

CHAPTER 445**CULTURAL HERITAGE ACT**

To make provision in place of the Antiquities (Protection) Act, Cap. 54 for the superintendence, conservation and management of cultural heritage in Malta and for matters ancillary thereto or connected therewith.

3rd May, 2002;
15th August, 2002;
21st October, 2002;
1st January, 2003

ACT VI of 2002, as amended by Acts XVIII of 2002, II of 2005 and XXXII of 2007; Legal Notice 426 of 2007; and Act XXIII of 2009.

Arrangement of Act

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PART I

PRELIMINARY

- Short title. **1.** The short title of this Act is the Cultural Heritage Act.
- Interpretation.
Amended by:
XXXII. 2007.19. **2.** In this Act, unless the context otherwise requires:
- "Agency" means the operating agency set up under article 8;
- "Centre" means the Malta Centre for Restoration referred to in article 10;
- "co-ordinate" means exchanging views orally or in writing, before a decision or action is taken, with a view to avoiding conflicts, waste and errors or of putting a remedy thereto;
- "Committee" means the Committee of Guarantee established by article 14;
- "conservation" means any activity required to maximise the endurance or minimise the deterioration of any cultural property as far as possible, and includes examining, testing, treating, recording and preserving any such cultural property or any part thereof;
- "Conservation and Protection Order" shall have the meaning assigned to it in article 47;
- "conservator-restorer" means a professionally qualified person holding a warrant under this Act;
- Cap. 226. "contiguous zone" has the meaning as is assigned to it by the Territorial Waters and Contiguous Zone Act;
- "cultural heritage" means movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value;
- "cultural property" means movable or immovable property forming part of the cultural heritage;
- Cap. 356. "development" has the meaning assigned to it in the Development Planning Act;
- "Entities" means the Superintendence, the Agency, the Centre, the Committee and the Fund, and Entity shall be construed accordingly;
- "exploration" means an activity on land or at sea or in the contiguous zone, carried out with the intention of discovering new data regarding the cultural heritage and which may result in the discovery of movable or immovable items of cultural heritage value

not yet documented on the national inventory of cultural property;

"financial year" means the period of twelve months ending on the 31st December in any year:

Provided that the financial year which commenced on the 1st October, 2007 shall be for a period of fifteen months and shall terminate on the 31st December, 2008;

"Forum" means the National Forum for Cultural Heritage established in article 15;

"function" includes responsibilities, powers and duties;

"Fund" means the Cultural Heritage Fund established by article 16;

"guardianship" and "guardianship deed" shall have the meaning respectively assigned to them in article 48;

"integrated conservation" means the whole range of measures aimed at ensuring the perpetuation of the cultural heritage, its maintenance as part of an appropriate environment, whether man-made or natural, its utilisation and its adaptation to the needs of society. Such an objective is to be achieved through the revitalisation and integration of cultural heritage within the physical environment of present-day society and by assigning a social function to such cultural heritage compatible with its dignity and its setting;

"investigation" means any activity for the purpose of obtaining and recording any information relating to cultural heritage and includes any works for the purposes of identifying, discovering, excavating, revealing, recovering and removing any object or material situated in, on or under any cultural property;

"holder" shall mean the person physically holding a cultural object on behalf of third parties;

"Local Council" means a local council established under the Local Councils Act;

Cap. 363.

"Minister" means the Minister responsible for cultural heritage, and includes, to the extent of any authority given, any person specifically authorised by the Minister for any of the purposes of this Act;

"mission" means the purpose and objective of an organization;

"museum" means a permanent institution in the service of society and of its development, and open to the public, which acquires, collects, conserves, researches, documentates, communicates and exhibits for the purpose of study, education and enjoyment of cultural heritage and associated information of humankind and its environment for the public benefit;

"owner" in relation to any cultural property includes the directus dominus, the sub directus dominus, the emphyteuta, the sub emphyteuta, the bare owner and the usufructuary;

"officer" and "employee" includes a public officer detailed for duty in any of the entities, committees or bodies established under

	<p>this Act;</p> <p>"Planning Authority" means the Authority established under the Development Planning Act;</p> <p>"possessor" means the person physically holding the cultural object in his own name;</p> <p>"prescribed" means prescribed under this Act;</p> <p>"public officer" has the same meaning assigned to it by article 124 of the Constitution;</p> <p>"restoration" means a highly specialised activity to conserve the integrity of cultural heritage, and to reveal its cultural values and to improve the legibility of its original state, form and design, within the limits of still existing material. Such activity must be based on a critical and historical process of evaluation and not on conjecture;</p> <p>"right of preference" means the right granted to the Superintendent by and in accordance with article 40;</p> <p>"Superintendence" means the Superintendence of Cultural Heritage established by article 7 and "Superintendent" means the Superintendent of Cultural Heritage referred to in the same article;</p> <p>"surveillance" means an activity by the Superintendence which includes an activity related to the control, direction, monitoring, regulation, investigation and recording of cultural heritage, and includes any activity in relation thereto;</p> <p>"suspension notice" has the meaning assigned to it in article 46;</p>
Cap. 356.	
Cap. 226.	<p>"territorial waters" has the meaning assigned to it in the Territorial Waters and Contiguous Zone Act, and includes any waters enclosed between the baselines therein mentioned and the coast;</p> <p>"warrant means the warrant granted in accordance with Part VI of this Act, and warrant holder shall be construed accordingly.</p>
Objects to which provisions of this Act apply.	<p>3. For the purposes of this Act, an object shall not be deemed to form part of the cultural heritage unless it has existed in Malta, including the territorial waters thereof, or in any other country, for fifty years, or unless it is an object of cultural, artistic, historical, ethnographic, scientific or industrial value, even if contemporary, that is worth preserving.</p>

PART II

PRINCIPLES AND GENERAL DUTIES

Principles and duties.

4. (1) The provisions of the following subarticles of this article and of the other articles of this Part shall not be enforceable in any court of law, however the principles therein contained are fundamental to the protection of the cultural heritage and it shall be the aim of the State to apply the same and to be guided thereby.

(2) Every citizen of Malta as well as every person present in Malta shall have the duty of protecting the cultural heritage as well as the right to benefit from this cultural heritage through learning

and enjoyment. The cultural heritage is an asset of irreplaceable spiritual, cultural, social and economic value, and its protection and promotion are indispensable for a balanced and complete life.

(3) The State in Malta shall have the duty of establishing and maintaining administrative and regulatory structures of superintendence so as to ensure that this heritage is protected and conserved, as well as such other structures as are required for the management of the care, exposition and appreciation of this heritage.

(4) The duty to protect includes the duty to documentate, conserve, maintain, restore and includes the duty to intervene whenever deemed fit, including in circumstances of misuse, lack of conservation or application of wrong conservation methods. Such duty to protect also includes the duty to encourage the sustainable use and maintenance of the cultural heritage resource, in accordance with the principles of integrated conservation, including that of:

- (a) encouraging the integration of conservation and management practices with respect to cultural heritage at all levels of government, local government, the private sector and voluntary sector;
- (b) ensuring that conservation, management and other initiatives affecting cultural heritage take account of policies of social inclusion;
- (c) ensuring that conservation, land planning and other initiatives affecting cultural heritage areas take into account the social fabric of existing communities and strive to improve the living conditions for all levels of society. Such initiatives should ensure, where possible, that they do not precipitate negative changes to the social fabric of the population of any given locality intervened upon;
- (d) promoting public awareness of the richness and extent of cultural heritage as an intrinsic part of humankind's environment, and of the need to prevent the debasement of cultural heritage assets upon which depends the quality of that same environment, and of the cultural, economic and social reasons justifying its protection;
- (e) taking into consideration the special problems of cultural heritage conservation, maintenance and management in anti-pollution policies;
- (f) promoting fiscal and financial policies aimed at encouraging owners of cultural heritage to maintain, conserve, protect and make good use of such property.

(5) The duty to make accessible includes the duty to exhibit, to research, to render accessible for research, study and enjoyment, the cultural heritage and to promote knowledge, appreciation and awareness of this heritage within the principle of social inclusion. The right of access to, and benefit from, the cultural heritage does not belong merely to the present generation. Every generation shall

have the duty to protect this heritage and to make it accessible for future generations and for all mankind.

Conditions.

5. In performing its duty the State may delegate any of the duties set out in article 4 to entities already in existence, or to other public or non-statal entities which may be established for the purpose, provided that the State shall:

- (a) publish the conditions under which such delegation is given;
- (b) reserve the public ownership of all that is put in trust by such delegation;
- (c) reserve the right of superintendence.

Priority of cultural heritage.

6. The protection, promotion and accessibility of the cultural heritage shall be given very high priority in deciding public policy in all fields of activity in Malta.

PART III

CONSTITUTION, COMPOSITION AND FUNCTIONS OF ENTITIES

Superintendence.

7. (1) There shall be a Superintendence of Cultural Heritage, under the responsibility and management of the Superintendent of Cultural Heritage. The mission of the Superintendence is to fulfill the duties of the State to ensure the protection and accessibility of cultural heritage as defined in this Act.

Legal personality and judicial representation.

(2) The Superintendence 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, or 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.

(3) The legal and judicial representation of the Superintendence shall vest in the Superintendent provided that the Superintendent may appoint any person, including any one or more of the officers or employees of the Superintendence, to appear in its name and on its behalf in any judicial proceedings and on any act, contract, instrument or other document whatsoever.

Appointment of Superintendent.

(4) The Superintendent shall be appointed by the Minister for a period of not more than five years under such terms and conditions as established in his letter of appointment. On the expiry of his term a person may be reappointed for a further term or terms.

Functions and duties of the Superintendence.

(5) It shall be the function of the Superintendence:

- (a) to establish, update, manage and, where appropriate, publish, or to ensure the compilation of, a national inventory of cultural property belonging:
 - (i) to the State or State institutions,
 - (ii) to the Catholic Church and to other religious

- denominations,
- (iii) to Foundations established in these islands,
 - (iv) to physical and juridical persons when the cultural property has been made accessible to the public, or when such persons have given their consent for such a purpose;
- (b) to exercise surveillance over the protection, conservation, restoration, maintenance, exhibition and accessibility of cultural property;
 - (c) to promote research in the field of cultural heritage and to conduct excavations and other investigations which may be required so that objects or aspects of cultural heritage be discovered, cared for and appreciated;
 - (d) to authorise excavations, as well as to monitor excavations ensuring that such excavations, their documentation and the exhibition of the results thereof follow scientific methods and employ the best technology possible;
 - (e) to ensure that adequate documentation is kept and archived in relation to excavation, exploration and search for antiquities, the conservation of cultural property and discoveries resulting from environment impact assessments;
 - (f) to promote and ensure the best policies, standards and practices in the conservation and presentation of artefacts, collections, museums, buildings, monuments and sites;
 - (g) to advise and coordinate with the Planning Authority action in safeguarding cultural heritage when considering applications for planning permission relating to development affecting objects, sites, buildings or landscapes which form part of the cultural heritage;
 - (h) to advise the Minister with regard to cooperation with other governments and international organizations in the field of the protection of the cultural heritage;
 - (i) after consulting the Committee, to advise the Minister on the need of enforcing urgent repair or conservation works in accordance with article 42, as well as to the need for the compulsory acquisition of sites or buildings by the Government in accordance with the Land Acquisition (Public Purposes) Ordinance for the better protection of the cultural heritage;
 - (j) generally to advise the Minister on all matters relating to the cultural heritage and cultural property;
 - (k) to perform such other functions under this or any other law as well as such other functions as the Minister may from time to time assign to it.

- Operating agency. **8.** (1) There shall be an operating agency hereinafter in this Act referred to as the Agency to be called "Heritage Malta". The mission of the Agency is to ensure that those elements of the cultural heritage entrusted to it are protected and made accessible to the public as defined in this Act.
- (2) The Agency 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, or 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.
- Legal and judicial representation. (3) The legal and judicial representation of the Agency shall vest in the Chairperson, provided that the Chairperson may appoint the Chief Executive Officer or any one or more of the officers or employees of the Agency, to appear in its name and on its behalf in any judicial proceedings and on any act, contract, instrument or other document whatsoever.
- Functions of Agency. (4) It shall be the function of the Agency:
- (a) to ensure that museums, collections, sites, buildings and property, movable or immovable, forming part of the cultural heritage, owned or administered by it, are conserved, restored, administered, managed, operated, marketed, studied and presented for exhibition, in the best way possible;
 - (b) to acquire in property or in trust objects, collections of objects, sites, buildings, for the Museums, collections, sites and buildings;
 - (c) to perform or commission, in each case under the surveillance of the Superintendent, the restoration or conservation of cultural property owned or otherwise held or administered by it;
 - (d) to coordinate with the Malta Tourism Authority, the Planning Authority and other pertinent bodies, measures which are deemed necessary so that objects, sites and buildings forming part of the cultural heritage are protected and made accessible through any necessary conservation, maintenance, restoration, exhibition and promotion;
 - (e) to promote public knowledge, education, appreciation and enjoyment of the cultural heritage;
 - (f) in coordination with the Superintendence to consult with Local Councils in the preservation of the cultural heritage in their locality; and
 - (g) to perform such other functions which the Minister may from time to time assign to it.
- (5) (a) For the purpose of ensuring the better conservation, restoration, management, administration, marketing, exhibition, presentation or study of any particular part of the cultural heritage, the Agency may, with the

written approval of the Minister, acting in consultation with the Superintendent, either delegate any of its functions to any existing entity or to any entity to be established, whether public or private, or a partnership thereof, as may be necessary, and in every case under such conditions as established by the superintendent and approved and published by the Minister in the Gazette, provided that whenever the delegation above-mentioned consists in an act of guardianship there shall be followed the provisions of article 48.

(b) The Agency may, where appropriate, also fulfil its functions directly through its own resources.

(6) The Agency shall give the Superintendent all information that he may require in order to enable him to perform his functions under this Act.

9. (1) The Agency shall be governed by a Board of Directors consisting of not less than five and not more than nine members, one of whom shall be the Chairperson, another the Deputy Chairperson, and a member nominated by the Minister responsible for Gozo.

Board of Directors.

(2) The members of the Board shall be appointed by the Minister for a period of not less than three years but not more than five years as may be determined in their letter of appointment. Members of the Board may, on the expiration of their term of office, be reappointed.

(3) The functions of the Board shall be:

- (a) to determine the policy and strategy of the Agency;
- (b) to employ and manage the human resources required to achieve the aims of the Agency;
- (c) to ensure the proper financial administration of the Agency;
- (d) to ensure the collaboration with other local and foreign bodies necessary for achieving the aims of the Agency.

(4) The Board shall appoint a Chief Executive Officer who shall be responsible to the Chairperson and the Board, and the appointment shall be for a period of not more than three years under such terms and conditions as stated in his letter of appointment. On the expiry of his term a person may be reappointed for a further term or terms.

(5) The meetings of the Board shall be called by the Chairperson, either on his own initiative or at the request of any two of the other members.

(6) Half the number of members for the time being constituting the Board shall form a quorum. Decisions shall be adopted at a meeting at which a quorum is present by a simple majority of the members present and voting. The Chairperson shall have an initial vote and, in the event of an equality of votes, a casting vote.

(7) Any member who has a direct or indirect interest in any

contract or other action made or proposed to be made by the Agency, where such interest exists, shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the meeting, and such member shall withdraw from any meeting while such matter is discussed or decided by the Board.

(8) Subject to the provisions of this Act, the Board may regulate its own proceedings.

(9) Any document purporting to be an instrument made or issued by the Agency and signed by the Chairperson on its behalf shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument made or issued by the Agency.

Malta Centre for
Restoration.
Amended by”
II. 2005.50.

10. (1) (a) The Malta Centre for Restoration established by the Minister responsible for education together with the University of Malta is hereby re-established and reconstituted as a body corporate having a distinct legal personality 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.

(b) The mission of the Centre is to become a centre of excellence for the teaching, training, research and practice of conservation, restoration, maintenance, management and presentation of the cultural heritage, and to provide conservation and restoration services and consultation as may be required by other bodies, both public and private.

(2) The legal and judicial representation of the Centre shall vest in the Chairperson, provided that the Chairperson may appoint the Director or any one or more of the officers or employees of the Centre, to appear in its name and on its behalf in any judicial proceedings and on any act, contract, instrument or other document whatsoever.

(3) The Centre shall be governed by a Board of Directors consisting of not less than five and not more than nine members appointed by the Minister, one of whom shall be the Chairperson and another the Deputy Chairperson.

(4) The functions of the Board shall be -

- (a) to determine the policy and strategy of the Centre;
- (b) to employ and manage the human resources required to achieve the aims of the Centre;
- (c) to ensure the proper financial administration of the

Centre;

(d) to ensure collaboration with local and foreign bodies, necessary for achieving the aims of the Centre.

(5) The Board shall appoint a Director of the Centre who shall be the Chief Executive Officer of the Centre and who shall be responsible to the Chairperson and the Board.

(6) The meetings of the Board shall be called by the Chairperson either on his own initiative or at the request of any two of the other members.

(7) Three members of the Board shall form a quorum at its meetings. Decisions shall be adopted at a meeting at which a quorum is present by a simple majority of the members present and voting. The Chairperson, or other person chairing the meeting, shall have an initial vote and, in the event of an equality of votes, a casting vote.

(8) Any member who has a direct or indirect interest in any contract or other action made or proposed to be made by the Centre, shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the meeting and such member shall withdraw from any meeting while such contract is discussed or decided by the Board.

(9) Subject to the provisions of this Act and to such procedures as may be prescribed, the Board may regulate its own proceedings.

(10) Any document purporting to be an instrument made or issued by the Centre and signed by the Chairperson on its behalf shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Centre.

11. The aims and functions of the Centre shall be:

Functions of
Centre.

- (a) to act as a national consulting agency for both the public and private sectors on all matters related to conservation and restoration;
- (b) to advise, following consultation with the superintendence, the Government on a policy of conservation and restoration which will cover the Maltese islands and identify priority areas and special needs;
- (c) to advise on and arrange for the restoration outside Malta of such artefacts which cannot be restored locally;
- (d) to undertake conservation projects in Malta and abroad and to provide conservation restoration project management services to public and private sector clients in Malta and abroad;
- (e) to set up and maintain all necessary systems, especially conservation databases, required to organise, plan, co-ordinate, control, monitor and generally undertake restoration projects;

- (f) to research and develop restoration project management methodology;
- (g) to set up and maintain diagnostic science and conservation laboratories;
- (h) to set up and maintain a documentation department charged with the scientific documentation of conservation projects;
- (i) to promote, set up and maintain teaching facilities for training students to internationally recognised, professional standards in the arts and sciences of conservation and restoration;
- (j) to promote and co-ordinate the pursuit of interdisciplinary training at professional, technical and craftsman levels in all aspects of conservation and restoration;
- (k) to promote and organize teaching and certification activities within the parameters of the Malta Professional and Vocational Qualifications Regulations, in such a way as to allow for progression from vocational to professional levels; and
- (l) to identify skills required throughout the cultural heritage sector and the means by which such skills can be developed, while also encouraging and supporting continuing professional development for those persons working in all occupations in the sector.

S.L.343.26

National strategy for cultural heritage.

12. (1) The Minister shall prepare a policy document outlining the National Strategy for Cultural Heritage. In preparing such document the Minister shall consult with all the Entities set up under this Act and those other agencies, whether public or otherwise, as the Minister may deem proper. The Minister shall cause a copy of such document to be laid on the Table of the House as soon as it is ready and the House shall dedicate one sitting for a discussion on it.

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

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

Relations with the Minister.

(3) In the exercise of their functions under this Act, the Superintendence, the Agency and the Centre shall:

- (a) give effect, as soon as practicable, to any direction, not inconsistent with any provision of this Act which the Minister may give to the Superintendence, the Agency and the Malta Centre for Restoration in relation to the policy to be followed by them in the discharge of their functions, and in relation to any matter which appears to the Minister to affect the cultural heritage;
- (b) afford to the Minister facilities for obtaining any information with regard to the property and activities of the Superintendence, the Agency and the Centre and

for this purpose the Superintendence, the Agency and the Centre shall each furnish the Minister with returns, accounts and other information with respect to its functions, and afford facilities for the verification of any information furnished, in such manner and at such times as the Minister may require.

13. The Superintendence, the Agency and the Centre shall be exempt from any liability for payment of any tax, other than customs or excise duties, or tax on income or duty on documents for the time being in force in Malta. Exemption from certain taxes.

14. (1) There shall be a Committee of Guarantee, which shall be composed as follows: Committee of Guarantee.

- (a) a Chairperson appointed by the Minister;
- (b) a person appointed by the Minister responsible for tourism;
- (c) a person appointed by the Minister responsible for the environment;
- (d) a person appointed by the Minister responsible for Gozo;
- (e) the Superintendent *ex officio*;
- (f) the Chairperson of the Agency *ex officio*;
- (g) the Chairperson of the Centre *ex officio*;
- (h) the Chairperson of the Planning Authority *ex officio*;
- (i) a member of the Catholic Cultural Heritage Commission referred to in article 52 appointed by the competent local ecclesiastical authority;
- (j) three other persons appointed by the Minister from amongst persons working in the field of cultural heritage and in non-Governmental organizations dedicated to cultural heritage, and another person active in the commercial sector.

(2) The Chairperson of the Committee and the members referred to in subarticle (1)(i) shall be appointed for a period of three years and may be reappointed for further periods each of three years.

(3) The Committee shall meet at least once every two months. Its meetings shall be called by the Chairperson either on his own initiative or at the request of any three of the other members.

(4) Five members shall form a quorum and decisions shall be adopted by a simple majority of all the members of the Committee. The Chairperson shall have an initial vote and in the event of an equality of votes, a casting vote.

(5) Subject to the provisions of this Act and to such procedures as may be prescribed, the Committee shall regulate its own proceedings.

(6) The Committee shall:

Functions of the Committee.

- (a) without prejudice to the provisions of this Act, co-ordinate the Entities established under articles 7, 8 and 10;
- (b) ensure and facilitate the collaboration between the different agencies with direct or indirect responsibility for the protection and management of the cultural heritage sector;
- (c) advise the Government on the National Strategy for Cultural Heritage and subsequently oversee and monitor the implementation of the strategy as adopted by Government and as directed by the Minister;
- (d) draw the attention of the Government or of any organisation or person to any urgent action that may be required in the field of cultural heritage;
- (e) meet regularly and consult, at least, every four months, with non-Governmental Organisations working in the field of cultural heritage and with persons operating in the commercial sector;
- (f) advise the Minister on any matter arising from the provisions of this Act and on any other matter referred to it by the Minister.

(7) Any member who has a direct or indirect interest in any contract or other action made or proposed to be made by the Committee, shall disclose the nature of his interest at the first meeting of the Committee after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the meeting, and such member shall withdraw from any meeting while such matter is discussed or decided by the Committee.

Cultural Heritage Fund.

15. (1) There shall be a Fund to be known as the Cultural Heritage Fund, which shall be a body corporate with a separate legal personality, and which shall receive and manage all monies paid to it under the provisions of this Act or under any other Act, as well as other monies or other movable or immovable properties which may be donated to it by non-governmental sources.

(2) The Fund shall be administered by the Committee of Guarantee.

(3) The monies in the Fund may be used solely for the purpose of research, conservation or restoration of the cultural heritage.

(4) A yearly account of the administration of the Fund shall be submitted to the Minister and laid by him on the Table of the House.

National Forum.

16. (1) The Minister shall, once a year convene a National Forum for Cultural Heritage inviting the participation therein of the Superintendence, the Agency, the Centre, the Committee, the Catholic Cultural Heritage Commission, the Religious Cultural Heritage Commissions, if any, other Government departments and entities, the Mayors of each Local Council or their representative, non-Governmental organizations registered with the Superintendence as organizations aiming at the protection of the

cultural heritage, the University of Malta, other educational institutions, specialists, consultants, representatives of the commercial sector, and any other parties registering their interest in writing with the Minister.

(2) The President of the Forum shall be appointed by the Minister.

(3) The Forum shall discuss the state of cultural heritage in general after hearing a report thereon prepared by the Superintendent.

(4) The Minister shall regulate the proceedings of the Forum.

(5) The proceedings of the Forum shall be published and transmitted to the Minister and to the Committee of Guarantee.

(6) The Minister shall give advanced public notice a month before the meeting of the Forum.

PART IV

ADMINISTRATIVE AND PERSONNEL PROVISIONS

17. (1) Subject to the provisions of the Constitution and of any other law including this Act applicable thereto, the appointment of officers and other employees of Entities shall be made by Superintendent in the case of the Superintendence, by the Chairperson of the Board of Directors in the case of the Agency, by the Chairperson of the Board of Governors in the case of the Centre, and by the Chairperson of the Committee in the case of Committee or the Fund. The terms and conditions of employment shall be determined by each Entity with the approval of the Minister.

Staff appointments.

(2) Each Entity shall appoint and employ, at such remuneration and upon such terms and conditions as it may in accordance with subarticle (1) determine, such officers and employees as may from time to time be necessary for the due and efficient discharge of its functions.

Appointments and functions of officers and employees.

18. (1) The Prime Minister may, at the request of an Entity, from time to time direct that any public officer shall be detailed for duty with the entity in such capacity and with effect from such date as may be specified in the direction.

Detailing of public officers.

(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, be such as may be specified in the direction, unless the direction is revoked earlier by the Prime Minister.

(3) Where any officer is detailed for duty with any Entity in accordance with this article, 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 Entity but shall for other intents and purposes remain and be considered and treated as a public officer.

Status of public officers.

(4) Without prejudice to the generality of the foregoing, a

public officer detailed for duty as aforesaid -

(a) shall not during the time while such officer is so detailed -

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

(ii) be so employed that the remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by that public officer at the date he was detailed for duty as aforesaid or which would have become attached to such appointment, during the said period, has such officer not been detailed for duty with the Entity; and

(b) shall be entitled to have the service with the Entity considered as service with the Government for the purpose of any pension, gratuity or benefit under the Pensions Ordinance, and the Widows' and Orphans' Pension, and of any other right or privilege to which that public officer would be entitled, and shall be liable to any liability to which he would be liable, but for the fact that he is detailed for duty with the Entity.

Cap. 93.
Cap. 58.

(5) Where an application is made as provided in subarticle (4)(a)(i), the same consideration shall be given thereto as if the applicant had not been detailed for duty with the Entity.

(6) Each Entity shall pay to the Government, where applicable, 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 such entities as aforesaid during the period in which such officer is so detailed.

Offers of permanent employment to public officers detailed for duty with the Entities.

19. (1) Each Entity may, with the approval of the Prime Minister, offer to any officer detailed for duty with such entities under any of the provisions of article 18 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.

(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 at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(3) Every officer who accepts permanent employment with an Entity, under the provisions of subarticle (1), shall for all purposes other than those of the Pensions Ordinance, and of the Widows' and Orphans' Pensions Act, be deemed to have ceased to be in service with the Government and to have entered into service with the Entity on the date of such acceptance and for the purposes of the said Ordinance and of the said Act, so far as applicable to that officer, service with such Entity shall be deemed to be service with the Government within the meanings thereof respectively.

Cap. 93.
Cap. 58.

(4) Every such officer as aforesaid who immediately before accepting permanent employment with an Entity 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 service with the entities were service with the Government.

(5) Each Entity 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 it as aforesaid during the period commencing on the date of such officer's acceptance.

- (6) (a) For the purposes of this article the posts and salary grades with Entities shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta 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 chairperson appointed by the Minister responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the relevant Entity. 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 employees in the Government service, and, or, of employees of an Entity.
- (d) No post shall be classified in a grade higher than that of 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 the provisions of article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which that person would have been entitled prior to such classification.

PART V

FINANCIAL PROVISIONS

Entities to meet expenditure out of revenue.

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

(2) For such purpose each Entity shall levy such fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law.

(3) Each Entity shall also be paid by Government out of the Consolidated Fund such sums as the House may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by it, being works of infrastructure or a similar capital nature, or to meet any of its expenditure which it cannot meet out of its revenue.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by each Entity to the formation of reserve funds to be used for its purposes, and without prejudice to the generality of the powers given to the Minister by this subarticle, any direction 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 subarticle (2) or any such excess as aforesaid.

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

Power to borrow capital.
Amended by:
L.N. 426 of 2007.

21. (1) For the purposes of any requirements of a capital nature, an Entity may, with the approval in writing of the Minister in consultation with the Minister responsible for finance, borrow 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) An Entity may also from time to time borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67), there shall be required the approval of the Minister in writing.

Advances from Government.

22. The Minister responsible for finance may, after consultation with the Minister, make advances to an Entity of such sums as the Minister responsible for finance may agree to be required by such entity for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as the Minister responsible for finance 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, authorising the Accountant General to make such advance.

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

Borrowing from
Government.

(2) Notice of any loans, liabilities or advances made or incurred under the provisions of subarticle (1) shall be given by the Minister to the House as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in subarticle (1), or for the purpose of providing an Entity with working capital, the Minister responsible for finance may, by warrant, and without further appropriation other than this Act, authorise the Accountant General to make advances to it 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 an Entity and any other moneys to be advanced to an Entity under this article, shall be paid into the Fund.

(5) Sums received by the Accountant General from an Entity in respect of advances made to it under subarticle (3) shall be paid, as respects of amounts received by way of repayment into the Treasury Clearance Fund and, as respects of amounts received by way of interest into the Consolidated Fund.

24. (1) Each Entity shall cause to be prepared in every financial year, and shall not later than eight weeks before the end of each financial year adopt, estimates of its income and expenditure for the next following financial year:

Estimates of the
Entities.

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

(2) In the preparation of such estimates an Entity 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 an appropriation Act or of any other law; and it shall so prepare the said estimates as to ensure that its total revenues 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 in such forms and shall contain such information and such comparisons with previous estimates as the Minister may direct.

(4) A copy of the estimates shall, upon their adoption by an Entity, be sent forthwith by the Entity 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 of the Entities, or, if at any time the House is not in session, within six weeks from the beginning of the next following session, cause such estimates to be laid before the House together with a motion that the House approves the said estimates. Not more than one sitting 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.

Expenditure according to the approved estimates.

25. (1) No expenditure shall be made or incurred by an Entity unless it has been approved by the House as provided in article 24.

(2) Notwithstanding the provisions of subarticle (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, an Entity may make or incur expenditure for carrying out 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 sub-head of the estimates may, with the approval of the Minister, be incurred in respect of another head or sub-head of the estimates;
- (c) in respect of the first financial year, an Entity may make or incur expenditure until the approval of the estimates for that year by the House not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;
- (d) if in respect of any financial year it is found that the amount approved by the House is not sufficient, or if a need has arisen for expenditure for a purpose not provided for in the estimates, an Entity may adopt supplementary estimates for approval by the House and pending such approval, such Entity may in special circumstances and with the approval of the Minister, incur the relative expenditure or part thereof as the said Minister may so approve, and in any such case the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates.

Publication of approved estimates.

26. All estimates and supplementary estimates approved by the House shall, as soon as practicable, be published in the Gazette.

Accounts and audit.

27. (1) Each Entity shall cause to be kept proper books of account 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 each Entity shall be audited by an auditor

or auditors to be appointed by it and approved by the Minister:

Provided that the Minister responsible for finance may require the books and other records of an Entity to be audited or examined by the Auditor General who shall for this purpose have power to carry out such physical checking and other verification, and may require such information, as the Auditor General may deem necessary.

(3) After the end of each financial year, at the same time as a copy of the estimates of an Entity is forwarded to the Minister under article 24, the Entity shall 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 auditor or auditors on that statement or on the accounts of the Entity.

(4) The Minister shall cause a copy of every such statement and report to be laid before the House together with the motion laid before the House under article 24(5).

28. (1) All moneys of an Entity shall be paid into a bank or banks appointed as bankers by it. Such moneys shall, as far as practicable, be paid into the banks from day to day, except for such sum as the Entity may require to retain to meet petty disbursements and immediate payments.

Deposit of revenues and payment by the entities.

(2) All payments out of the funds of each entity, except petty disbursements not exceeding such sum as may be fixed by the respective Entity with the approval of the Minister, shall be made by such officer or officers of that entity as shall be appointed or designated for the purpose.

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

(4) Each Entity 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 its monies are to be paid, and the transfer of funds from one account into another;
- (c) the method to be adopted in making payments out of its fund; and
- (d) generally with respect to any matter which is relevant to the proper keeping and control of the accounts, books and other records and the control of its finances.

29. An Entity shall not enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the Entity, which is estimated by it to involve an expenditure exceeding six thousand and nine hundred and eighty-eight euro and twelve cents (6,988.12), except

Contracts of supply and of works.
Amended by:
L.N. 426 of 2007.

after notice of its intention to enter into such contract has been published and competitive tenders have been issued.

Annual report.

30. Each Entity shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with its activities during that financial year and containing such information relating to its proceedings and policy 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 together with the estimates as provided for in article 24.

PART VI

CONSERVATION PROFESSIONALS

Qualifications for warrant.

31. (1) No person shall exercise the profession of conservator-restorer unless he is the holder of a warrant under article 33.

(2) A person shall not qualify for the award of warrant unless -

- (a) he is a citizen of Malta or is otherwise permitted to work in Malta under any law;
- (b) he is of good conduct;
- (c) he is of full legal capacity; and
- (d) he satisfies the Board that -

- (i) he is in possession of academic qualifications obtained after successful completion of a course of study of at least three years full-time duration, or equivalent part-time duration at such university or academic institution as may be recognised by the Board referred to in article 34, being a course which contains those minimum core subjects in the field of conservation and restoration as the Minister may prescribe;

- (ii) for a period of not less than two years after obtaining the academic qualifications referred to in subparagraph (i), he has trained in Malta under the supervision of a practising warrant holder, in accordance with such guidelines as the Minister may prescribe:

Provided that where the academic qualifications referred to in subparagraph (i) are obtained after full-time academic courses in conservation of a duration in the aggregate of at least six years, and which contain such level of practical training as may be approved by the Board, the condition for supervised training shall be deemed to have been fulfilled:

Provided further that with the approval of the said Board such training may, for a period not exceeding one year, in the said period of two

years, be undergone in a State outside Malta with a professional in related disciplines duly qualified to practise in such State;

- (iii) he has been duly examined and approved by the Board in an examination or examinations for the purpose, as the Minister may prescribe:

Provided that the Board may exempt a person who obtained the academic qualifications from the University of Malta or from such other University or academic institution approved by the said Board, from all or part of such examination or examinations.

32. Notwithstanding the provisions of article 31, a person may be granted a warrant if he possesses:

Special circumstances.

- (a) the qualifications listed in article 31(2)(a), (b) and (c) and has, prior to the first of January 2000, practised as a conservator-restorer in Malta or outside Malta for a period of not less than fifteen years, and is in the opinion of the Board referred to in article 34 of the required competence and academic ability; or
- (b) the qualifications listed in article 31(2)(a), (b), (c) and (d)(ii) and (iii), is in possession of academic qualifications obtained after a course of studies as is mentioned in the said paragraph (d)(i) which however does not contain all the minimum core subjects in the fields of conservation and restoration but has successfully undergone such tests that the Board referred to in article 34 may deem necessary from case to case to make good for such deficiency.

33. (1) The warrant to practise the profession of conservator-restorer shall be granted by the Minister on the recommendation of the Board referred to in article 34 to any person who satisfies the requirements of articles 31 or 32:

Warrant to practice as a conservation professional.
Amended by:
XXIII. 2009.126.

Provided that the decision of the Minister to grant or to refuse an application shall be notified in writing to the applicant within four months from the date of receipt of the application. Failure to notify the applicant about the decision regarding an application for a warrant within the time established shall be deemed, for reasons of public interest, to be a refusal of the warrant applied for. Where no decision has been notified to the applicant within the time established, such applicant may appeal before the Court of Appeal constituted as provided in article 41(6) of the Code of Organization and Civil Procedure:

Cap. 12.

Provided further that an application for a warrant shall not be deemed to have been filed by an applicant unless it is duly filled in and accompanied with all required information and documentation.

(2) A warrant holder may use the designation Conservator-Restorer with his name.

Temporary provision of services.
Added by:
XVIII. 2002.10.
Substituted by:
XXIII. 2009.127.
Cap. 451.

33A. (1) Without prejudice to the Mutual Recognition of Qualifications Act and notwithstanding the provisions of article 31 of this Act, any person established in another Member State may practise the profession of a restorer in Malta on a temporary and occasional basis provided that such person:

- (a) is legally established in another Member State for the purpose of pursuing the restorer's profession in that Member State; and
- (b) has pursued the restorer's profession for at least two years during the ten years immediately preceding the provision of services where the restorer's profession is not regulated in that Member State.

(2) Persons referred to in subarticle (1) shall inform the Board by means of a written declaration to be made in advance, which declaration shall include the following:

- (a) the details of an insurance cover or other means of personal or collective protection relative to professional liability. This declaration shall be made once a year if the service provider intends to provide temporary or occasional services during the year;
- (b) proof of the nationality of the service provider;
- (c) an attestation certifying that the warrant holder is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising the profession of a restorer even temporarily, at the moment of delivering the attestations;
- (d) evidence of professional qualifications; and
- (e) where applicable, any means of proof that the service provider has pursued the restorer's profession for at least two years during the previous ten years immediately preceding the provision of services.

(3) Where the Board, in exercising its authority under this article, deems that there is a substantial difference between the professional qualifications of the service provider and the academic qualifications required under article 31, to the extent that the difference is such as to be harmful to public health, safety and security, the Board shall give the service provider the opportunity to show, in particular by means of an aptitude test, that he has acquired the knowledge or competence which he lacks.

(4) The Board shall assess the temporary and occasional nature of the provision of the services on a case by case basis.

(5) The Board shall, within one month from the date of receipt of the declaration referred to in subarticle (2), inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Whenever a decision cannot be given during the established time, the Board shall notify this information to the service provider within the period established in this subarticle. The Board may extend this period only once for another period of one month.

(6) In the event that the Board does not give its decision within the period referred to in subarticle (5), the restoration services may be provided.

(7) A person exercising the profession under this article shall be deemed to be a warrant holder and the provisions of this Act and of any other applicable law shall apply to him in the same manner and to the same extent as with any other warrant holder.

34. (1) There shall be a Board, to be known as *Bord tal-Warrant tar-Restawraturi* (hereinafter in this article referred to as the Board) which shall consist of: *Bord tal-Warrant tar-Restawraturi.*

- (a) a Chairperson to be appointed by the Minister from among persons who are or have been qualified to be appointed judges in Malta;
- (b) two members appointed by the Minister from among persons who in his opinion have the necessary knowledge and experience and of whom one shall be from among the academic staff of the University of Malta and one from persons accredited under this Act;
- (c) the Superintendent or his representative;
- (d) a member appointed by the Board of Governors of the Centre from among persons who in the opinion of the said Board of Governors have the necessary knowledge and experience.

(2) The Chairperson shall be appointed for a term of three years and under such conditions as may be set out in his letter of appointment.

(3) The other appointed members of the Board shall hold office for a term of two years, and under such conditions as may be set out in their letter of appointment.

(4) Where any vacancy in the Board occurs, the Minister shall as soon as practicable, in the case of the Chairperson, or a member appointed by him, appoint another person to fill the vacancy; in the case of a member appointed by the Centre, request the Centre to appoint another person to fill the vacancy.

(5) The number of members necessary to form a quorum shall be three, but, subject to the presence of a quorum, the Board may act notwithstanding any vacancy amongst its members.

(6) The Minister may also delegate a public officer to act as secretary to the Board, and such secretary shall not have a vote.

(7) Save as aforesaid the Board may make its own rules and otherwise regulate its own procedure.

(8) Notwithstanding the provisions of this article, for a period of one year from the date of coming into force of this part of this Act, the first Board to be appointed shall consist of:

- (a) a Chairperson to be appointed by the Minister from among persons who are or have been qualified to be appointed judges in Malta; and

Functions of the Board.

(b) two other persons, appointed by the Minister not being themselves persons who will apply for a warrant, and who in his opinion possess the competence to assess the first applicants for the warrant.

35. (1) The functions of the Board are to -

(a) consider applications for the issue of a warrant, and make its recommendations thereon to the Minister;

(b) organise and regulate, and determine requests for exemptions from the professional warrant examination in accordance with articles 31 and 32;

(c) regulate the conditions of practical training abroad in accordance with the provisions of article 31;

(d) approve universities or academic institutions in accordance with article 31;

(e) organise and regulate the appropriate tests and periods of practical training, as provided for in article 32;

(f) consider and determine applications by warrant holders, other professionals and other persons in the field of conservation and restoration for accreditation to perform particular work, interventions or procedures in connection with cultural property, and to grant or withhold accreditation accordingly;

(g) to draw up a code of ethics and guidelines of practice for warrant holders and persons accredited under this subarticle;

(h) encourage initiatives that ensure programmes of continued professional training and development for warrant holders and persons accredited under this article; and

(i) advise the Minister in connection with any matter relating to the profession of conservator-restorer and to accreditation.

(2) In the exercise of its functions the Board may also consult with such persons as it may deem appropriate and may also appoint committees, of which the Chairperson shall be a member of the Board, for the carrying out of such duties or other work as the Board may assign to them.

(3) The Board shall keep a register of warrant holders and shall, not later than three months after the end of each year, publish in the Gazette a list of persons who, on the 31st December of the said year, were registered as holders of a warrant issued under this Act.

(4) The Board shall keep a register of persons accredited under this article indicating with respect to each person registered there in the work, intervention or procedure for which such person is accredited, and shall at the end of each year, publish in the Gazette, a list of persons who, on the 31st December of the said year, were accredited indicating with respect to each person the work, intervention or procedure for which he is accredited.

(5) The provisions of articles 36 to 38 shall apply *mutatis mutandis* with regard to accreditation under this article as they apply with regard to a warrant and shall apply *mutatis mutandis* with regard to an accredited person as they apply with regard to a warrant holder.

36. (1) The Minister may, by order in writing, suspend, revoke or cancel a warrant if the warrant holder:

Suspension or revocation of warrant.

(a) has been found guilty, after an inquiry by the Board referred to in article 34 of the following acts or omissions:

- (i) dishonesty, misconduct or gross negligence in the exercise of his profession;
- (ii) conduct that goes against the code of ethics and guidelines for practice as provided for in article 35(1)(g);
- (iii) failure to comply with regulations with respect to professional standards or practices; or
- (iv) failure to comply with any condition attached to a warrant issued under the provisions of article 38; or

(b) has been found guilty by a competent court of an offence under the provisions of this Act or of any regulations made thereunder; or

(c) has been found guilty by a competent court of a crime affecting public trust or of fraud or of knowingly receiving property obtained by theft or fraud.

(2) A decision of the Board under subarticle (1)(a) shall be subject to appeal before the Court of Appeal constituted as provided in article 41(6) of the Code of Organization and Civil Procedure.

Cap. 12.

(3) The Minister responsible for Justice may make regulations prescribing the fees that shall be payable in the registry of the courts in connection with appeals under this article:

Provided that until such time as fees are so prescribed by the Minister responsible for justice, the fees payable with respect to appeals to that Court shall be the fees applicable to the Court of Magistrates (Malta).

(4) The Board established under article 29 of the Code of Organization and Civil Procedure shall make rules establishing the form of such appeals, the time within which they are to be filed and generally any other matter relating to such appeals.

37. Where a warrant under this Act is withdrawn, suspended or revoked, the person to whom the warrant was issued shall cease to be a holder of such warrant, or shall be suspended from the exercise of his profession as the case may be and he shall cease to use the designation *Konservatur-Restawratur*.

Effects of revocation or suspension of warrant.

38. The Minister, acting on the recommendation of the Board, referred to in article 34 may, after the expiration of one year from

Minister may issue fresh warrant.

the date of the revocation or withdrawal of a warrant, issue a fresh warrant subject to such conditions as the Minister on the recommendation of the Board may deem necessary.

Conservation
technician.

39. (1) The Board mentioned in article 34 shall keep a register with the details of every person, being a person trained or with experience of specific conservation procedures or who has experience of specific aspects of preventive conservation and who is in possession of a certificate of conservation technician awarded under the regulations that establish standards and levels regarding professional and vocational qualifications.

(2) For the purposes of this Act -

(a) a person shall not be deemed to practise the profession of conservator-restorer if he acts as an employee of, or assistant to, and under the supervision of a warrant holder and does not issue any certification of a conservation-restoration nature under his name;

(b) to such extent as may be prescribed, a person shall not be deemed to exercise the profession of a warrant holder if he is in such employment or holds or acts in such office or performs only such work, services, acts or functions as may be prescribed;

(c) a conservator-restorer shall however endeavour to ensure that all assistants employed or engaged by him shall have successfully completed training to such levels as are or may be prescribed by the Malta Professional and Vocational Qualifications Regulations.

S.L.343.26

PART VII

SPECIAL POWERS OF THE STATE

Right of
preference.

40. (1) In the case of sale, export, exchange, emphyteutical grant or lease of an object of cultural property the Superintendent shall have the right, with the approval of the Minister in consultation with the Committee of acquiring the same, in preference to all others on equal conditions including consideration as that concluded between the parties:

Provided that in the case of the export of an object of cultural property the Government shall acquire the same by title of sale.

(2) This right of preference may be exercised not later than two months from the date of the receipt of notice of such sale, export, exchange, transfer or lease by any of the parties thereto, or from the date when the Superintendent shall come to know of the said sale, export, exchange, transfer or lease, which ever is the earlier.

(3) In exercising the right of preference, where the consideration of the transfer cannot be otherwise established the value of the cultural property in question shall be established in accordance with the provisions of article 55 of this Act.

41. (1) No person may export or re-export any cultural property without the written permission of the Superintendent.

Control of exportation and re-exportation.

(2) The export and re-export, when permitted shall be subject to the payment of the *ad valorem* duty as set out in the Schedule to this Act and shall be subject to such other conditions as may be imposed by the Superintendent.

(3) Permission for export and re-export may be granted for a limited period and without the payment of the duty referred to in subarticle (2) for the purpose of restoration, exhibition or study. The Superintendent may, in granting such permission impose guarantees for the return of the cultural property so exported or re-exported at such amount as shall be fixed by the Superintendent.

(4) The value of the objects for the purpose of the payment of the duty referred to in subarticle (2) shall be fixed by one or more experts to be appointed by agreement between the Minister and exporter or, in default of agreement, by the Court of Appeal (Inferior Jurisdiction) on the demand of the exporter, to be made by an application. The cost of the evaluation shall be borne by the exporter.

(5) In lieu of the payment of duty, the exporter may, with consent of the Superintendent, give to the Government by way of *datio in solutum*, one or more objects of a value equivalent to the duty due.

(6) It shall be competent to the Government to acquire any object proposed to be exported, at such price as may be fixed in the manner laid down in this article within two months from the making of the valuation referred to in this article after notice of the intended export is given to the Superintendent. All expenses in connection with the valuation shall, in such cases, be at the charge of the Government.

42. The Superintendent may after consulting the Committee by notice inform any person being the owner, holder or possessor of cultural property that such cultural property, is in urgent need of repair or restoration and shall in such notice fix a time limit in which such repair or restoration shall be effected, failing which, the Superintendent, may effect the said works at the expenses of such person.

Repair and restoration by Government.

43. (1) Archaeological or palaeontological excavations or explorations on land as well as in the territorial waters or in the contiguous zone of Malta can only be made by the Superintendent, or with the written permission of the Superintendent and in accordance with any condition attached thereto:

Exclusive right to excavate.

Provided that without prejudice to the provisions of article 45(4), it shall be lawful for the Superintendent to undertake or cause excavations to be carried out for the purposes of this Act in any part of Malta, whenever such excavations are considered to be expedient and subject to any regulations laid out in article 55(d).

(2) Any person who, even accidentally, discovers any object, site or building to which this Act applies in accordance with article 3, shall immediately inform the Superintendent, keep the object

found in situ, and shall not for a period of six working days after informing the Superintendent proceed with any work on the site where the object of cultural property is discovered.

(3) The Superintendent shall inspect the site of discovery within the said six working days and may direct the person responsible to desist from any further work on the site or any part thereof by giving him a notice to stop work.

(4) Any person who following a notice to stop work suffers any damage because of the interruption of the works shall have a right to be compensated for such damages by the Superintendent.

Cap. 88.

(5) Within three months of a notice to stop the works the Government shall institute procedures to acquire the site in accordance with the Land Acquisition (Public Purposes) Ordinance, or the Superintendent shall release the site. Upon the institution of proceedings to acquire the site as aforesaid no further compensation shall be due in accordance with subarticle (4).

(6) Every movable object forming part of the cultural heritage discovered in any location within Malta, its territorial waters, and its contiguous zone whether found in authorised or illegal excavations or exploration or accidentally in the course of any work or any other manner shall belong to the State.

(7) The original or a full copy of the records of the progress of any excavation or exploration, whether carried out in accordance with this article or otherwise, shall be given by the person responsible for such excavation or exploration to the Superintendent.

Development
permissions and
cultural property.
Cap. 356.

44. (1) The Superintendent may commend for scheduling to the Planning Authority such sites and buildings which he deems should be scheduled within the meaning of the Development Planning Act.

(2) The Superintendent shall make use of the list of scheduled property for the purpose of the inventory under article 7(5).

Permit for
interventions on
cultural property.

(3) No person shall make any interventions on such cultural property or classes thereof without first having obtained a permit therefor from the Superintendent as may be prescribed in regulations issued under this Act.

(4) Before determining an application under subarticle (3) the Superintendent may require such information including the results of such tests, examinations or inspection by such persons accredited under this Act for the purpose as may be required by the Superintendent, and such research on the history, composition provenance or other aspects of the relevant cultural property as he may consider necessary for the purpose.

(5) In the grant of such permit the superintendent may impose such conditions as he may consider appropriate, including without prejudice to the generality of the foregoing that the work or any part thereof shall be carried out in accordance with such protocol as may be prescribed or as may be attached to the permit, that the work and the various phases thereof be photographed or otherwise

documented or recorded, that a report on the work be delivered to the superintendent at such times as may be stated in the permit, and that the work or any part thereof as may be stated in the permit is carried out, by or under the supervision as shall be stated in the permit, of such warrant holder, professional or other person accredited under this Act for such work.

45. (1) Any officer or employee of the Superintendence duly authorised in writing by the Superintendent may enter any area, property, site under investigation or building if the Superintendent considers it necessary to do so in the discharge of any function under this Act or if he considers that there are reasonable grounds to believe that an offence against this Act or any other regulation, licence condition or conditions made thereunder has been or is about to be committed.

Power of entry and inspection.

(2) Where entry is for the purpose of inspection or documentation purposes, the Superintendent shall serve a written notice to the occupier of cultural property of the intended entry, and thereupon the officer or employee authorised as aforesaid shall be given access to such cultural property where conservation, restoration or development is taking place.

(3) The Superintendent shall cause an inspection to be carried out in cases of reported discoveries of cultural property in order to establish whether preservation or excavation works are required.

(4) The Superintendent shall have the right to enter and occupy any cultural property in order to conduct archaeological excavations therein, provided that:

- (a) a written notice is served upon the occupier or owner of the cultural property in question at least three days before the commencement of such excavations;
- (b) the expected duration of the occupation is stated in the notice, and at least three days notice is further given of any extension of the duration of the occupation;
- (c) the owners or occupier of cultural property occupied in accordance with this article shall be entitled to compensation for any loss of profit, damage sustained during archaeological excavations or the reinstatement of excavated areas.

(5) Discoveries made during a period of occupation by the Superintendent shall be the property of the Government.

(6) For the purpose of exercising any of his rights under this article the Superintendent may request the assistance of the Police.

46. (1) Where any development or other work is being carried out in respect of any cultural property in contravention of any of the provisions of this Act, or any person holding a licence to carry out archaeological excavations under this Act does not conform to any condition attached to such licence, the Superintendent may serve a suspension notice on the owner, possessor or holder of the cultural property or any other person carrying out the development works or excavation and thereupon the person served with the order

Suspension notices.

shall suspend all activity in connection with the development work or excavation.

(2) The Superintendent may revoke any such suspension notice either absolutely or subject to such conditions as the Superintendent deems appropriate.

Conservation and protection order.

47. (1) The Superintendent may in the case of any infringement of any of the provisions of this Act or of any regulations made thereunder serve a conservation and protection order on the owner or occupier or possessor of cultural property, requiring such action as may be specified in the notice, including the discontinuance of anything being done or carried on, to be taken within such time as may be specified in the order.

(2) If any action required to be taken by a conservation and protection order has not been taken within the time specified therein, the Superintendent shall have the right to enter the cultural property and may for such purpose request the assistance of the Police Force and take the required action, where applicable at the expense of the owner or the occupier or the possessor.

Cap. 319.

(3) Saving the provisions of article 46 of the Constitution or of article 4 of the European Convention Act no precautionary order or warrant may be issued by any court restraining the Superintendent from issuing an order under this article or of doing anything which he is authorised to do by this article.

Guardianship.

48. (1) The Superintendent may with the authority in writing of the Minister, in concurrence with the Minister responsible for lands, enter by public deed, into a guardianship contract with a local council or with a non-government organization whereby the custody and administration of immovable cultural property is passed over to the local council or the non-government organisation, as the case may be, in accordance with the provisions of this Act and of such regulations as may be prescribed and to such conditions not inconsistent therewith as may be contained in the deed. The guardianship deed shall state the term for which it is entered, which term shall be approved by the Superintendent on a case by case basis, following the 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 thereof 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 authorising the Superintendent to enter into a guardianship deed the Ministry shall seek the views of the Committee as to the conditions to be included in the guardianship deed; such conditions shall in particular address the following matters:

- (a) the protective measures that are to be taken to safeguard the cultural property subject to the guardianship deed; and
- (b) the conservation and management plan relative to the cultural property, and 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 Entity under this Act with regard to the cultural property subject to the guardianship deed.

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

(6) The Minister after consulting the Superintendent and the Committee 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 cultural property is placed shall transmit to the Minister, the Superintendent and the Committee a report of its activities in relation to the cultural 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.

49. The powers and duties under this Act shall be exercised in conformity with any international convention, treaty, agreement or instrument concerning the proper use and conservation of national or world cultural property to which Malta may be a party.

International conventions, etc.

50. (1) The Government is hereby authorised to ratify and become a party to the Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Rome, June 1995).

Return of stolen and illegally exported cultural property.

(2) The Minister may, after consulting the Committee, by regulations prescribe rules to give effect to any of the provisions of the said Convention and the provisions of any such regulations shall have effect notwithstanding the provisions of any other law to the contrary.

51. Any person who feels aggrieved by a decision of the Superintendent under articles 40 to 42, 46 and 47 shall have a right of appeal as may be prescribed under article 55. An appeal shall not suspend the decision appealed from.

Right of appeal.

PART VIII

RELIGIOUS CULTURAL HERITAGE

Provisions
regarding religious
cultural heritage.

52. (1) Without prejudice to any other law that may be in force, and until such time when there may be reached an agreement between the competent civil and ecclesiastical authorities, cultural property belonging to the Catholic Church, including to Catholic Religious Orders, and destined or used for religious purposes shall fall under the exclusive regulation and superintendence of the Catholic Cultural Heritage Commission to be appointed every two years by the President of the Malta Episcopal Conference, and to consist of not less than five experts one of whom shall be so appointed after consultation with the Minister.

(2) Cultural property belonging to, and destined or used for religious purposes by any denomination other than that mentioned in subarticle (1) may be placed by the relevant and competent religious authority under the exclusive regulation and superintendence of a religious cultural heritage commission. Each such religious cultural heritage commission shall be appointed for a period of two years by the relevant and competent religious authority, and shall consist of three experts one of whom shall be so appointed after consultation with the Minister.

(3) The commissions referred to in subarticles (1) and (2) shall have the same powers and duties with regard to the cultural property under their superintendence as the Superintendent, and shall give a report about their work to the Forum:

Provided that where such commissions are not so appointed the regulation and superintendence of the property falling under their competence will vest in the Superintendent.

(4) The Minister, after full consultation with the President of the Malta Episcopal Conference mentioned in subarticle (1) or with the relevant and competent religious authorities mentioned in subarticle (2), may prescribe rules regulating the powers and duties of, and the procedures and practices which should be followed by the commissions mentioned in subarticles (1) and (2).

PART IX

OFFENCES

Wilful damage or
destruction of
certain property.
Amended by:
L.N. 426 of 2007.

- 53.** (1) Any person who:
- (a) wilfully, or through negligence, unskillfulness or non-observance of regulations causes damage to or destroys any cultural property whether or not such cultural property has been registered in any inventory in accordance with this Act, and even if such cultural heritage property is owned by the person who has caused the damage or destruction, or is lawfully administered by such a person;
 - (b) carries out any activity or does any act in contravention of the provisions of this Act or of any

regulation made thereunder or of the conditions of any licence or permit issued under this Act or fails to do anything which he is required to do under this Act, regulation or licence; or

- (c) acts as a conservator-restorer when he is not in possession of a warrant under Part VI of this Act; or
- (d) fails to abide with any suspension notice issued in accordance with article 46 or with a conservation or protection order made in accordance with article 47; or
- (e) receives or retains any cultural property knowing that it has been illegally removed in Malta or illegally exported from any other country; or
- (f) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest or interfere with, any officer or employee of the Superintendence, or of the Agency, or of the Centre, or of the Committee or any police officer, in the execution of duties provided for under this Act, or fails to comply with any lawful order by any such officer or employee or police officer as aforesaid, or knowingly furnishes such officers or employees with false information or neglects or refuses to give any information required by or under this Act; or
- (g) 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 and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67), or to imprisonment for a term not exceeding six years, or to both such fine and imprisonment:

Provided that, subject to the above maximum, the minimum fine (*multa*) to which an offender shall become liable under this article shall not be less than the value of any work required to remedy the effects of the offence.

(2) The liability of an offender under subarticle (1) shall be without prejudice to the liability of the offender to pay to the Superintendent any cost incurred in the reintegration, or restoration of the cultural property caused by the offence, or to pay into the Fund the value of the cultural property destroyed or damaged when the same cannot be reintegrated or restored. Such payment may be recovered by civil suit by the Superintendent against the offender or his heirs.

(3) The Court, besides awarding the punishment referred to in this article, shall order the convicted offenders to remove the causes of the offence and to undo anything which was done without any permit required under this Act or to comply with the conditions imposed in such a permit, as the case may be, within a time sufficient for the purpose and in any case not exceeding three

months from the date of the judgement and, if the offender fails to comply with any such order within the time so fixed, he shall be liable to a further fine (*multa*) of not less than fifty-eight euro and twenty-three cents (58.23) and not more than one hundred and sixteen euro and forty-seven cents (116.47), as the court may fix, for every day the default continues after the expiration of the said time.

Power to prosecute and to assist the Police and other officers.

54. (1) In prosecutions for offences against this Act or against regulations under this Act, officials of the Superintendence shall have the right to assist the police, and to plead the case before the Courts of Magistrates.

(2) Officers of the Superintendence may assist the Police, Customs or any other Government body, when the same are exercising powers conferred under any other laws, in the exercise of any of their powers to prevent the commission of an offence against this Act or to secure evidence concerning any such offence.

PART X

REGULATIONS

Power to make regulations.

55. The Minister may make regulations to give effect to any of the foregoing provisions of this Act, or to regulate or otherwise provide for any matter relating to activities affecting cultural property, and may in particular, but without prejudice to the generality of the foregoing, make regulations for any of the following purposes:

- (a) to establish any fees and dues which may be payable by or under, or for services rendered pursuant to, the provisions of this Act;
- (b) to ensure the better fulfilment of the functions of the Entities;
- (c) to regulate the appointment of officers and employees with any of the Entities;
- (d) to regulate any excavation and exploration;
- (e) to establish guidelines for best conservation and restoration practice;
- (f) to provide for any forms or procedures which may be necessary or expedient and for which no express procedure is contained in this Act;
- (g) to regulate trade and commerce in cultural property;
- (h) to regulate movement of cultural property;
- (i) to prescribe rules to give effect to the provisions of any international convention concerning the protection of the cultural heritage, ratified by the Government of Malta; or for the compliance with international obligations contracted by the Government of Malta regarding heritage;
- (j) where not otherwise provided in this Act, to prescribe

- rules regulating the powers and duties of, and the procedures to be followed by, any entity, commission, committee or board established by or under this Act;
- (k) to set out and publish the requirements for accreditation as established in article 35;
 - (l) to establish the parameters within which, and the types of cultural property in respect of which, the powers under articles 40 and 41 shall be exercised;
 - (m) to grant to persons feeling aggrieved by any action undertaken under the provisions of articles 40 to 42, 46 and 47, procedures whereby to contest such exercise and obtain a remedy if successful;
 - (n) to establish an appeal board and to regulate all procedure in respect of the same, for putting into effect the provisions of the preceding paragraph;
 - (o) to provide for the form and procedure in respect of applications and the grant of permits for interventions in cultural property under article 44, and to provide for appeals from decisions of the Superintendent on the same;
 - (p) to prescribe anything else which may or is to be prescribed under this Act.

PART XI

MISCELLANEOUS

56. Any regulations made under the Antiquities (Protection) Act, repealed by this Act, shall continue in force and have effect as if made under this Act, and may be amended or repealed accordingly, and the provisions of this Act shall apply to any contravention of such regulations as if they were made under this Act. Saving.

SCHEDULE

(Article 41)

RATE OF EXPORT DUTY

<i>Value of object</i>	<i>Export Duty</i>
On the first €232.94 or part thereof	10 per cent.
On the second €232.94 or part thereof	20 per cent.
On the third €232.94 or part thereof	30 per cent.
On the fourth €232.94 or part thereof	40 per cent.
On any further value	50 per cent.

*Substituted by:
L.N. 426 of 2007.*