CHAPTER 545

REGULATOR FOR ENERGY AND WATER SERVICES ACT

To provide for the establishment of a Regulator to be known as the Regulator for Energy and Water Services and for the exercise by or on behalf of that Regulator of regulatory functions regarding services relating to energy and water, and to make provision with respect to matters ancillary thereto or connected therewith.

31st July, 2015;
1st June, 2016*

ACT XXV of 2015 as amended by Act XLIX of 2021 and Legal Notices 503, 504 and 505 of 2021 and Acts XXXV of 2023 and XVII of 2024 and Legal Notices 93 and 95 of 2026.

PART I
PRELIMINARY

Short title and scope. *Amended by: XVII.2024.21.*

1. (1) The short title of this Act is the Regulator for Energy and Water Services Act.

(2) The purpose of this Act is to establish a Regulator to be known as the Regulator for Energy and Water Services which shall exercise functions relating to energy and water resources.

(3) This Act shall not apply to matters relating to mineral resources and to the legislation listed in the Second Schedule.

Interpretation.

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

"authorisation" includes any licence or permit however so described issued by or under this Act to operate, provide or carry out any activity or operation relating to energy and water and, in relation to services and service providers of such services, means a permit, licence, warrant, appointment, concession or decision concerning access to a service activity or any other activity the exercise of which relates to energy and water resources;

"authorisation scheme" means any authorisation or other procedure of an administrative nature, under which a provider or recipient is in effect required to take steps in order to commence the activity in question and obtain from a competent authority authorisation concerning access to a service activity or the exercise thereof;

"authorised provider" means any person who has a valid authorisation to operate, provide or carry out any activity or operation or to provide any service relating to energy and water;

"Board" means the Board of the Regulator appointed under article 3(2);

"Chairman" means Chairman of the Regulator for Energy and Water Services and includes, in the circumstances mentioned in article 3(3), the Deputy Chairman or other person appointed to act as Chairman;

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* see article 1(4) of this Act as originally enacted and Legal Notice 208 of 2016.

"Chief Executive Officer" means the Chief Executive Officer appointed under article 6(7);

"contractor" means a person acting in pursuance of an agreement entered into with the Regulator for Energy and Water Services or in accordance with article 6(5);

"decision" includes any determination, measure, order, requirement or specification however so described made by the Regulator for Energy and Water Services and the word "decision" shall be construed accordingly;

"directive" means a directive issued by the Regulator for Energy and Water Services in accordance with the procedures as may be prescribed by regulations made under this Act;

"Directorates" means such directorates as are or may be established under article 6;

"distribution" in relation to electrical energy, means the transport of electricity on the medium-voltage and low-voltage distribution systems with a view to its delivery to customers;

"distribution system operator" means a person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;

"electrical energy" means electrical energy when generated, transmitted, distributed, supplied or used for any purpose except the transmission of any communication or signal;

"employee" means a person employed by the Regulator for Energy and Water Services;

"energy" includes electrical energy, fuels, heat when transmitted as a commercial activity, and energy derived from renewable sources;

"establishment" means the actual pursuit of an economic activity as referred to in Article 43 of the Treaty, by a service provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

"fuel" includes coal, all hydrocarbons or hydrocarbon derivatives normally used as fuels, including crude oil, fuels based on hydrocarbons or coal, gaseous fuel, petroleum substitutes in liquid form, liquids or gases produced from fermentation or similar processes when intended for use as fuels, fuels produced from solid waste; but does not include petroleum for the purposes of the Petroleum (Production) Act; Cap. 156.

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

Provided that the first financial year of the Regulator for Energy and Water Services shall begin on the coming into force of this Act and shall end on the 31st December of the next following year;

"gas" means all hydrocarbons in gaseous form whether in their natural state or obtained from petroleum or produced chemically;

"Internal Market Information System" means the information system through which competent authorities exchange information in fulfilment of their obligations under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market;

"Member State" means a Member State of the European Union;

"Member State of establishment" means the Member State in whose territory the provider of the service concerned is established;

"Member State where the service is provided" means the Member State where the service is supplied by a provider established in another Member State;

"Minister" means the Minister responsible for energy and water services;

"overriding reasons relating to the public interest" means the reasons recognised as such in the case law of the European Court of Justice in relation to Articles 43 and 49 of the Treaty, as they may continue to evolve and including the following grounds:

(*a*) public policy, public security, public safety and public health; provided that these grounds shall be interpreted within the meaning of Articles 46 and Article 55 of the Treaty;

(*b*) the maintenance of order in society;

(*c*) social policy objectives;

(*d*) the protection of the recipients of services;

(*e*) consumer protection;

(*f*) the prevention of fraud;

(*g*) the prevention of unfair competition;

(*h*) the protection of the environment;

"petroleum" means all natural hydrocarbons whether liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline;

"public officer" in relation to article 18, has the same meaning assigned to it by article 124 of the Constitution but does not include a judge or a magistrate;

"recipient" means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;

"Regulator" means the Regulator for Energy and Water Services established by article 3;

"resources" means the resources relating to energy and water regulated by or under this Act;

"service" means any self-employed activity performed for an

economic consideration as referred to in Article 50 of the Treaty;

"services of a general economic interest" means those services declared by the Minister responsible for Competition as services of general economic interest in terms of article 30(3) of the Competition Act;

Cap. 379.

"service provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;

"transmission" in relation to electrical energy, means the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or distributors but does not include supply;

"TSO" means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;

"Treaty" means the Treaty establishing the European Community;

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;

Cap. 490.

"undertaking" means any person whether an individual, a body corporate or unincorporate or any other entity, pursuing an economic activity, and includes a group of undertakings;

"water", when used in relation to any practice, operation or activity which is regulated by this Act, shall include drainage and sewage services, but shall not include bottled table water.

Extension of applicability to exclusive economic zone area or environment *protection area. Added by: XXXV.2023.85.* Cap. 362. Cap. 625.

2A. The provisions of this Act and of any subsidiary legislation made thereunder shall also apply, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea as ratified by the Law of the Sea (Ratification) Act, to an exclusive economic zone area or an environment protection area as defined in the Exclusive Economic Zone Act. Any artificial island, installation, structure, equipment or device therein shall, solely for the purposes of this Act and any subsidiary legislation made thereunder, be treated as if they were situated in Malta itself.

PART II
ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF REGULATOR

Establishment and composition of the Regulator for Energy and Water Services. *Substituted by: XLIX.2021.2.*

3. (1) There shall be a legally distinct body as established by this Act, to be known as the Regulator for Energy and Water Services, hereinafter referred to as the "Regulator" which shall consist of a Chairman and not less than four (4) and not more than six (6) other members.

(2) The Regulator shall be functionally independent from other public or private entities. The staff and the persons responsible for the management of the Regulator shall act independently from any market

interest and shall not seek or take direct instructions from Government or other public or private entities when carrying out its regulatory tasks. This requirement shall be without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the Government not related to its regulatory powers and duties.

(3) The Regulator shall take autonomous decisions, independently from any political body.

(4) The Regulator shall have all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner.

(5) The Regulator shall have a separate annual budget and autonomy in the implementation of the budget.

(6) The members of the Board of the Regulator shall be appointed based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience.

(7) The members of the Board of the Regulator shall be appointed by the Minister for a term of five (5) years or for such longer period as may be specified in the instrument of appointment subject to a maximum term of seven (7) years but the members so appointed may be re-appointed, once only, on the expiration of their term of office for a term of five (5) years or for such longer period as may be specified in the instrument of appointment subject to a maximum term of seven (7) years.

An appropriate rotation scheme for the appointment of the members of the Board of the Regulator shall be put in place, in terms of which the end date of the term of office of the Board members is not the same for all members.

(8) The Minister may designate one (1) of the other members of the Board of the Regulator as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or during any vacancy in the office of Chairman; and the Minister may also, in any of the above circumstances, appoint another person to act as Chairman and in such a case the foregoing provisions shall apply in respect of that person.

(9) A person shall not be qualified to hold office as a member of the Board of the Regulator if he:

(a) is a Minister, Parliamentary Secretary or a member of the House; or

(b) is a judge or magistrate; or

(c) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Board of the Regulator.

(10) Subject to the provisions of this article, the office of a member of the Board of the Regulator shall become vacant:

(a) at the expiration of his term of office; or

(b) if any circumstances arise that, if he were not a member of the Board of the Regulator, would cause him to be disqualified for appointment as such.

(11) A member of the Board of the Regulator may only be removed from office by the Minister if such member is unfit to continue in office for any one or more of the following reasons:

(a) if the member is found unable to act independently from any market interests;

(b) if the member is found taking instructions or directions from any other public or private entity or person in the exercise of the regulatory functions assigned to the Regulator;

(c) where such member has been found guilty of misconduct under any law.

(12) If a member resigns or if the office of a member of the Board of the Regulator is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister shall take all appropriate measures to fill the vacancy so created, subject to the provisions of sub-articles (9), (10) and (11).

(13) Any member of the Board of the Regulator who has any direct or indirect interest in any contract or business made or proposed to be made by the Regulator, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Board of the Regulator after the relevant facts have come to his knowledge; such disclosure shall then be recorded in the minutes of the meeting of the Board of the Regulator, and the member having an interest as aforesaid shall withdraw from any meeting at which such contract is discussed. Where the interest of the member is such as to disqualify him from remaining a member, he shall immediately report the fact to the Board of the Regulator and submit his resignation. Any disclosure under this sub-article shall be notified by the Regulator to the Minister without delay.

(14) Any member of the Board of the Regulator shall avoid any conflict of interest when acting as a member of the Board. A member of the Board shall preserve confidentiality on information obtained and matters pertaining to the Regulator during and beyond the end of the mandate.

Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Board of the Regulator and tender his resignation. Any disclosure under this sub-article shall be communicated by the Regulator to the Minister without delay.

Objectives of the Regulator. *Amended by: XLIX.2021.3.*

4. The Regulator shall be responsible for the regulation of energy and water services and resources to ensure:

(*a*) greater focus on and increased consumer protection; and

(*b*) the independence of the Regulator as required by various EU directives including EU Directive 2019/944/EC concerning common rules for the internal market in electricity and EU Directive 2009/73/EC concerning common rules for the internal market in natural gas and the Energy Charter Treaty.

The Regulator is hereby designated as the single regulatory authority at national level for the purposes of Directive 2019/944/EC and Directive 2009/73/EC.

Functions of the Regulator. *Amended by: XLIX.2021.4.*

5. (1) The Regulator shall have, and shall independently, transparently and impartially implement and administer, the following functions:

(*a*) to regulate, monitor and keep under review all practices, operations and activities relating to energy and water services and resources;

(*b*) to grant any licence, permit or other authorisation, for the carrying out of any operation or activity relating to energy and water services and resources;

(*c*) to regulate and secure interconnectivity for the production, transmission and distribution of the services or products regulated by or under this Act;

(*d*) to promote fair competition in all such practices, operations and activities and to monitor the occurrence of restrictive contractual practices, and where appropriate in collaboration with the authority responsible for competition;

(*e*) to establish minimum quality and security standards for any of the said practices, operations and activities and to regulate such measures as may be necessary to ensure public and private safety;

(*f*) to secure and regulate the development and maintenance of efficient systems in order to satisfy, as economically as possible, all reasonable demands for the provision of the services regulated by or under this Act;

(*g*) to regulate the price structure for any activity regulated by this Act and where appropriate to establish the mechanisms whereby the price to be charged for the acquisition, production, manufacture, sale, storage and distribution thereof is determined;

(*h*) to establish the minimum qualifications to be possessed by any person who is engaged or employed in any activity regulated by or under this Act;

(*i*) to ensure that international obligations entered into by the Government relative to the matters regulated by or under this Act are complied with, in particular, the implementation of the regulatory functions envisaged in the Electricity and Gas market directive and the Energy Charter Treaty;

(*j*) to submit its opinion to Government on the formulation of policy in relation to matters regulated by this Act, and in particular in relation to such international obligations;

(*k*) to promote the interests of consumers and other users in Malta, particularly vulnerable consumers, especially in respect of the prices charged for, and the quality and variety of the services and, or products regulated by or under this Act;

(*l*) to determine disputes in relation to matters regulated by or under this Act;

(*m*) to undertake effective stakeholder and regulated entity involvement and consultation when preparing its positions and actions;

(*n*) to carry out investigations into the functioning of the electricity market, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the Regulator shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law.

(2) The Regulator shall also independently, transparently and impartially:

(*a*) in relation to energy -

(i) regulate the harnessing, generation, distribution, transmission, supply and use of all forms of energy; and

(ii) impose levies on energy produced by non-renewable sources and grant subsidies in connection with the production of energy from renewable sources and energy efficiency;

(*b*) in relation to water -

(i) secure and regulate the acquisition, production, storage, distribution or other disposal of water for domestic, commercial, industrial or other purposes;

(ii) secure and regulate the conservation, augmentation and operation of water resources and the sources of water supply;

(iii) secure and regulate the treatment, storage, disposal, use or re-use, as appropriate, of sewage, waste water, sludge and storm water run-off;

(iv) secure and regulate the provision of adequate systems of public sewers and to ascertain their cleanliness, safety and efficiency;

(*c*) in relation to petroleum -

(i) secure that adequate provision and reserve stocks of petroleum and gas is available at all times;

(ii) regulate the distribution, sale, exportation or disposal in any other manner of fuels supplied for bunkering; for the purposes of this sub-paragraph "bunkering" and "fuel" shall have the same meaning assigned to them by article 2 of the Bunkering (Fuels) Tax Act; Cap. 381.

(iii) manage national emergency stocks and specific stocks for which purpose the Regulator is hereby designated the Central Stock Holding Entity for security stock in accordance with Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products:

Provided that matters falling under sub-articles (1) and (2) which shall have been pending before the Malta Resources Authority in terms of the Malta Resources Authority Act from before the coming into force of this Act shall forthwith be transferred onto the Regulator without the need of any formalities other than the coming into force of this Act. Cap. 423.

(3) The provisions of this article shall be without prejudice to the exercise of the functions of any authority established by or under any law in relation to public health, competition and the environment or any other matter falling within the functions of any such authority.

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

Conduct of the affairs of the Regulator.

6. (1) Subject to the other provisions of this Act the affairs and business of the Regulator shall be the responsibility of the Regulator itself but save as aforesaid, the executive conduct of the Regulator, its administration and organisation and the

administrative control of its officers and employees, shall be the responsibility of the Chief Executive Officer of the Regulator, who shall also have such other powers as may from time to time be delegated to him by the Regulator and who shall be wholly accountable to the Regulator.

(2) The Regulator shall establish Directorates, Units, Divisions and Sections, as appropriate, which shall be vested with such responsibilities as the Regulator may decide and which it may vary from time to time, as it deems appropriate.

(3) The Regulator shall exercise its functions through the Directorates, Units, Divisions and Sections so established and for such purpose it shall vest in each of the Directorates, Units, Divisions and Sections so established and subject to the overall supervision and control of the Chief Executive Officer, such of its functions as relate or are ancillary to the matters for which it is responsible so as to enable the said Directorates, Units, Divisions and Sections to give effect to the policies of the Regulator and to otherwise discharge effectively and efficiently the functions of the Regulator in its respective area of operation.

(4) Each of the Directorates, Units, Divisions and Sections so established shall be headed by an individual who shall either be a public officer detailed for duty with the Regulator or an employee of the Regulator or a person detailed to work for the Regulator in accordance with an agreement made between the Regulator and a public or private undertaking, in either case having adequate experience or knowledge in the respective area of operation.

(5) The Regulator and each of the Directorates, Units, Divisions and Sections may exercise any one or more of their functions either directly or through any of their officers or employees or through an agency authorised for the purpose, or through a contractor or other person with whom an agreement for the performance of any one or more of such functions has been entered into:

Provided that nothing in this sub-article shall authorise the Regulator to contract out any of its regulatory or licensing functions.

(6) Where in this Act anything is to be done by or against or with respect to the Regulator, or any notice is to be or may be given to the Regulator, any such thing or notice may also be done by or against or with respect to or be given to the Directorate, Unit, Division and Section under whose jurisdiction the matter falls by reason of a delegation of function to such Directorate, Unit, Division and Section; and for the purposes aforesaid any reference in this Act to the Regulator includes a reference to the appropriate Directorate, Unit, Division and Section.

(7) The Chief Executive Officer and the heads of the Directorates, Units, Divisions and Sections shall be appointed by the Regulator for a period to be determined by the Regulator which shall in no case be less than three years:

Provided that the Chief Executive Officer shall be appointed by the Minister.

(8) The Chief Executive Officer shall attend all the meetings of the Regulator but shall not vote at such meetings:

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

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

(*a*) assume full responsibility for the overall supervision and control of the Directorates, Units, Divisions and Sections;

(*b*) assign to each Directorate, Unit, Division and Section such duties which he considers necessary or expedient;

(*c*) co-ordinate the workings of the Directorates, Units, Divisions and Sections;

(*d*) develop the necessary strategies for the implementation of the objectives of the Regulator;

(*e*) advise the Regulator on any matter it may refer to him or on any matter which he considers necessary or expedient; and

(*f*) perform such other duties as the Regulator may assign to him from time to time.

Relations between the Minister and the Regulator.

7. (1) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time communicate to the Regulator directions in writing of a general character, not related to the regulatory powers of the Regulator and not inconsistent with the provisions of this Act, and the Regulator shall, as soon as may be, give effect to all such directions in such a manner as to respect, in particular, the provisions of article 5 such that the independent regulatory powers of the Regulator are in no way prejudiced.

(2) The Regulator shall afford to the Minister facilities for obtaining information with respect to its property and activities and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

(3) All communications between the Minister and the Regulator shall be conducted in such a manner as to ensure that at no time shall the independence of the Regulator in the exercise of its functions be, or be perceived to be, in any way prejudiced.

Legal personality and representation of the Regulator.

8. (1) The Regulator 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, including the lending or borrowing of money.

(2) The legal representation of the Regulator shall jointly vest in the Chairman and the Chief Executive Officer:

Provided that the Regulator may appoint any one or more of its members or of the officers or employees of the Regulator to appear in the name and on behalf of the Regulator in any judicial proceedings and in any act, contract, instrument or other document whatsoever:

Provided further that in respect of any matter falling within the functions vested in a Directorate, the legal and judicial representation of the Regulator shall also vest in the head of the Directorate or in such other member, officer or employee of the Regulator, as the Regulator may appoint or authorise for the purpose.

(3) Any document purporting to be an instrument made or issued by the Regulator and signed by the Chairman or by the Chief Executive Officer or by a head of a Directorate in relation to any matter vested in the relative Directorate by the Regulator shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Regulator.

Provisions with respect to proceedings of the Regulator.

9. (1) The meetings of the Regulator shall be called by the Chairman as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members.

(2) Half the number of members for the time being constituting the Regulator shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman, or in his absence the Deputy Chairman or other person appointed to act as Chairman, shall have an initial vote and in the event of an equality of votes, a casting vote. Without prejudice to the other requirements of this Act, no decision shall be valid which is not supported by at least two members of the Regulator.

(3) Subject to the provisions of this Act the Regulator may regulate its own procedure.

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Regulator shall be invalidated merely by reason of the existence of any vacancy among the members.

(5) All acts done by any person acting in good faith, as a member of the Regulator, shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Regulator shall be questioned on the ground of the contravention, by a member, of the provisions of article 3(8).

PART III
POWERS OF THE REGULATOR

Licensing, etc., of activities.

10. (1) Save as may otherwise be prescribed, no person shall

carry out any activity or operation, or be engaged in such activity or operation, relating to energy and water services and resources unless such person is in possession of a licence, permit or other authorisation of the Regulator under this Act.

(2) Any person who carries out any such activity without a licence or who acts in breach of any condition of such licence, shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one hundred and fifteen thousand euro (€115,000) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) Saving the provisions of article 469A of the Code of Organization and Civil Procedure no appeal shall lie from any decision of the Regulator under sub-article (1). Cap. 12.

(4) The provisions of this article shall not apply to any cistern or well in any dwelling house, which is required to be constructed under any law, and the provisions of this article shall not be deemed to require any licence or permit for the construction and maintenance of any such cistern or well, so however that this construction shall not preclude the Regulator from exercising any of its functions and powers under this Act for the purpose of ensuring that water is not wasted or misused and that no damage is caused to the aquifer or elsewhere.

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

Provided that matters falling under this article which shall have been pending before the Malta Resources Authority in terms of the Malta Resources Authority Act from before the coming into force of this Act shall forthwith be transferred onto the Regulator without the need of any formalities other than the coming into force of this Act. Cap. 423.

Enforcement powers of the Regulator.

11. (1) Any officer or employee of the Regulator so authorised may, at all reasonable times, enter any premises, vehicle, vessel or any other place, for the purposes of -

(*a*) the making of such inspections, tests, measurements, lifting of samples or to ascertain that nothing contrary to the provisions of this Act, to the regulations made thereunder or to any term or condition attached to any licence, permit or authorisation issued under this Act is being carried out;

(*b*) ascertaining or reproducing such data or information as the Regulator may require.

(2) Any person who obstructs or impedes any officer or employee of the Regulator in the exercise of his duties under this Act shall be guilty of an offence and shall, on conviction, be liable to imprisonment not exceeding eighteen months or to a fine (*multa*) of not more than seventy thousand euro (€70,000) or to both such fine and imprisonment.

Imposition of administrative penalties. *Amended by: XLIX.2021.5.*

12. (1) The Regulator may impose an administrative penalty upon any person who infringes any provision of this Act, regulations prescribed thereunder or of any other law which the Regulator is entitled to enforce, or who fails to comply with any directive or decision given by the Regulator whether under this Act, regulations prescribed thereunder or under any other law which the Regulator is entitled to enforce, or who fails to comply with a legally-binding decision of the Agency for the Cooperation of Energy Regulators, or infringements of Regulation (EU) 2019/943, the network codes adopted pursuant to Article 59 of that Regulation, the guidelines adopted pursuant to Article 61 of that Regulation and on electricity undertakings not complying with their obligations under Regulation (EU) 2019/943 or who fails to comply with any condition of any authorisation granted under this Act.

(2) An administrative penalty imposed under sub-article (1) shall not exceed:

(*a*) one hundred thousand euro (€100,000) for each contravention and, or six hundred euro (€600) for each day of non-compliance, from the date of the decision given by the Regulator; and, or

(*b*) in the case of an undertaking (including a vertically integrated undertaking) or a body corporate, up to ten *per centum* of the total turnover concerned in the preceding business year:

Provided that in the case of an undertaking, including a vertically integrated undertaking or a body corporate, a fine of up to ten *per centum* of the annual turnover concerned in the preceding business year, which amount exceeds one hundred thousand euro (€100,000) may, in any such case be imposed.

Proceedings when imposing administrative penalties.

13. (1) The Regulator, before recovering an administrative penalty upon any person who infringes or fails to comply with -

(*a*) any provision of this Act;

(*b*) regulations made thereunder;

(*c*) any other law which the Regulator is entitled to enforce;

(*d*) any directive or decision given by the Regulator whether under this Act, regulations made thereunder or under any other law which the Regulator is entitled to enforce; or

(*e*) any condition of any authorisation granted under this Act,

shall by judicial letter to the person concerned -

(i) give notice of the administrative penalty being imposed by the Regulator;

(ii) give notice of the specific reason why such penalty is being imposed;

(iii) give notice of the amount of the penalty;

(iv) demand that the person concerned rectify the

acts or omissions committed by such person where such acts or omissions are capable of remedy and, or make submissions to the Regulator within a specified time:

Provided that such time may not be of more than twenty days and of not less than five days from the date of service of the judicial letter:

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

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

(3) If the person concerned remedies the infringement within the period established by the Regulator in accordance with sub-article (1), and agrees in writing to abide with any conditions that the Regulator may impose, the Regulator shall desist from proceeding any further:

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

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

(5) Notwithstanding any other provision of this article, where the Regulator has *prima facie* evidence that the infringement -

(*a*) represents an immediate and serious threat to public safety or public security or public health; or

(*b*) creates or may create serious economic or operational problems for other providers of resources or for consumers,

the Regulator may shorten the periods mentioned in subarticle (1):

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

(6) The judicial letter referred to in sub-article (1) shall, upon the expiry of the time limit for appeal therefrom, and upon the service of a copy thereof by means of a judicial act on the person liable to the payment of the administrative penalty, constitute an executive title for all effects and the purposes of article 253(*a*) of the Code of Organization and Civil Procedure: Cap. 12.

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

Provided further that the Administrative Review Tribunal shall determine any requests for suspension referred to in this sub-article expeditiously. Before determining any such request the Administrative Review Tribunal shall give the Regulator a reasonable opportunity to reply and make its submissions, within a period of not less than three working days.

(7) Interest at the rate of eight per cent *per annum* shall run as from the date set by the Regulator for the payment of any administrative penalty imposed by it. In cases where the Administrative Review Tribunal or the Court of Appeal, as the case may be, after having upheld an application to suspend the penalty pending proceedings, finally decides that the administrative penalty as imposed by the Regulator is due, such administrative penalty shall be due together with any interests accrued thereon as from the date originally set by the Regulator for payment including the period during which the payment of the said penalty was suspended.

(8) The Regulator shall give its reasons for any decision taken under this article.

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

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

(11) An administrative penalty imposed by the Regulator upon any person shall be considered a civil debt due to the Regulator.

(12) If any person knowingly avoids, obstructs or refuses service of any judicial act issued under this article, such person shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not more than seventy thousand euro (€70,000):

Provided that matters falling under this article which shall have been pending before the Malta Resources Authority in terms of the Malta Resources Authority Act from before the coming into force of this Act shall forthwith be transferred onto the Regulator without the need of any formalities other than the coming into force of this Act.

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Administrative infringements by bodies corporate and undertakings.

14. Where an administrative infringement breaches -

(*a*) any provision of this Act;

(*b*) regulations made thereunder;

(*c*) any other law which the Regulator is entitled to enforce;

or any person -

(i) fails to comply with any directive or decision given by the Regulator whether under this Act, regulations made thereunder or under any other law which the Regulator is entitled to enforce; or

(ii) fails to comply with any condition of any authorisation granted under this Act, and the infringement is committed by an undertaking or body corporate and is proved to have been committed with the consent, or involvement of, or to be attributable to, any gross negligence on the part of a person being a director, manager, secretary or other officer, however so described, of such body corporate or undertaking or a person who was purporting to act in any such capacity,

such person and such body corporate shall be responsible for the said infringement and shall be jointly and severally liable for the payment of any administrative penalty imposed by the Regulator as a consequence thereof.

Debt recovery procedure. Cap. 12.

15. The provisions of article 466 of the Code of Organization and Civil Procedure shall apply to the Regulator in the same manner as they apply to Government Departments:

Provided that matters falling under this article which shall have been pending before the Malta Resources Authority in terms of the Malta Resources Authority Act from before the coming into force of this Act shall forthwith be transferred onto the Regulator without the need of any formalities other than the coming into force of this Act.

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PART IV
OFFICERS AND EMPLOYEES OF THE REGULATOR

Staff appointments.

16. Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Regulator shall be made by the Regulator. The terms and conditions of employment shall be established by the Regulator.

Appointment and functions of officers and employees of the Regulator.

17. The Regulator shall appoint and employ, at such remuneration and upon such time, terms and conditions as it may, in accordance with article 16, determine, such officers and employees as may from time to time be necessary for the due and efficient discharge of the functions of the Regulator.

Detailing of public officers for duty with the Regulator.

18. (1) The Principal Permanent Secretary, following the direction of the Prime Minister, may from time to time, at the request of the Regulator, direct that any public officer shall be detailed for duty with the Regulator in such capacity and under such conditions and with effect from such date as he may prescribe.

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

(*a*) the acceptance by such officer of an offer of transfer to the service of, and permanent employment with, the Regulator made in accordance with the provisions of article 20; or

(*b*) the revocation of such direction by the Principal Permanent Secretary following the direction of the Prime Minister.

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

Status of public officers detailed for duty with the Regulator.

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

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

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

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

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

which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Regulator:

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

(*b*) shall be entitled to have his service with the Regulator considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows' and Orphans' Pensions Act and for the purpose of any other right or privilege to which he would be entitled, and shall be liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Regulator: Cap. 93. Cap. 58.

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

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

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

Offer of permanent employment with the Regulator.

20. (1) The Regulator may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Regulator under any of the provisions of article 18 permanent employment with the Regulator 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 the Regulator offered to him, under the provisions of sub-article (1) shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the Cap. 93. Cap. 58.

provisions of sub-article (6), be deemed to have ceased to be in service with the Government and to have entered into service with the Regulator on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Regulator shall be deemed to be service with the Government within the meanings thereof respectively.

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

Cap. 58.

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

(6) For the purposes of the Pensions Ordinance the pensionable emoluments of such public officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post and incremental level at which the officer retires from the Regulator.

Cap. 93.

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

(*b*) The classification referred to in paragraph (*a*) shall be carried out by a board composed of a chairman appointed by the Ministry responsible for finance and two other members, one appointed by the Minister responsible in general for personnel policies in the public service and one appointed by the Regulator. 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 Government service and, or, of employees of the Regulator.

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

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

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PART V
FINANCIAL PROVISIONS

Regulator to meet expenditure out of revenue.

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

(2) For such purpose the Regulator shall levy all fees, rates and other payments prescribed and however so described or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Regulator.

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

(4) Any excess of revenue over expenditure shall, be applied by the Regulator to the formation of reserve funds to be used for the purposes of the Regulator; and without prejudice to the generality of the powers given to the Minister by this sub-article, 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 sub-article (2) or any such excess as aforesaid.

(5) Any funds of the Regulator not immediately required to meet expenditure may be invested in such manner as may be decided by the Regulator.

Power to borrow or raise capital.

22. (1) For the purpose of carrying out any of its functions under this Act, the Regulator may, in connection with the exercise of its functions, borrow or raise money.

(2) The Regulator 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 twenty thousand euro (€120,000), there shall be required the approval of the Minister in writing.

Advances from Government.

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

Borrowing from Government.

24. (1) The Minister responsible for finance may, for any requirements of the Regulator of a capital nature, contract or raise

loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(2) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable and, in any case, not later than eight (8) weeks after such loan, liability or advance is made, or if at any time during that period the House is not in session, within eight weeks from the beginning of the next following session.

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

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

(5) Sums received by the Accountant General from the Regulator, in respect of advances made to the Regulator under sub-article (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.

Estimates of the Regulator.

25. (1) The Regulator shall cause to be prepared in every financial year, and shall not later than six (6) weeks after the end of each such year adopt, estimates of the income and expenditure of the Regulator for the next following financial year.

(2) In the preparation of such estimates the Regulator 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 the Regulator shall so prepare the said estimates as to ensure that the total revenues of the Regulator are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

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

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

(5) The Minister shall, at the earliest opportunity and not later than six (6) weeks after he has received a copy of the estimates from the Regulator, approve the same with or without amendment

after consultation with the Minister responsible for finance.

Expenditure to be according to approved estimates.

26. (1) No expenditure shall be made or incurred by the Regulator unless provision therefor has been made in the estimates approved as provided in article 25.

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

(*a*) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year, whichever is the earlier date, the Regulator may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one-half of the amount approved for the preceding financial year;

(*b*) expenditure approved in respect of a head or sub-head of the estimates may be made or incurred in respect of another head or sub-head of the estimates;

(*c*) in respect of the first financial year, the Regulator may make or incur expenditure not exceeding in the aggregate such amounts;

(*d*) if in respect of any financial year it is found that the amount approved in the estimates is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Regulator may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

Publication of approved estimates.

27. The Minister shall at the earliest opportunity and not later than eight (8) weeks after he has received a copy of the estimates and supplementary estimates of the Regulator, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives.

Accounts and audit.

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

(2) The accounts of the Regulator shall be audited by an auditor or auditors to be appointed by the Regulator:

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

(3) After the end of each financial year, and not later than the date on which the estimates of the Regulator are forwarded to the Minister under article 25, the Regulator shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the

accounts of the Regulator.

(4) The Minister shall, at the earliest opportunity and not later than eight (8) weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight (8) weeks from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

Deposit of revenues and payments by the Regulator.

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

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

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

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

(*a*) the manner in which and the officer or officers by whom payments are to be authorised or approved;

(*b*) the title of any account held with the bank or banks into which the monies of the Regulator are to be paid, and the transfer of funds from one account to the other;

(*c*) the method to be adopted in making payments out of funds of the Regulator;

and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Regulator.

Annual report.

30. The Regulator shall, not later than six (6) 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 the activities of the Regulator during that financial year and containing such information relating to the proceedings and policy of the Regulator as may be required from time to time. The Minister shall at the earliest opportunity and not later than eight (8) weeks after he has received a copy of the said report, or if at any time during that period the House of Representatives is not in session, within eight (8) weeks from the beginning of the next following session, cause such report to be laid on the Table of the House of Representatives.

PART VI
MISCELLANEOUS

Administrative Review Tribunal. Cap. 490.

31. The provisions of the Administrative Justice Act, in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Regulator.

Appeals.

32. (1) An appeal shall lie to the Administrative Review Tribunal on any decision of the Regulator in accordance with the provisions of this Act and any regulations made thereunder, and the right to appeal shall be competent to any person aggrieved by such decision.

(2) An appeal to the Administrative Review Tribunal may be filed on any of the following grounds:

(*a*) that a material error as to the facts has been made;

(*b*) that there was a material procedural error;

(*c*) that an error of law has been made;

(*d*) that there was some material illegality, including unreasonableness or lack of proportionality.

(3) The Administrative Review Tribunal shall give reasons for its decision and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of confidentiality, the names of the persons involved.

(4) In determining an appeal the Administrative Review Tribunal shall take into account the merits of the appeal, and may in whole or in part, confirm or annul the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(5) The effect of a decision to which an appeal relates shall not, except where the Administrative Review Tribunal or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

(6) The right of appeal to the Administrative Review Tribunal shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Administrative Review Tribunal shall also require a direct interest in impugning the decision or directive appealed from.

(7) Without prejudice to the provisions of article 13 -

(*a*) an appeal from a decision or directive of the Regulator shall be made by application and shall be filed with the secretary of the Administrative Review Tribunal within twenty (20) days from the date on which the said decision or directive has been notified in writing to the party appealing or published in the Gazette whichever is the earlier, as the case may be; and

(**b**) the application of appeal shall be served on the Regulator, which shall not later than twenty (20) days from such service file its reply thereto with the secretary of the Administrative Review Tribunal.

Grounds of appeal.

33. (1) The Administrative Review Tribunal shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Act and any regulations made thereunder; and, subject to article 34, the decisions of the said Tribunal shall be final and binding.

(2) In the exercise of its functions, the Tribunal may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer the oath. The Tribunal may also appoint experts to advise the Tribunal on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Tribunal shall have the same powers as are competent to the First Hall, Civil Court according to law.

(4) The procedure to be followed before the Tribunal, the time within which and the manner in which an appeal to the Tribunal is to be made shall be such as may be prescribed; and subject thereto, and to any other applicable provision of this Act, the Tribunal may establish its own procedure.

Appeal to the Court of Appeal.

Cap. 490.

34. (1) Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal, or the Regulator if it feels dissatisfied with any such decision, may on a question of law appeal to the Court of Appeal in terms of the Administrative Justice Act.

(2) The appeal shall be made by means of an application filed in the registry of that court within twenty (20) days from the date on which that decision has been notified.

Powers of service providers.

35. (1) The execution of all works in connection with any services provided under a licence issued under this Act shall be carried out in such manner as may be agreed between the service provider and the person receiving such services.

(2) The provider of any service for which a licence is required under this Act and any employee duly authorised by him may at all reasonable times enter any premises for the purpose of -

(*a*) ascertaining that the services are being used in accordance with the conditions under which they are supplied;

(*b*) maintaining or repairing any equipment supplied by him in relation to such service;

(*c*) ascertaining such data or information that may be required in connection with the provision of such service:

Provided that any such service provider shall repair all damage caused by such entry.

(3) Any person who obstructs or impedes any person in the exercise of his duties under sub-article (1) shall be guilty of an offence against this Act.

Service providers.

Cap. 500.

36. (1) In regulating access to service activities falling under this Act and, or the exercise thereof, the Regulator shall, where such service activities fall within the scope of the Services (Internal Market) Act:

(*a*) act objectively, transparently, efficiently and in a timely manner;

(*b*) provide information and assistance to service providers and recipients subject to the provisions of this Act;

(*c*) make it possible to complete all procedures and formalities relating to access to a service activity and to the exercise thereof, available electronically through the designated point of single contact:

Provided that the requirement to make it possible to complete all procedures and formalities electronically through the point of single contact shall not apply to the inspection of premises from which the service is provided or of equipment used by the service provider.

(2) When a service provider is already established in another Member State, and seeks access to a service activity or the exercise thereof in Malta:

(*a*) where the service activity is subject to an authorisation scheme or the fulfilment of other requirements regulating establishment in Malta, the Regulator shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose which a service provider may already be subject to in another Member State where he is already established;

(*b*) where the Regulator requires a service provider to supply a certificate, attestation or document proving that a requirement has been satisfied in terms of this Act or regulations made thereunder:

(i) it shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied;

(ii) it may not require a document from another Member State to be produced in its original form or as a certified copy or certified translation save in the cases provided for in a Community instrument or where such a requirement is justified by an overriding reason relating to the public interest, including public order and public security:

Provided that the provisions of this paragraph shall not affect the right of the Regulator from requesting a non-certified translation of documentation in the Maltese or in the English language.

(3) Where the number of authorisations available for a service

activity is limited because of the scarcity of available natural resources, technical capacity or if justified by an overriding reason relating to public interest, the Regulator shall apply a selection procedure to potential candidates in order to ensure impartiality, transparency, conditions of open competition, including in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, the Regulator may give consideration to issues relating to public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, and other overriding reasons relating to the public interest, in conformity with Community law.

(4) An authorisation granted to a service provider shall be for an indefinite period, except where:

(*a*) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(*b*) the number of available authorisations is limited in terms of sub-article (3);

(*c*) a limited authorisation period can be justified by an overriding reason relating to the public interest:

Provided that in cases referred to in paragraph (*b*), an authorisation shall be granted for an appropriate limited period enabling the service provider to recover the cost of investment and to make a fair return on the capital invested, which authorisation may not have an excessive duration, be open to automatic renewal nor confer any other advantage on the service provider whose authorisation has just expired or on any person having any particular links with that provider.

(5) An authorisation granted by the Regulator shall enable the service provider to have access to the service activity or the exercise thereof throughout Malta including by means of the setting up of agencies, subsidiaries, branches or offices, except where the authorisation for each individual establishment or a limitation of authorisation to a certain part of the territory is justified by an overriding reason relating to public interest:

Provided that the service provider shall be required to inform the Regulator of the creation of subsidiaries, branches, offices or agencies whose activities fall within the scope of the authorisation scheme.

(6) In the fulfilment of its authorisation function in terms of this article, the Regulator shall:

(*a*) acknowledge all applications requesting authorisation;

(*b*) in case of an incomplete application, inform the applicant as quickly as possible of the need to supply any additional information, together with the consequences which ensue should the applicant delay in providing the said information or requirements;

(*c*) process an application for an authorisation as quickly as possible and in any event within a time period

which shall be fixed and made public in advance failing which it shall be deemed that the authorisation has been granted. The period will start to run from the day when all due information has been submitted and any other requirements and formalities have been completed in order for the Regulator to process the application:

Provided that the time period may be extended once for a limited time when justified by the complexity of the issue. The extension and its duration shall be duly justified and given to the applicant before the original period has expired:

Provided further that the Regulator may make different arrangements where objectively justified by overriding reasons relating to the public interest including a legitimate interest of third parties;

(*d*) provide information regarding the means of redress available in case of non-acceptance of an application;

(*e*) grant an authorisation as soon as the applicant fulfils all requirements, without prejudice to the right of the Regulator to revoke or modify an authorisation when the conditions for authorisation are no longer met by the service provider;

(*f*) in the case of rejected applications due to failure to comply with the required procedures or formalities, inform the applicant of the rejection as soon as possible;

(*g*) except in the case of the granting of an authorisation, a decision from the Regulator, including refusal or withdrawal, shall be fully reasoned and shall be open to challenge before the Administrative Review Tribunal.

(7) With the exclusion of service activities and matters which are declared to be services of a general economic interest, which *inter alia* may include -

(*a*) in the electricity sector, services covered by Directive 2009/72/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;

(*b*) in the gas sector, services covered by Directive 2009/73/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;

(*c*) water distribution and supply services and waste water services,

the Regulator shall respect the right of service providers that are lawfully established and providing services in another Member State to provide services in Malta, and may not prevent them from providing such service activities by imposing requirements which are discriminatory, unnecessary or disproportionate:

Provided that the Regulator may impose requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment:

Provided also that in establishing whether a service provider is exercising his freedom to provide services within the meaning of this article and Article 49 of the Treaty, or is an establishment case, or whether a service provider is abusively taking advantage of the freedom to provide services, the Regulator shall assess and decide each case on its individual merits and in conformity with Community legislation and rulings of the European Court of Justice.

(8) Without prejudice to sub-article (7), in exceptional cases only, the Regulator may, in respect of a service provider established in another Member State, take measures in order to ensure the safety of services provided in Malta. When taking such measures, the Regulator shall follow the procedure established under the Fourth Schedule to the Services (Internal Market) Act, and ensure the fulfilment of the following conditions:

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(*a*) the national provisions, in accordance with which the measures are taken, have not been subject to Community harmonisation in the field of the safety of services;

(*b*) the measures taken provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;

(*c*) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those requested by the Regulator and as referred to in paragraphs 2 and 3 to the Fourth Schedule to the Services (Internal Market) Act;

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(*d*) the measures are proportionate:

Provided that the Regulator, upon gaining actual knowledge of any conduct or specific acts by a service provider established in Malta and which provides services in other Member States, which, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, shall inform all other Member States and the European Commission within the shortest possible period of time through the Internal Market Information System.

(9) (*a*) The Regulator shall require service providers established in Malta and falling under its area of competence to keep it updated at all times with the information it identifies as necessary and objectively justified for it to fulfil its supervisory function of services in terms of this Act and the Services (Internal Market) Act.

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(*b*) The Regulator shall exercise its supervisory functions on service providers established in Malta, and falling under its area of competence, whether the service is provided in Malta or in another Member State.

(*c*) In executing its supervisory functions, when a service is being provided in another Member State by a service provider established in Malta, the Regulator shall assist the relevant competent authority of that other Member State in terms of the procedure established in the Second Schedule of the Services (Internal Market) Act. In doing so, the Regulator shall not refrain from taking supervisory enforcement measures in Malta on the grounds that a service has been provided or caused damage in another Member State: Cap. 500.

Provided that the Regulator shall not be bound to carry out checks and controls in the Member State where the service is being provided.

(*d*) When a service is being provided in Malta, in the event of a temporary movement by a service provider established in another Member State:

(i) the Regulator shall participate in the supervision of the service provider in accordance with the procedure set up in the Second Schedule to the Services (Internal Market) Act; Cap. 500.

(ii) when the Regulator has imposed requirements in terms of the first proviso to sub-article (7), it shall assume responsibility for the supervision of that service provider in Malta in order to ensure compliance with those requirements.

(*e*) The Regulator shall exchange requests and information with the relevant competent authorities of another Member State through the Internal Market Information System.

(*f*) Without prejudice to the limitations imposed by any other law, the Regulator shall supply information to the relevant competent authority of another Member State on disciplinary or administrative actions, or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which directly concern a provider, and which are directly relevant to the provider's competence or professional reliability, in terms of the procedure contemplated under the Third Schedule of the Services (Internal Market) Act. Cap. 500.

37. (1) The Minister may, after consultation with the Regulator, make regulations in respect of any of the functions of the Regulator or for the better carrying out of any of the provisions of this Act. Power to make regulations.

(2) Without prejudice to the generality of the aforesaid power such regulations may, in particular provide -

(*a*) for any aspect relating to the procedure and conditions that may be imposed in relation to any authorisation under this Act including where applicable the grant, renewal, transfer, suspension, cancellation and duration of any such authorisation, the manner in

which applications for such authorisations is to be made, the content and form of such applications and how they may be granted, renewed or transferred, the fees payable, and the manner in which renewals or transfers thereof is to be indicated;

(b) for the regulation of any aspect relating to imposition of public and, or universal service obligations, however so described, in respect of any operation, activity or service regulated by this Act;

(*c*) for the regulation of price structures for resources and where appropriate for the regulation and determination of tariffs, price mark-ups and charges for the supply, storage and distribution of resources and for the use of any systems used in the distribution and transmission of resources;

(*d*) for securing adequate reserves, where applicable, and for securing the adequate provision of the resources regulated by or under this Act;

(*e*) for the compulsory acquisition and distribution of any such resources during periods of scarcity;

(*f*) for the minimum standards to be adopted in, and any other matter related to the conservation, acquisition, supply, sale, storage, generation, distribution, transmission, export, treatment, re-use or disposal and any other practices, operations and activities, regulated by or under this Act including the means by which such resources are to be protected, acquired, supplied, sold, stored, generated, distributed, transmitted, exported, treated, re-used or disposed of;

(*g*) for the quality of service targets and the establishment and maintenance of an efficient customer service by authorised providers for consumers;

(*h*) to secure and regulate the conservation, augmentation, operation and use of sources of energy and water as well as the promotion and the harnessing, generation and use of energy and water resources;

(*i*) for promoting fair competition in all practices, operations and activities related to energy and water;

(*j*) for the undertaking of studies, research or investigation on any matter relating to the resources regulated by or under this Act and the provision of information, the issue of guidelines to the public and to commercial entities on matters relating to the said resources;

(*k*) to give effect to any international obligation entered into by Government in relation to the resources regulated by or under this Act;

(*l*) for regulating the services that may be required in relation to energy and water and the time, manner, place and condition in which or under which such

services are to be provided;

(*m*) for the regulation of the qualifications to be possessed by persons who are employed in any activity regulated by or under this Act;

(*n*) for matters concerning the construction, condition and maintenance of any facilities, apparatus and other equipment utilised in the provision of any of the said resources or services related thereto;

(*o*) for prescribing the information to be retained by authorised providers under this Act and the provision of statistical data by such authorised providers, and on any other matter relating to provision of information by authorised providers to the Regulator;

(*p*) for the making of any deposit or the giving of any guarantee to ensure the performance of any obligation by any person imposed as a condition of any permit, authorisation or licence under this Act;

(*q*) for prescribing the practices to be adopted in regard to safety, and the protection of the environment in relation to any matter regulated by this Act, including any norms in relation to the liability of any person who causes damage to the environment as a result of any activities regulated by or under this Act undertaken by that person;

(*r*) regarding a contingency plan in the event of any crisis relating to any matter regulated by this Act;

(*s*) for complaint processing procedures to be implemented by an authorised provider, and for any matter relating to the resolution of any disputes and, or complaints, however so described, relating to any matter regulated by this Act;

(*t*) in regard to administrative infringements and fines;

(*u*) regarding cooperation with other authorities and the relationship between the Regulator and other public authorities including consultations, provision of information and any other matter of mutual interest;

(*v*) for the procedures to be followed in regard to the settlement of disputes;

(*w*) for the enforcement powers required by the Regulator to perform its functions under this Act;

(*x*) for prescribing anything which may be or is required to be prescribed by this Act.

Power to make regulations with respect to exclusive economic zone area or environment protection area. *Added by: XXXV.2023.86.* Cap. 625.

37A. Without prejudice to any provision of this Act granting the Minister the power to make regulations, the Minister may, subject to the provisions of the Exclusive Economic Zone Act, from time to time, make, amend, substitute or repeal regulations for the purpose of regulating, prescribing or otherwise providing for any matters regulated by or under this Act or by or under any subsidiary legislation made thereunder, in respect of an exclusive economic zone area or an environment protection area as defined in the Exclusive Economic Zone Act or any activities therein including, but not limited, to the applicability or otherwise of this Act and, or of any subsidiary legislation made thereunder.

Power of Minister to make regulations in relation to criminal offences.

38. Without prejudice to any other provision of this Act the Minister may, after consultation with the Regulator, make regulations prescribing penalties for criminal offences against any regulations made under this Act, and such regulations may:

(*a*) prescribe imprisonment and different fines (*multi*) for different offences;

(*b*) prescribe fines (*multi*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for:

(i) imprisonment for more than eighteen months, or a fine (*multa*) of more than seventy thousand euro (€70,000); or

(ii) a fine of more than one thousand four hundred euro (€1,400) for each day during which the offence persists.

Persons deemed public officers.

Cap. 9.

39. The members of the Regulator and all officers and employees of the Regulator shall be deemed to be public officers within the meaning and for the purposes of the Criminal Code.

Exemption from liability.

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

Savings. *Amended by: XVII.2024.22.* Cap. 423.

41. (1) *Repealed by Act XVII of 2024*.

(2) (*Omitted under the Statute Law Revision Act, 1980*).

(3) Any licence, permission, authority or order granted or made under any of the provisions of the subsidiary legislation listed in the First Schedule and still in force immediately before the coming into force of this Act, shall continue in force thereafter as if it were a licence, permission, authority or order granted or made under a corresponding provision of this Act, and any such licence, permission, authority or order as aforesaid shall be treated and dealt with accordingly.

Cap. 549.

Cap. 643

Cap. 423.

(4) The legislation listed in the Second Schedule shall remain in force and have effect as if it were made under the Environment Protection Act and the Climate Action Act.

(5) (*Omitted under the Statute Law Revision Act, 1980*)).

(6) (*Omitted under the Statute Law Revision Act, 1980*)).

(7) (*Omitted under the Statute Law Revision Act, 1980*)).

Transfer of assets and liabilities of the Malta Resources Authority. *Amended by: XVII.2024.23.*

42. (1) With effect from the date of the coming into force of this Act:

(*a*) all assets and rights of whatever nature of the Malta Resources Authority (hereafter 'Authority') relating to resources other than mineral resources whether existing in Malta or outside Malta, including but not limited to all real or other rights under any contract, all monies due by any person to the Authority, and all shares in, stocks, or other interests of or in any other bodies; and

(*b*) all obligations and liabilities of the Authority relating to resources other than mineral resources,

shall by virtue of this Act be deemed to be assets, rights, liabilities and obligations of the Regulator without the need of any formalities other than this Act.

Act No. XVII of 2024.

(2) With effect from the date of the coming into force of the Environment Protection (Amendment) Act, 2024, all actions pending before any court, tribunal, arbitral tribunal, or any other adjudicating body, instituted by, or against the Authority shall, with reference to resources other than mineral resources and to the legislation listed in the Second Schedule, be continued by, or against the Regulator, without the need of any formalities other than this Act.

Transitory provisions. Cap. 423.

43. *Repealed by Act*XVII.2024.*24*.

Revocation of the Protection of Groundwater against Pollution caused by Certain Dangerous Substances Regulations. S.L. 423.16

44. (*Omitted under the Statute Law Revision Act, 1980*)).

Amendment of the Energy Performance of Buildings (Fees) Regulations. S.L.423.43

45. (*Omitted under the Statute Law Revision Act, 1980*))

Effect of the Energy Performance of Buildings (Fees) Regulations. S.L.423.43

46. (*Omitted under the Statute Law Revision Act, 1980*)).

Amendment of the Water Policy Framework Regulations. S.L. 423.20

47. (*Omitted under the Statute Law Revision Act, 1980*)).

Effect of the Water Policy Framework Regulations. S.L. 423.20

48. (*Omitted under the Statute Law Revision Act, 1980*)).

Amendment of the Promotion of Energy from Renewable Sources Regulations. S.L. 423.19

49. (*Omitted under the Statute Law Revision Act, 1980*)).

Amendment of the Protection of Groundwater against Pollution and Deterioration Regulations. S.L. 423.36

50. (*Omitted under the Statute Law Revision Act, 1980*)).

Effect of the Protection of Groundwater against Pollution and Deterioration Regulations. S.L. 423.36

51. (*Omitted under the Statute Law Revision Act, 1980*)).

FIRST SCHEDULE
(Article 41)

Electricity Supply Regulations (S.L. 545.01)

Control of Water Pumps and Wells Order (S.L. 545.02)

Water Supply Regulations (S.L. 545.03)

Water Economy Regulations (S.L. 545.04)

Water Services (Establishment of Penalties) Regulations (S.L.545.05)

Registration of Drilling Rigs Regulations (S.L.545.06)

Control of Swimming Pools Regulations (S.L. 545.07)

Sewer Discharge Control Regulations (S.L. 545.08)

Maintenance of Minimum Stocks of Crude Oil and, or Petroleum Products Regulations (S.L. 545.09)

Electricity Transit (Grid Requirements) Regulations (S.L. 545.10)

Natural Gas Market Regulations (S.L. 545.12)

Electricity Market Regulations (S.L. 545.13)

Water Supply and Sewerage Services Regulations (S.L. 545.14)

Biofuels and Bioliquids Market Regulations (S.L. 545.15)

Energy Efficiency and Cogeneration Regulations (S.L. 545.16)

Petroleum for the Inland Wholesale Fuel Market, Bottling of LPG and Primary Storage Facilities Regulations (S.L. 545.17)

Quality of Fuels Regulations (S.L. 545.18)

Authorisations (Suspension, Refusal and Revocation) Regulations (S.L.545.19)

Liquefied Petroleum Gas Market Regulations (S.L. 545.20)

Energy End-use Efficiency and Energy Services Regulations (S.L. 545.21)

Petroleum for the Inland (Retail) Fuel Market Regulations (S.L. 545.22)

Electrical Installations Regulations (S.L. 545.24)

Bunkering (Authorisation) Regulations (S.L. 545.25)

Autogas (Installation and Certification) Regulations (S.L. 545.26)

Feed-in Tariffs Scheme (Electricity Generated from Solar Photovoltaic Installations) Regulations (S.L. 545.27)

Guarantees of Origin of Electricity from High Efficiency Cogeneration and of Energy from Renewable Energy Sources Regulations (S.L.545.36)

Promotion of Energy from Renewable Sources Regulations (S.L. 545.43)

Biofuels, Bioliquids and Biomass Fuels (Sustainability Criteria) Regulations (S.L. 545.45)

SECOND SCHEDULE
(Articles 1, 41, 43, 44)

Notification of Groundwater Sources Regulations (S.L. 423.12)

Borehole Drilling and Excavation Works within the Saturated Zone Regulations (S.L. 423.32)

Groundwater Abstraction (Metering) Regulations (S.L. 423.40)

Assessment and Management of Flood Risks Regulations (S.L. 423.41)

Users of Groundwater Sources (Application) Regulations (S.L. 423.45)

Lifecycle Greenhouse Gas Emissions from Fuels Regulations (S.L. 423.48)

European Union Greenhouse Gas Emissions Trading System for Stationary Installations Regulations (S.L. 423.50)

European Union Greenhouse Gas Emissions Trading System for Aviation Regulations (S.L. 423.51)