payment of debts to the Authority resulting from actions as set out in this article does not take place within the time frame stipulated in sub-article (7), any objects whatsoever confiscated, impounded, seized or in any way removed during the said action will become the property of the Authority and may be disposed of, where applicable at the contravenor's expense, according to regulations that the Minister may make to this effect.

**78.** Subject to the provisions of regulations made under this Act, and without prejudice to the Authority's powers set out in article 77, when an operation or a site is subject to a stop order or to a compliance order, and the provisions of the said stop order or compliance order are not abided with, the operation or site may be subject to a daily fine that starts accruing from the date of the first notification of the stop order or compliance order to any of the parties to whom the order is served according to the provisions of

Imposition of daily fines.

article 76. Any person subject to a stop order who fails to comply with the said order, or when a compliance order has not been appealed or where a compliance order has been appealed but has been confirmed, as the case may be, and the person concerned subject to a compliance 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 one hundred and fifty euro (€150) 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.

Recovery of amounts due to the Authority.

**79.** (1) 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 person against whom the order has been issued, or from any person responsible for the acts mentioned in the order, including an order for payment, or an applicant, subject to such right of recovery such person may have against any other person.

(2) 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 Chairperson 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.

(3) The declaration referred to in sub-article (2) 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.

(4) The application filed in terms of sub-article (3) 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.

(5) 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.

Special procedure.

**80.** (1) The Authority may impose an administrative fine upon any person:

- (a) who infringes any provision of this Act, regulations prescribed thereunder or of any other law with which the Authority is entitled to secure compliance and to enforce; or
- (b) who fails to comply with any directive or decision given by the Authority whether under this Act, regulations prescribed thereunder or under any other

law with which the Authority is entitled to secure compliance and to enforce; or

- (c) who fails to abide by any stop order or compliance order and the provisions therein; or
- (d) who fails to comply with any condition of any authorisation granted under this Act, including with failure to provide data or information required in authorisation conditions in a timely and/or appropriate manner:

Provided that if the infringement is committed by a body corporate and is proved to have been committed with the consent, or involvement of, or to be attributable to, any gross negligence on the part of a person being a director, manager, secretary or other officer, however so described, of such body corporate or a person who was purporting to act in any such capacity then such person and such body corporate shall be responsible for the said infringement and shall be jointly and severally liable for the payment of any administrative penalty imposed by the Authority as a consequence thereof.

(2) An administrative fine imposed under sub-article (1) shall not exceed one hundred thousand euro (€100,000) for each contravention or one thousand five hundred euro (€1,500) for each day of non-compliance, from the date of the notice of the imposition of the administrative fine given by the Authority.

**81.** (1) The Authority, before imposing an administrative penalty upon any person who infringes or fails to comply with -

- (a) any provision of this Act;
- (b) regulations made thereunder;
- (c) any other law with which the Authority is entitled to secure compliance and to enforce;
- (d) any directive or decision given by the Authority whether under this Act, regulations made thereunder or under any other law with which the Authority is entitled to secure compliance and to enforce;
- (e) any provisions or time-frames included in any stop order or compliance order; or
- (f) any condition, limitation or approved specification of any authorisation granted under this Act,

shall by notice to the person concerned -

- (i) give notice of the administrative penalty that may be imposed by the Authority;
- (ii) give notice of the specific reason why such penalty may be imposed;
- (iii) give notice of the amount of the penalty; and
- (iv) demand that the person concerned rectify the acts or omissions committed by such person and, or make submissions to the Authority within a specified time:

Proceedings when imposing administrative fines.

Provided that such time may not be more than twenty days or less than five days from the date of service of the notice:

Provided further that the person against whom an administrative penalty may be imposed, shall be given a reasonable opportunity during such period of time as may be stipulated in the notice to make submissions to the Authority and to propose any remedies that rectify the acts or omissions required by the Authority to be so rectified.

(2) In the notice mentioned in sub-article (1), the Authority may impose such conditions as it may consider reasonable in the circumstances.

(3) If the person concerned remedies the infringement to the Authority's satisfaction within the period established by the Authority in accordance with sub-article (1), and agrees in writing to abide with any conditions that the Authority may impose and pays any accrued daily fines to which the said infringement was subjected in terms of article 78, the Authority shall desist from proceeding any further:

Provided that if the person concerned, after having been bound in writing as stated above, fails to remedy the infringement to the Authority's satisfaction within the period established by the Authority in accordance with sub-article (1) or fails to abide with any terms or conditions agreed to in writing, the Authority shall impose against such person an administrative penalty for such failure, in addition to the administrative penalty which may be imposed for the infringement itself.

(4) If, after the lapse of the period mentioned in sub-article (1), the Authority considers that the person concerned has not given any valid reasons to demonstrate why no administrative penalty should be imposed against such person, the Authority shall proceed to impose such administrative penalty.

(5) Notwithstanding any other provision of this article, where the Authority has *prima facie* evidence that the infringement represents an immediate and serious threat to the environment, or to public safety or public security or public health, the Authority may shorten the periods mentioned in sub-article (1):

Provided that the person against whom such administrative penalty is imposed shall be given a reasonable opportunity to state any views and propose any possible remedies:

Provided further that if the person against whom the notice has been issued files an appeal before the Tribunal and, concurrently with or before, the filing of the appeal requests the Tribunal to suspend the effects of the notice, then the Authority shall desist from issuing a judicial act as referred to in this sub-article until the request of suspension has been determined, withdrawn or otherwise dealt with:

Provided further that the Tribunal shall determine any requests for suspension referred to in this sub-article expeditiously. Before determining any such request the Tribunal shall give the



Authority a reasonable opportunity to reply and make its submissions, within a period not less than three working days.

(6) The notice referred to in sub-article (1), upon the expiry of the time limit for appeal therefrom, and upon the service of a copy thereof by means of a judicial act on the person liable to the payment of the administrative penalty, shall constitute an executive title for all effects and the purposes of article 253(a) of the [Code of Organization and Civil Procedure](#).

Cap. 12.

(7) The Authority shall give its reasons for any decision taken under this article.

(8) Notwithstanding the provisions of any other law, no precautionary warrant or order shall be issued by any court restraining the Authority from the exercise of any of the powers conferred upon it under this Act in relation to administrative penalties.

(9) In all cases where the Authority imposes an administrative penalty and any action in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence if such person settles the penalty and any imposed action:

Provided that payment of the administrative penalty and the carrying out of any imposed action shall not extinguish any civil liability to make good any damages to any person or authority or to the environment in terms of environmental liability.

(10) An administrative penalty imposed by the Authority upon any person shall be considered a civil debt owing to the Authority.

(11) Measures whereby the liquidated value of damage to the environment, or of any infringement falling within the scope of this Act, can be settled, debited or offset, *inter alia* against payments due for public services, public goods or public projects.

**82.** Officers of the Authority appointed for such purpose may impose on-the-spot fines, not exceeding a maximum amount of one thousand euro (€1,000), for offences and to amounts as shall be prescribed in regulations issued by the Minister.

On-the-spot fines.

**83.** 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, the Authority may enter into an agreement in writing with 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 is agreed to be paid in respect of that offence as shall be prescribed in regulations made by the Minister.

Out of court settlement.

## PART VIII

### Offences

**84.** (1) Any person who -

Offences.

(a) carries out any activity without an authorisation as in

force at the time of such activity, or, if the activity is carried out with an authorisation, fails to comply or to cause compliance with any condition, restriction or other limitation to which the authorisation is subject; or

- (b) acts in contravention of any of the provisions of article 70 in respect of any protected area, or an emergency conservation order; or
- (c) having been served with a stop or compliance order or other order under article 76 fails to comply with any of the requirements of such notice within the time therein specified; or
- (d) attempts to hinder, obstruct, threaten, molest or interfere with, any officer of the Authority, or relatives thereof, or any police officer, or any public officer, or any officer of any department of Government or of any entity 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 (€1,500) and not exceeding two million five hundred thousand euro (€2,500,000), 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 article 69(6) and article 78 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 an authorisation or in violation of any conditions to which such authorisation was subject.

(2) The Court, besides awarding the punishment referred to in sub-article (1), may confiscate the *corpus delicti* where applicable and shall order the offender to remove the causes of the offence and to undo anything which was done without an authorisation or to comply with the conditions imposed in the authorisation, 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 (€50) and not more than one

hundred and thirty euro (€130), as the court may fix, for every day the default continues after the expiration of the said time and the Court may also order the modification, suspension or revocation of any authorisation.

(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) Neither the filing of an application intended to regularise any activity to which a prosecution refers, nor the filing of an appeal against a refusal or partial approval of such an application shall be a bar to the continuation of such a prosecution and the court shall continue to hear such a case and shall give judgment 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 has been regularised no fine under sub-article (2) shall be due in respect of the time after the activity has been regularised and all fines paid to the Authority.

(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 judgment given in proceedings arising out of this Act or of any regulations, rules or orders made thereunder.

Cap. 9.

(7) Any action taken under the provisions of this article shall be without prejudice to any action that may be taken against any person under regulations made in accordance with the provisions of article 69(6).

**85.** 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 Chairperson of the Authority 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.

Certified copies of documents.

## PART IX

### Miscellaneous

**86.** (1) Where any notice, order, 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:

Service of notices, etc., under this Act.

- (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; or
- (f) in any case in which it is not reasonably possible to effect service in any of the manners prescribed in (a) to (e) 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 publication in a local newspaper; or
- (g) where the order, notice, or other document to be served or given is affixed on the land but is removed before the expiry period of seven days, the reaffixing of the order, notice or other document shall only be for the remaining period after the document was removed.

(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.

(3) A person who at any time after an order, notice or other document is affixed pursuant to this article, removes, damages or defaces the said affixed order, notice or other document during its term of validity without lawful authority shall be guilty of an offence and shall be subject to a fine according to the provisions of article 82.

**87.** (1) The Minister may with effect from such date as may be established by notice in the Gazette repeal the [Environment and Development Planning Act](#) and different dates, rules and procedures may be so established for the revocation and, or

applicability of different provisions thereof.

(2) The Minister may by regulations made under this Act, provide that for the words "Director" and "Director Environment Protection", wherever they may occur in regulations made under the [Environment and Development Planning Act](#), there shall be substituted the word "Authority" and any definition of "Director" and "Director Environment Protection" in regulations made under the same Acts shall be deleted. Cap. 504.

(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 [Environment and Development Planning 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. 504.

(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 [Environment and Development Planning 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. 504.

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, notice or certificate shall remain operative for such a period from the date such licence, permission, authority, order, notice or certificate was issued.

(5) The Environment Fund established under the provisions of article 32, shall perform and succeed all the functions, assets, rights, liabilities and obligations of the Environment Fund established under the provisions of the [Environment and Development Planning Act](#). Cap. 504.

(6) The Minister may by regulations made under this Act provide that the Authority shall be considered as the competent Authority for any matters listed in this article.

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## SCHEDULE

[Article 58(2)]

The activities and operations referred to in article 58(1) include, amongst others, the following:

- (a) in relation to biodiversity and other natural features:
  - (i) for whatever purpose, trade in, sell, buy, exchange, transfer or dispose, extract or abstract, transport, import, export or re-export such specimens of flora, fauna or other natural features, as may be prescribed whether dead or alive in whole or in part, including any derivatives thereof;
  - (ii) have such specimens as may be prescribed in transit;
  - (iii) have in his possession such specimens as may be prescribed;
  - (iv) handle such specimens as may be prescribed, in any manner including the ringing and tagging thereof;
  - (v) mount, stuff, trap, shoot or capture such specimens as may be prescribed;
  - (vi) deliberately pick, collect, cut, destroy, kill, pursue, take, damage, capture such specimens as may be prescribed;
  - (vii) uproot, fell, prune or carry out any surgical or other interventions on such specimens 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 the diversity and the integrity of the site or its environmental characteristics;
  - (xii) carry out any activity which goes counter to the principles of ecological, geological, geomorphological, hydrology and landscape restoration or of good-practice conservation and management of biodiversity, natural features, landscapes and protected areas, as may be prescribed, including but not limited to:
    - 1. activities which are expected to cause permanent or prolonged or otherwise significant alterations;
    - 2. afforestation, planting, deforestation and removal of natural vegetation;
    - 3. activities expected to generate, intensify or modify ambient noise, vibrations, light pollution, currents or other disturbances to the environment;
    - 4. activities involving fires, fireworks, spillage hazards or other potentially hazardous factors;
    - 5. activities considered to have an effect on biological diversity, on the physical aspect of the site, or on the integrity of the site and the landscape;
    - 6. off-roading activities or events;
    - 7. cleaning or dredging of valleys;
  - (xiii) modify, endanger the stability of or demolish any natural physical features, or any rural structures affording a habitat for flora and

- fauna or otherwise contributing to the integrity of the landscape or the physical environment, as may be prescribed;
- (xiv) manage biological diversity as may be prescribed;
  - (xv) for the access to genetic resources and their benefit-sharing;
- (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 as may be prescribed into the environment;
- (d) in relation to the contained use of genetically modified organisms:
- (i) deliberate release into the environment of genetically modified organisms;
  - (ii) trade in genetically modified organisms;
  - (iii) manage or otherwise have in his possession genetically modified organisms;
- (e) any other activity as may be prescribed by regulations.
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