CHAPTER 200

CLEAN AIR ACT

To make provision for abating the pollution of the air.

(21st March, 1968)*

(15th April, 1969)†

ACT XVIII of 1967 as amended by Legal Notice 148 of 1975; Acts: XI of 1977, XIII of 1983 and VIII of 1990; and Legal Notice 410 of 2007.

Short title.

1. The short title of this Act is the Clean Air Act.

Interpretation. *Amended by: XI. 1977.2.*

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

"authorized officer" means any public officer authorized by the Minister, whether generally or specially, to act in respect of any matter referred to in this Act;

"the Board" means the Clean Air Board established by article 10;

"chimney" includes any structure or opening of any kind from or through which smoke or other matter foreign to normal air may be emitted, and references to a chimney of a building include references to a chimney which serves the whole or a part of a building but is structurally separate therefrom;

"dark smoke" means smoke which, if compared in the appropriate manner with a chart of the type known at the date of the passing of this Act as the Ringelmann Chart, would appear to be as dark as or darker than shade 2 on the chart, and includes smoke which is to be deemed to be dark in accordance with any method other than the Ringelmann Chart prescribed by regulations made under article 13 for the purpose of ascertaining whether smoke is dark smoke or not;

"day" means a period of twenty-four hours beginning at midnight;

"industrial plant" includes any still, melting pot or other plant used for any industrial or trade purposes, and also any incinerator used for or in connection with any such purposes;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for public health and includes, to the extent of the authority given, any person authorized by the Minister in that behalf for any purpose of this Act;

"oven" includes any form of retort or container used to subject solid fuel to any process involving the application of heat;

"practicable" means reasonably practicable having regard,

**See* article 1 of the Act as originally enacted, part of which has been omitted under the Statute Law Revision Act, 1980, and Legal Notice 25 of 1968.
†*See* Legal Notice 29 of 1969.

amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and "practicable means" includes the provision and maintenance of plant and the proper use thereof;

"smoke" includes soot, ash, grit and gritty particles emitted in smoke.

Prohibition of dark smoke from chimneys.

3. (1) Subject to the provisions of this Act, dark smoke shall not be emitted from a chimney of any building, and if, on any day, dark smoke is so emitted, the occupier of the building shall be guilty of an offence.

(2) Emissions of smoke from any chimney lasting for not longer than such periods as may be specified by the Minister by regulations made under article 13 shall, in such classes of cases and subject to such limitations as may be so specified, be left out of account for the purposes of this article.

(3) In any proceedings for an offence under this article it shall be a defence to prove that -

(*a*) the contravention complained of was solely due to some failure of a furnace or of apparatus used in connection with a furnace; and

(*b*) such failure could not reasonably have been foreseen, or, if foreseen, could not reasonably have been provided against; and

(*c*) the contravention could not reasonably have been prevented or minimised by action taken after the failure occurred.

(4) This article shall apply in relation to a chimney serving the furnace of any boiler of industrial plant (being a boiler or plant attached to a building or for the time being fixed to or installed on any land) as it applies in relation to a chimney of a building:

Provided that, in relation to any such chimney as aforesaid which is not a chimney of a building, the reference in this article to the occupier of the building shall be construed as a reference to the person having possession of the boiler or plant.

New furnaces to be as far as practicable smokeless.

4. (1) Subject to the provisions of this article, no furnace shall be installed in a building or in any boiler or industrial plant attached to a building or for the time being fixed to or installed on any land unless it is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed, and any person who installs a furnace in contravention of this subarticle or on whose instructions a furnace is so installed shall be guilty of an offence:

Provided that this subarticle shall not apply to a furnace the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into, before the date of commencement of this Act.

(2) Any furnace installed in accordance with plans and specifications submitted to, and approved for the purpose of this

article by, the Board, shall be deemed to comply with the provisions of subarticle (1).

(3) A furnace to which subarticle (1) applies shall not be installed in a building or in any such boiler or plant as is mentioned in the said subarticle (1) unless notice in writing of the proposal to install it has been given to the Board, and any person who installs a furnace in contravention of this subarticle or on whose instructions a furnace is so installed shall be guilty of an offence.

(4) This article shall not apply to furnaces designed solely for use for domestic purposes, not being furnaces of boilers with a maximum heating capacity of fifty-five thousand or more British Thermal Units per hour.

(5) This article shall apply in relation to the attachment to a building of a boiler or industrial plant which already contains a furnace or the fixing to or installation on any land of any such boiler or plant as it applies in relation to the installation of a furnace in any boiler or industrial plant attached to a building or for the time being fixed to or installed on any land.

Grit and dust from furnaces to be minimised.

5. (1) The occupier of any building in which a furnace is used to burn solid fuel or solid waste, or of any building or land in or on which an oven is used to subject solid fuel to any process involving the application of heat, shall use any practicable means there may be for minimising the emission of grit and dust from any chimney which serves the furnace or oven and if he fails to do so he shall be guilty of an offence.

(2) This article shall apply in relation to the furnace of any boiler or industrial plant (being a boiler or plant attached to a building or for the time being fixed to or installed on any land) as it applies in relation to a furnace in a building:

Provided that in relation to a furnace which is not in a building, the reference in this article to the occupier of the building shall be construed as a reference to the person having possession of the boiler or plant.

(3) This article shall not apply to furnaces designed solely for domestic purposes, not being furnaces of boilers with a maximum heating capacity of fifty-five thousand or more British Thermal Units per hour.

Height of chimneys.

6. (1) Where it is proposed to construct or extend a chimney for carrying smoke, grit, dust or gases from a building, other than a building used or to be used as a residence, shop or office, no such chimney shall be constructed or extended except in accordance with plans, elevations and sections submitted to and approved by the Board and giving sufficient details and information in respect of the chimney, the building to be served thereby and the relation of the chimney to nearby buildings and to the levels of neighbouring ground; and any person who constructs or extends a chimney in contravention of this subarticle or on whose instructions a chimney is so constructed or extended shall be guilty of an offence.

(2) The Board shall not approve the plans, elevations and

sections submitted under subarticle (1) unless it is satisfied that the height of the chimney as shown therein will be sufficient to prevent, so far as practicable, the smoke, grit, dust or gases from becoming prejudicial to health or a nuisance having regard to -

(*a*) the purpose of the chimney;

(*b*) the position and description of the buildings near thereto;

(*c*) the levels of the neighbouring ground;

(*d*) any other matters requiring consideration in the circumstances.

Abatement of smoke nuisances. *Amended by: XIII. 1983.5; VIII. 1990.3; L.N. 410 of 2007.*

7. (1) Smoke, other than -

(*a*) smoke emitted from a chimney of a private dwelling; or

(*b*) dark smoke emitted from a chimney of a building or from a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

shall, if it is, whether by reason of its quantity or otherwise, a nuisance to the inhabitants of the neighbourhood, be deemed to be a statutory nuisance for the purposes of this Act.

(2) If the Board is satisfied that a statutory nuisance has occurred it shall serve a notice (hereinafter referred to as an "abatement notice") on any person by whose act, default or sufferance the nuisance arises or continues or, if any such person cannot be found, on any owner or occupier of the premises or land on which the nuisance arises, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for such purposes.

(3) If any person on whom an abatement notice has been served makes default in complying with any of the requirements of the notice, or if the nuisance, although abated or has ceased, is, in the opinion of the Board, likely to recur on the same premises or land, the Board may cause a summons to be issued by the Executive Police requiring any person on whom the notice was served to appear before the Court of Magistrates.

(4) If on the hearing of the case it is proved that the alleged nuisance exists, or that although abated or has ceased it is likely to recur on the same premises or land, the court shall make an order for either or both of the following purposes:

(*a*) requiring the defendant to comply with all or any of the requirements of the abatement notice, or otherwise to abate the nuisance, within a time specified in the order, and to execute any works necessary for the purpose;

(*b*) prohibiting a recurrence of the nuisance and requiring the defendant, within a time specified in the order, to execute works necessary to prevent a recurrence,

and may also impose on the defendant a fine (*multa*) not exceeding twenty-three euro and twenty-nine cents (23.29).

(5) An order made by the court under subarticle (4) shall also provide for the imposition of a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65) for each day on which the defendant shall fail to comply with, or shall contravene, the order after the expiration of the time specified in the order.

(6) Where an order made by the court under subarticle (4) prohibits the recurrence of a nuisance, the defendant in the proceedings in which the order is made shall be liable to a fine (*multa*) not exceeding twenty-three euro and twenty-nine cents (23.29) if the nuisance recurs by his act, default or sufferance.

(7) Where a statutory nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons, proceedings may be instituted under the foregoing provisions of this article against any one of them, or all or any two or more of them; and, subject to those provisions, any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the court, contribute to the nuisance, or may be fined, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance.

(8) In any proceedings under this article it shall be a defence for the defendant to prove that the best practicable means had been employed to prevent the nuisance.

(9) For the purposes of this article an abatement notice shall be deemed to have been served if it has been delivered, or sent by post, to the persons to be served with such notice and, if sent by post, it shall, unless the contrary is proved, be deemed to have been received on the day next following that on which it is posted.

Vessels.

8. (1) Article 3 shall apply in relation to vessels in waters to which this article applies as it applies in relation to buildings, but as if for references to the occupier of the building there were substituted references to the owner of, and to the master or other officer or person in charge of, the vessel and as if references to a furnace included references to an engine of a vessel.

(2) Save as provided in this article, in subarticle (1)(*c*) and in article 13(2), nothing in this Act applies to smoke, grit or dust from any vessel.

(3) The waters to which this article applies are all navigable waters contained within any harbour or bay in Malta.

Government premises and vessels.
Amended by: L.N. 148 of 1975.

9. (1) It shall be part of the duties of an authorized officer, in cases where it appears to him proper so to do, to report to the Board any cases of -

(*a*) emissions of dark smoke, or of grit or dust from any premises which are under the control of any Government department and are occupied for any of

the purposes of any Government department; or

(*b*) emissions of smoke, whether dark smoke or not, from any such premises as aforesaid which appear to him to constitute a nuisance to the inhabitants of the neighbourhood; or

(*c*) emissions of dark smoke from any vessel owned by the Government for the purposes of its armed forces or from any vessel in the service of the Government while employed for the purpose aforesaid, which appear to him to constitute such a nuisance as aforesaid;

and on receiving any such report the Board shall inquire into circumstances and, if the inquiry reveals that there is cause for complaint, shall bring the matter to the attention of the officer in charge of the department with a request to employ all practicable means for preventing or minimising the emission of the smoke, grit or dust or for abating the nuisance and preventing the recurrence thereof, as the case may be.

(2) The fact that there subsists in any premises an interest belonging to the Government shall not affect the application of this Act to those premises so long as that interest is not the interest of the occupier of the premises, and this Act shall have effect accordingly in relation to the premises and that and all other interest therein.

(3) Article 8 shall, with the omission of the reference in subarticle (1) thereof to the owner, apply to vessels owned by the Government, but shall not apply to vessels owned by the Government for the purposes of its armed forces or to vessels in the service of the Government while employed for the purpose aforesaid.

Clean Air Board.

10. (1) There shall be a Board, to be known as the Clean Air Board, which shall be appointed by the Minister and which shall consist of not less than five and not more than nine members, of whom one shall be appointed by the Minister to be the Chairman of the Board.

(2) It shall be the function of the Board to perform any act required to be performed by it under this Act and to -

(*a*) keep under review the progress made in abating the pollution of the air in Malta;

(*b*) obtain the advice of persons having special knowledge, experience or responsibility in regard to prevention of pollution of the air;

(*c*) advise the Minister on any matter which he may deem proper to refer to it for advice.

(3) The Minister may by order make provision with respect to the proceedings of the Board and any such order may be varied or revoked by a subsequent order; but for so long as no such provision is in force, the Board may regulate its own proceedings.

(4) The Minister shall also appoint a person to act as secretary to the Board.

Powers of authorized officers.

11. (1) It shall be lawful for an authorized officer for the purpose of ascertaining that the provisions of this Act, or of any regulation, notice or order, made or given thereunder, are being observed -

(*a*) at all reasonable times to enter freely and without previous notice any premises or other place, or to board any vessel, to which he has reasonable cause to believe that any of the provisions aforesaid apply:

Provided that an authorized officer shall not enter any premises used as residence unless twenty-four hours' notice of the intended entry has been given to the occupier of such premises or unless such occupier consents to such entry;

(*b*) to carry out in any such premises, place or vessel, any examination or enquiry which he may consider necessary for any of the purposes aforesaid;

(*c*) to require from any person such information (other than information which could incriminate the person giving it) as he may deem necessary for any of the purposes aforesaid;

and any person who wilfully obstructs, impedes or delays an authorized officer in the execution of his powers under this article, or who wilfully fails to give the information required by an authorized officer under this article or gives to such officer any information which he knows to be untrue, shall be guilty of an offence.

(2) An authorized officer shall be furnished with a certificate of his authority to act under this Act and, on applying for admission to any premises, place or vessel for the purposes of this Act, shall, if so required, produce the said certificate.

Unjustified disclosure of information.

12. If any person discloses any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Act or in connection with the execution thereof, he shall be guilty of an offence unless the disclosure is made -

(*a*) with the consent of the person carrying on that undertaking; or

(*b*) in connection with the execution of this Act; or

(*c*) for the purpose of any legal proceedings arising out of this Act or of any report of such proceedings.

Power to make regulations. *Amended by: XIII. 1983.5; L.N. 410 of 2007.*

13. (1) The Minister may make regulations for the purpose of carrying into effect any of the provisions of this Act and, without prejudice to the generality of the foregoing, for -

(*a*) prescribing or specifying any matter which is to be, or may be, prescribed or specified under this Act;

(*b*) making provision for the taking and recording of measurements from time to time of the smoke emitted from any chimney;

(*c*) controlling the emission from any chimney of such smoke or other matter as may pollute the air or be prejudicial to health or may constitute a nuisance.

(2) Any regulation made under this article may provide that any person contravening or failing to comply with any of the provisions thereof shall be guilty of an offence and shall be liable, on conviction, to punishments not exceeding a fine (*ammenda*) of eleven euro and sixty-five cents (11.65) or a fine (*multa*) of two hundred and thirty-two euro and ninety-four cents (232.94) and in respect of a continuing offence to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65) for each day during which the offence continues.

Penalties.
Amended by: XIII. 1983.5; L.N. 410 of 2007.

14. (1) A person guilty of an offence under any of the provisions of this Act, other than article 4(3) and article 7, shall be liable, on conviction, to a fine (*multa*) not exceeding six hundred and ninety-eight euro and eighty-one cents (698.81):

Provided that a person guilty of an offence under article 12 shall be liable to such fine as aforesaid or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) A person guilty of an offence under article 4(3) shall be liable, on conviction, to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65).

(3) Where a person is convicted of an offence under any of the provisions of this Act or of any regulations made thereunder, the court may, without prejudice to the foregoing provisions of this article or to the provisions of any regulation made as aforesaid, but subject to the provisions of article 7, order the offender to abate the nuisance or the inconvenience arising from the offence, or, according to circumstances, to carry out the law, within a time, sufficient for the purpose, to be fixed by the court, and if the offender fails to comply with any such order within the time so fixed, he shall be liable to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65) for every day during which the default continues after the expiration of the said time.

Offences by bodies of persons.

15. Where the person guilty of an offence under any of the provisions of this Act is a body of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body of persons or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Application of Act to bakehouses.

16. This Act shall not apply to bakehouses existing at the commencement of this Act unless and until the Minister shall, by notice in the Government Gazette, order that it shall apply to such bakehouses.