CHAPTER 640

OLDER PERSONS STANDARDS AUTHORITY ACT

AN ACT to provide for the establishment of an Authority to be known as the Older Persons Standards Authority and for the exercise of that Authority of regulatory functions regarding the establishment of the standards for residential services, any other geriatric facility and any other service of a geriatric nature; as well as to regulate for the powers, duties and financial resources of the Older Persons Standards Authority set up in accordance with the provisions of this Act; to regulate the service providers and establish regulatory standards for different services that are provided to older persons by agencies or public or private entities or any other entity or person; establish procedures for the investigation of complaints against service providers and to make provisions in respect of all such powers as may be necessary in order for the Authority to fulfil its functions in accordance with this Act.

24th November, 2023

ACT XXXVIII of 2023

ARRANGEMENT OF ACT

Part I	Preliminary	1-2
Part II	Declaration of Principles	3-5
Part III	Establishment and Functions of the Authority	6-16
Part IV	Provisions on Licensing	17-26
Part V	Regulatory Standards	27
Part VI	Enforcement of Standards	28-33
Part VII	Appeals	34-35
Part VIII	Officers and Employees of the Authority	36
Part IX	Financial Provisions	37-40
Part X	Offences and Penalties	41-43
Part XI	Miscellaneous	44-45
Part XII	Transfer of Powers and Responsibilities	46-48

PART I
Preliminary

1. The short title of this Act is the Older Persons Standards Authority Act. Short title.

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

"Authority" means the Older Persons Standards Authority;

"Board" means the Board of Governors appointed in terms of article 6(2);

"Chairperson" means the Chairperson of the Authority;

"Chief Executive Officer" means the Chief Executive Officer appointed in terms of article 16;

"Code of Practice" means a standard, specification or any other written or illustrated form of practical guidance, instruction or control;

"Inspectorate Office" means the Inspectorate Office within the Authority to conduct the monitoring, assessment, evaluation and enforcement required by this Act;

"financial year" means any period of twelve (12) months ending on the 31st December of any calendar year:

Provided that the financial year commencing upon the date of entry into force of this Act shall terminate on the 31st December of the same year;

"legally responsible person" means any person who is providing the service in terms of this Act;

"licensed service provider" means any person or organisation that has been granted a valid licence by the Authority in terms of this Act;

"Minister" means the Minister responsible for older persons;

"prospective service provider" means any person or organisation who applies for a licence to provide a service under this Act;

"public officer" has the same meaning as that assigned to it by article 124 of the Constitution;

"service" means residential services, any other geriatric facility and any other service of a geriatric nature provided to older persons in terms of this Act;

"service provider" means the person or organisation who is providing the service in terms of this Act;

"service user" means any older person who is using a service that is regulated by this Act;

"standard" means those mandatory requirements that are issued by the Authority to service providers in accordance with the provisions of this Act;

Cap. 490.

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

PART II
Declaration of Principles

Promotion, regulation and standard of care.

3. The Government shall, through the establishment of the Authority, seek to promote and develop the regulation of care, assistance and service provision in Malta in residential services, any other geriatric facilities and any other service of a geriatric nature provided to older persons.

Protection of older persons.

4. The protection of older persons in services regulated by this Act or any regulations made in terms of this Act shall be considered of public interest.

Principles governing the Authority.

5. (1) In accordance with the provisions of this Act, the Government shall determine Malta's policies and objectives in the regulation of care, assistance and service provision to older persons in Malta in residential services, any other geriatric facilities and any other service of a geriatric nature provided to older persons.

(2) The Authority shall achieve the following:

(a) the development of regulatory standards for the provision of services and assistance to older persons who are in need of care, determine which standards are necessary, consistent, person–centred, effective and proportionate;

(b) the assistance and support of the licensed service providers to achieve a higher quality of service; and

(c) the proactive enforcement of the standards and conditions set in the licences awarded by the Authority to service providers.

(3) The Authority shall ensure the holistic well-being of all older persons using the services regulated by this Act, including the physical, psychological and social well-being of the older persons and that these principles are safeguarded by whoever is so obliged to do.

(4) The Authority shall ensure that the level of standards established and regulated by this Act are maintained at all times.

PART III
Establishment and Functions of the Authority

Establishment and composition of the Authority.

6. (1) There shall be established an Authority to be known as the Older Persons Standards Authority, whose functions shall be, amongst others, to set regulatory standards for all the services provided to older persons in terms of this Act and to ensure that such standards are duly complied with in accordance with the provisions of this Act.

(2) There shall be a Board of Governors consisting of seven (7)

members of whom one (1) shall be the Chairperson and another member shall be the Deputy Chairperson.

(3) Without prejudice to any other law, the members of the Board of Governors shall be appointed by the Minister from among persons who appear to him to be qualified by reason of having professional qualifications, or academic qualifications, or experience in or having shown capacity in matters relating to care of older persons. The Commissioner for Older Persons shall be appointed as one (1) of the members *ex officio,* however, he shall have the right to abstain from any decision that he thinks it may be prejudicial to the powers given to him under the Commissioner for Older Persons Act.

Cap. 553.

(4) The Minister shall appoint an additional person who shall not have any voting rights to act as Secretary to the Board.

(5) The Chairperson and the other members of the Board shall hold office for a period of three (3) years:

Provided that the members so appointed may be re-appointed on the expiration of their term of office:

Provided further that no members, except for the Commissioner for Older Persons, shall hold office as a member of the Board for more than two (2) consecutive terms:

Provided further that if a member is appointed at any time after the other members have already been appointed, the term of appointment of such member shall end on the same date as that of the other members.

(6) A person shall not be qualified to hold office as a member of the Board if such person:

(a) is a candidate for election to or a member of the House of Representatives, the European Parliament, a Local Council or a Regional Council;

(b) is legally incapacitated or interdicted;

(c) is otherwise providing a service to the Authority or employed with an entity or facility that is regulated by the same Board;

(d) has been declared bankrupt or has made a composition or arrangement with his creditors;

(e) has been convicted of a crime affecting public trust or theft or fraud or knowingly receiving property obtained by theft or fraud, or of any offence against this Act or against any other law, particularly those relating to the abuse against older persons; or

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

Provided that the Minister may determine that the interest of the person under this paragraph is not likely to affect the discharge of his functions and upon such determination that person shall be qualified to hold office of member of the Board provided that the declared interest and the determination of the Minister are published in the Government Gazette.

Vacancy in the office of a member of the Board.

7. The office of a member of the Board shall become vacant:

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

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

Removal of the Chairperson and Board members from office.

8. Without prejudice to any other law, the Chairperson, any other member of the Board and the Secretary to the Board, but with the exception of the Commissioner for Older Persons, may be removed from the office by the Minister if, in the opinion of the Minister, the Chairperson, member or the Secretary to the Board is unable to discharge their functions whether the inability arises from infirmity of mind, manifest behaviour or when the Chairperson, member or the Secretary to the Board are no longer fit to continue in office.

Vacancy in the office of Chairperson.

9. If the office of the Chairperson of the Board is vacant or if the Chairperson is for any reason unable to perform the functions of his office, the Minister may appoint a person to act as a temporary Chairperson of the Board, and any person so appointed shall cease to be such a temporary Chairperson when a person has been appointed to fill the vacancy or, as the case may be, when the Chairperson who was unable to perform the functions of his office resumes those functions.

Exercise of the functions of the Authority.

10. In the exercise of its functions the Authority shall not be subject to the direction or control of any other person or authority.

Juridical personality and legal representation of the Authority.

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

(2) The legal representation of the Authority shall vest in the Chairperson and the Chief Executive Officer as appointed in terms of article 16:

Provided that the Authority may appoint any one (1) or

more of its members or of the officers or employees of the Authority to appear in the name and on behalf of the Authority in any judicial proceedings as well as in any act, contract, instrument or other document whatsoever.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairperson or by the Chief Executive Officer shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument made or issued by the Authority.

Functions of the Authority.

12. The functions of the Authority shall include:

(a) to establish the minimum regulatory standards for services regulated by this Act and to enforce such standards as may be necessary to ensure a quality level of services provided to older persons;

(b) to establish the criteria and conditions for the granting, refusal, suspension and revocation of licences;

(c) to grant, refuse, suspend or revoke any licence;

(d) to implement the provisions of this Act and any other regulations or orders made thereunder;

(e) to perform such other functions as may be assigned to it under the provisions of this Act or of any other law;

and this without prejudice to any other functions which may be assigned to it by this Act or by any other law or regulations.

Powers related to regulatory standards.

13. The power conferred on the Authority to make, adopt and publish regulatory standards shall be construed as including the power which may be exercisable in like manner to vary, substitute or revoke any such standard.

Powers of the Authority.

14. The powers of the Authority shall include:

(a) to receive and acknowledge applications for licensing to operate any service related to the care of older persons;

(b) to consider the proposed services for older persons;

(c) to verify and investigate service providers;

(d) to grant, refuse, suspend or revoke a licence, as well as imposing conditions in the licence, to operate a service in accordance with established criteria;

(e) to receive, acknowledge, investigate and take any necessary action in relation to any complaint against any agency or service provider or public or private entities or any other entity or person;

(f) to impose measures to improve the quality of services for older persons;

(g) to establish and update a public register of licensed agencies or service providers or public or private entities or any other entity or legal person providing services for older persons as the Authority may deem necessary from time to time:

Provided that for the purposes of this paragraph this public register shall not contain personal data;

(h) to modify or remove any of the conditions, or to impose additional conditions, or change the type of licence, after the licence has been granted and, unless otherwise prescribed, such conditions shall become effective within the time limit imposed by the Authority;

(i) to make recommendations to the Government to develop policies in the field of services for older persons.

Meetings.

15. (1) The meetings of the Board shall be called by the Chairperson as often as may be necessary, but at least twice (2) a month on the Chairperson's own initiative or at the request of at least two (2) of the members of the Board.

(2) The Board may act notwithstanding any vacancy among its members.

(3) Half of the number of members of the Board shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting.

(4) The Chairperson shall have an original vote and, in the event of an equality of votes, a casting vote. In the absence of the Chairperson, the Deputy Chairperson shall preside over the meeting and during such meeting shall have the same rights as the Chairperson.

(5) A member of the Board who may in any way be directly or indirectly interested in a decision made or proposed to be made by the Board shall immediately after the relevant circumstances have come to his knowledge, disclose the nature of the interest at the first meeting of the Board.

(6) Any disclosure made under sub-article (5) shall be recorded in the minutes of the meeting of the Board, and that member:

(a) shall not take part in any deliberation and decision with respect to that deliberation and decision of the Board after the interest has been disclosed; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for that deliberation or decision.

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

(8) The Board shall have the power to consult professionals or other persons having knowledge and experience in the field of services to older persons.

(9) In the exercise of its functions, the Board may, in relation to any matter that falls under the provisions of this Act, request any person to provide any information and produce any documentation.

(10) The members of the Board, the Secretary and every person employed with the Authority shall be bound by confidentiality and shall not disclose to third parties any information which may come to their knowledge in the exercise of their functions, unless required to do so by law.

(11) The Authority shall lay on the Table of the House an annual report of all its activities during the preceding calendar year by no later than the 15th April of each year.

Conduct of the affairs of the Authority.

16. (1) Subject to the other provisions of this Act, the affairs and business of the Authority shall be the responsibility of the Authority itself. However, the executive conduct of the Authority, its administration and organisation, and the administrative control of its officers and employees shall be the responsibility of the Chief Executive Officer of the Authority, who, in addition to those responsibilities prescribed by law, shall also have such other powers as may from time to time be delegated to him by the Authority.

(2) The Chief Executive Officer shall be appointed by the Board of Governors and shall establish the necessary structure vested with all the powers and responsibilities as the Authority may decide and which it may vary from time to time, so however, that the Chief Executive Officer shall have professional qualifications or academic qualifications or experience in or having shown capacity in matters relating to care of older persons.

(3) The structure so established shall be headed by the Chief Executive Officer appointed by the Board of Governors as provided for in sub-article (2), and he shall have adequate experience and knowledge in the sector.

(4) The Authority may exercise any one (1) or more of its

functions directly through its structure and also through any of its 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 is made:

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

(5) Where in this Act anything is to be done by or against or with respect to the Authority, or any notice is to be or may be given to the Authority, any such thing or notice may also be done by or against or with respect to or be given to the structure under whose jurisdiction the matter falls by reason of a delegation of function to such structure; and for the purposes aforesaid any reference in this Act to the Authority shall include a reference to the appropriate structure.

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

(a) lead the Authority towards fulfilling its obligations at law;

(b) execute the strategic direction of the Authority;

(c) ensure that the proper organisational structure is in place to deliver the obligations at law and the implementation of the strategy as set by the Authority;

(d) ensure that the decisions taken by the Authority are properly carried out by the structure of the Authority.

(7) The Chairperson shall ensure that revocation of a licence is sanctioned by the majority of the members of the Board present at the meeting.

(8) In cases of urgency, the Chairperson may order that inspections be carried out by the Inspectorate Office of the Authority at any premises wherein it is believed that a service which is being provided is prejudicial or harmful to the service user:

Provided that in the exercise of this function, the Chairperson may request the additional assistance of the Executive Police in order for such inspections to be carried out.

(9) When an irregularity is found following an urgent inspection carried out in accordance with sub-article (8), the Chairperson shall:

(a) report the findings to the Commissioner of Police;

or

(b) bring the matter before the Board within three (3) working days so as to decide upon any administrative action.

(10) The Authority shall handle all requests relating to the licensing of services to older persons and the complaints about the service or conduct of the service providers.

(11) In carrying out any of its functions, the Authority may request the assistance of the Executive Police and, or any other entity and, or authority as may be necessary and wherever so required.

PART IV
Provisions on Licensing

Provision of services without a valid licence.

17. (1) No person, agency or public or private entity that provides a service regulated by this Act shall provide any service without a valid licence required for the provision of that service issued by the Authority, and no person may provide any service from any place or establishment unless he is in possession of a valid licence for that purpose issued by the Authority:

Provided that when the agencies or the public or private entities or any other entity or person intends to provide the same kind of service but from different premises, a separate application shall be made for each service.

(2) No licence shall be granted or renewed under sub-article (1) when the premises, equipment and facilities as well as the personnel, whether medical or otherwise, are not such as to provide such standard of geriatric care or service as the Authority deems to be satisfactory.

(3) The Authority may, in granting or renewing any licence under sub-article (1), impose any conditions and fees as it may deem fit and it may restrict the services and the activities that may be provided or carried on in the licensed premises.

(4) Where any premises are used or any act is done in contravention of any condition or restriction provided for in a licence granted or renewed under sub-article (1), any premises so used and any act so done shall be deemed to have been used and done without the licence required by this article.

(5) Any licence granted in accordance with sub-article (1) shall lapse after one (1) year of issue but may be renewed by the Authority from year to year. Any such licence shall also lapse if there is a declaration of guilt under Part X.

Application for a licence.

18. (1) A prospective service provider may apply to the Authority, in the prescribed form, in order to be granted a licence to

operate a service for older persons in terms of this Act.

(2) The Authority shall, at any time during the processing of the application, require the prospective service provider to provide any documents and, or any other information which it deems necessary and shall visit the premises intended to be used for the provision of service in order to make its assessment and ascertain whether the licence should be granted.

(3) When a provider fails to provide the documents and, or information requested by the Authority in the stipulated time period, that application shall become null.

Granting of a licence.

19. The Authority shall grant a licence to a prospective service provider if it is satisfied that the prospective service provider:

(a) complies with the eligibility criteria established by the Authority;

(b) complies with the standards relevant to the proposed services and any regulations issued under this Act; and

(c) is not in violation of any other applicable law or regulation.

Temporary or emergency licences.

20. (1) The Authority may grant a temporary or an emergency licence, as the case may be, to a prospective service provider who is in the process of setting up a service regulated under this Act but who still does not meet all the standards established under this Act or any other regulations made thereunder.

(2) The Authority shall only grant temporary licences when it is satisfied that the level of services provided is of quality and after it has approved a plan of action presented by the provider that conforms with all the standards established under this Act or any other regulation made thereunder.

(3) The Authority may grant an emergency licence to the prospective service provider when he specifies the emerging critical situation which is of a temporary nature.-

(4) The Authority may also issue emergency licences when a licence is revoked or suspended in critical situations of a temporary nature which affect the health and, or safety of older persons:

Provided that a temporary or emergency licence may only be granted if it is provided for in the relevant regulations and the prospective service provider is in conformity with the standards stipulated in the relevant regulations:

Provided further that such temporary or emergency licence

may only be issued for a period of three (3) months and may only be further extended for another maximum period of three (3) months.

Licence certificate.

21. Upon granting a licence to a prospective service provider, the Authority shall issue a licence certificate which shall be valid for a period of one (1) year from the date of issue, unless otherwise prescribed in the terms and conditions laid down in the licence.

Renewal of licence.

22. (1) A licence may be renewed by the Authority provided that the licensed service provider has complied with the provisions of this Act and of any regulations made thereunder.

(2) A licensee who intends to renew a licence which is due to expire shall, at least four (4) months before such expiry, apply to the Authority for such licence to be renewed. The Authority shall renew the licence if it is satisfied that the services are being provided in accordance with the provisions of this Act and following an assessment conducted by the Authority confirming adherence with the regulations issued in terms of this Act.

(3) The decision of the Authority on the renewal of the licence shall be served on the licensed service provider by registered mail not later than thirty (30) days from date of decision.

(4) The licensed service provider shall ensure that the original licence is kept affixed in a prominent place in the principal office of the premises from which the service is provided. The licensed service provider shall, upon a request by a service user, provide access to the licence to the service users or potential service users.

(5) The issuing and renewal of a licence shall be without prejudice to the requirement of any other licence or authorization required under any other law.

Refusal to grant a licence.

23. (1) The Authority may refuse an application to grant or renew a licence in terms of this Part if it deems that the prospective service provider or licensed service provider is not fit to carry out or operate the service. The refusal, together with the reasons thereof, shall be served in writing by registered mail to the prospective service provider or licensed service provider applying for the licence within fifty (50) days from the date of application and validation of documents.

(2) A prospective service provider or a licensed service provider shall have the right to request a review of the decision of the Authority by filing an appeal in terms of Part VII.

(3) A prospective service provider or a licensed service provider who has had a licence revoked shall have the right to reapply to the Authority for a licence if the reason for refusal no longer subsists.

Revocation of a licence.

24. The Authority shall have the right to revoke a licence granted in terms of this Act at any time if the licensed service provider:

(a) files a request in writing for revocation;

(b) ceases to comply with the criteria of eligibility for licensing;

(c) is no longer deemed suitable to provide the service for which he was licensed or if the licensee has been found guilty of an offence contemplated under this Act;

(d) is in breach of the conditions for licensing in accordance with the provisions of this Act or any other law, or knowingly obstructs, impedes or hinders any person entrusted with the carrying out of duties and responsibilities under that licence.

Report on the revocation of a licence.

25. (1) The Authority shall revoke the licence in accordance with paragraphs 24(b), (c) or (d) after drawing up a report containing its recommendations on whether the licence should be revoked or otherwise. This report shall include evidence of due warning to the licensed service provider that the licence may be revoked unless appropriate action is taken.

(2) The written revocation, together with the reasons thereof, shall be served on the licensed service provider by registered mail. Such revocation shall have effect from date of notification.

(3) If the licence of a licensed service provider is revoked, the licence certificate and all the records and documentation relating to the service shall become the property of the Authority:

Provided that if a licence is revoked for any reason whatsoever under this Act, the Authority shall have the right to demand a migration plan from the service provider of service delivery to service users so as to ensure the continuity of service delivery. This plan shall be provided within two (2) working days from the final date of revocation of licence. Should the service provider fail to provide this plan, the Authority shall take any action required to safeguard the interests of service users and continuity of service provision to service users in terms of this Act. This shall be without prejudice to any legal action or punitive measures which may be applicable to the circumstances.

Publication in the Government Gazette.

26. (1) During the month of January of every year, the Authority shall publish in the Government Gazette:

(a) a list of the licensed service providers; and

(b) a list of the licensed service providers whose licence has been revoked throughout the previous calendar year

and any changes in the conditions required for licensing or renewal.

(2) The Authority shall ensure to publish online the same lists and also to update the said lists online at the end of every month.

PART V
Regulatory Standards

Responsibility of the regulatory standards.

27. (1) The Authority shall be responsible for establishing, publishing and reviewing regulatory standards for services for older persons in accordance with the provisions of this Act.

(2) For the purpose of sub-article (1), the Authority shall consult any person or group of persons as it deems appropriate.

(3) The purpose of the regulatory standards shall be to:

(a) improve and standardise the regulation of the services provided to older persons;

(b) render effective the essential regulation of the services;

(c) re-assure the service users that the services for older persons are appropriate to their needs and respect their rights and dignity; and

(d) emphasize that the welfare, well-being and care of the service users is to be considered as paramount:

Provided that the standards and any amendments thereto shall be made by regulations issued by the Minister after consulting the Authority:

Provided further that, without prejudice to the other provisions of this Act or of any other law, the list of standards and any amendment thereto by the Authority shall be made, published, prescribed or made available to the public in both the Maltese and English languages. Where technical terms in the English language cannot be translated into the Maltese language in a precise manner, the English language shall be used.

PART VI
Enforcement of Standards

Right of entry.

28. (1) The Authority shall have the right to enter any premises of a licensed service provider in order to inspect and assess the service being offered. Inspections and assessments shall be carried out by the employees of the Authority nominated by the Inspectorate Office and shall have the power to:

(a) enter any premises without prior notice at any reasonable time to carry out an inspection in terms of this Act;

(b) carry out in all such premises any search, examination, test or inquiry which may be deemed necessary to ensure that the provisions of this Act, or of any regulations or orders made thereunder, and all recognised standards are being observed, and in particular:

(i) to interview, in the presence of witnesses, any person whom they consider was involved in the provision of the service in terms of this Act and any person whom they consider has made use of such service;

(ii) to require the production of any books, registers or other documents being kept by the service provider and to make a copy of such books, registers or documents or take extracts therefrom;

(iii) to require any information as may be reasonably required in relation to the investigation;

(c) take photographs, films, video recordings or electronic images;

(d) require the assistance of the Police whenever deemed necessary;

(e) inspect all equipment, instruments, financial records, medical records, procedural manuals and any other records kept by the service provider in fulfilment of their obligations under this Act and any regulations made under this Act;

(f) take any action as may be necessary to ensure and audit the quality of the service provided by each licensed service provider; and

(g) carry out any other activity which may be deemed necessary in accordance with the provisions of this Act or any regulations made thereunder.

(2) Following the conclusion of an investigation, the Authority may:

(a) submit a report to the Executive Police for further investigation in all cases involving a criminal offence;

(b) take any administrative action which it deems appropriate in the circumstances of the case;

(c) take any such other action as it deems appropriate in the circumstances of the case.

Power to request information.

29. The Authority shall request, at any time, a licensed service provider or any other person directly or indirectly involved in the provision of the licensed service to supply it with any information and, or documents relating to the service which are deemed necessary or expedient to require for the purposes of fulfilling their functions under this Act and any regulations made thereunder.

Right of inspection and audit.

30. (1) Following the issue of a licence, the Authority shall have the right to inspect and audit the service and the premises from which it is offered at any time. If the inspecting officers deem that the service is not compliant with the provisions of this Act, or with the terms of the licence, the inspecting officers shall draw up a report recommending any changes required to be undertaken by the licensed service provider. The Authority shall then compile a report which shall be notified to the licensed service provider.

(2) The licensed service provider shall effect the changes indicated in the report within the time frame established by the Authority. In the event that the service provider does not comply with the required changes within the specified time frames, the Authority shall take any action it deems fit.

Data protection.

31. (1) The Authority acting in its capacity of controller in terms of Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), shall perform the relevant data processing operations which are limited to the attainment of the purposes of this Act, and to that which is necessary and proportionate so the Authority may exercise its functions and powers.

(2) Nothing in this Act shall prejudice the applicability of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), including the regulations made thereunder and the fundamental rights and freedoms of data subjects

(3) The processing of personal data, including any processing of special categories of personal data shall, for the purposes of this Act, comply with the principles relating to the processing of personal data pursuant to Article 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Adequate protection measures.

32. (1) The Authority shall implement those appropriate technical and organised measures to ensure an adequate level of security which is appropriate to the risk posed, and in particular to prevent unauthorized disclosure of or unlawful access to information pertaining to data subjects. In the implementation of the mentioned measures the nature, scope, context and purposes of the processing shall be considered.

(2) The data protection officer designated by the controller in terms of Article 37 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) shall be involved and consulted properly and in a timely manner on all issues in relation to the protection of personal data processed for the purposes of this Act.

(3) For the purpose of ensuring and in order to be able to demonstrate that the processing of personal data is performed in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the controller shall implement all appropriate data protection policies, which policies shall be periodically reviewed and updated where necessary.

Inspection of the premises.

33. (1) The Authority shall have the right to inspect all premises where the services for older persons are provided without the licence required under this Act. Following such inspection, the Authority shall:

(a) draw up a report of its findings;

(b) where possible, work with the non-registered service provider so the organisation complies with the provisions of this Act;

(c) allow the service provider reasonable time within which to regularize his position;

(d) re-inspect the services offered by the service provider at the end of the period given in order to assess:

(i) whether the service provider meets the necessary criteria for temporary licensing, in which case it shall issue such a temporary licence; or

(ii) whether the service provider requires more time to meet the necessary criteria for the issue of a temporary licence, in which case the Authority may

direct the service provider to cease all activity until such criteria are met:

Provided that in exceptional cases, and where the Authority deems that no serious prejudice will affect the service user, the Authority may allow the service provider to continue offering the service until the service provider meets the required standards within a time frame established by the Authority.

(2) Notwithstanding the provisions of sub-article (1), a non-registered service provider shall still be liable to fines and penalties that may be imposed for non-compliance with the provisions of this Act.

(3) Where the Authority deems that the service is not compliant with the provisions of this Act, or with the terms of the licence, a report shall be drawn up including an assessment together with recommendations, where applicable, about changes that the licensed service provider should undertake.

PART VII
Appeals

Appeal from decisions of the Authority.

34. (1) An appeal shall lie to the Tribunal on any decision of the Authority in accordance with the provisions of this Act and any regulations made thereunder. Any person who feels aggrieved by any such decision shall have the right to appeal within ten (10) days from the date of service of the decision.

Cap. 490.

(2) The provisions of the Administrative Justice Act shall apply to the composition of the Tribunal in any appeal made to the Tribunal, or in all cases where a reference by this Act is made to the Tribunal.

(3) The Tribunal may, upon good grounds being shown, stay the execution of the decision of the Authority appealed from.

Appeals from a decision by the Tribunal. Cap. 490.

35. Any party to the proceedings before the Tribunal who feels aggrieved by a decision of the Tribunal, may appeal to the Court of Appeal in accordance with the provisions of the Administrative Justice Act.

PART VIII
Officers and Employees of the Authority

Appointment and functions of the officers and employees of the Authority.

36. (1) The Authority shall appoint and employ, at such remuneration and upon such terms and conditions such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detailing of public officers to perform duties with the Authority.

(2) The Prime Minister may, at the request of the Authority, from time to time order that any public officer shall be detailed for duty with the Authority in such capacity and with effect from such

date as may be specified in the Prime Minister's order.

(3) The period during which an order 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 date is specified in such order, cease to have effect after one (1) year from the effective date of such order unless the order is revoked earlier by the Prime Minister.

Status of public officers detailed to perform duties with the Authority.

(4) Where an officer is detailed for duty with the Authority, such officer shall, during the time in which such order has effect in relation to him, be under the administrative authority and control of the Authority but he shall for other intents and purposes remain and be considered and treated as a public officer.

(5) Without prejudice to the generality of the foregoing, an officer detailed to perform duties 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 any department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government 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 appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Authority; and

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

Cap. 93.
Cap. 58.

(6) Where an application is made as provided for in sub-article (5)(a)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

(7) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed to perform duties with the Authority as

aforesaid during the period in which he is so detailed.

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

(9) 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.

(10) Every officer who accepts permanent employment with the Authority offered to him, under the provisions of sub-article (8), shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, be deemed to have ceased to be in service with the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meanings thereof respectively.

Cap. 93.
Cap. 58.

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

Cap. 58.

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

(13) The officers and employees of the Authority shall not have any direct or indirect interest in any contract made or proposed to be made by the Authority, or in any enterprise which has or proposes to have any business relations with the Authority.

(14) Employees who, on the date of coming into force of this Act are performing duties with the Social Care Standards Authority and who wish to be deployed with the Authority shall be regarded as employees of the Authority under the same terms and conditions prevailing at the date of coming into force of this Act.

PART IX
Financial Provisions

Finances of the Authority. Cap. 601.

37. (1) The Authority shall be governed by the provisions of the Public Finance Management Act.

(2) The Authority shall levy all the tariffs, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Authority.

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

Provided that any subvention received from Government shall be exempted from any liability for the payment of income tax and duty on documents under any law for the time being.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds which shall be used for the purposes of the Authority 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 tariffs, rates and other payments levied in accordance with sub-article (2) or any such excess as aforesaid.

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

Annual report.

38. The Authority 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 Authority during that financial year and containing such information relating to the proceedings and policy of the Authority as either of the said Ministers may from time to time require.

Accounts and audit.

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

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

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the

Authority to be audited or examined by the Auditor General who shall for that purpose have the power to carry out such physical checking and other verifications as he may deem necessary.

(3) The Authority shall, in accordance with regulations published by the Minister, cause a copy of the statement of accounts duly audited to be transmitted together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

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

(5) The Authority shall ensure that an audit trail of all files, including all documentation and reports are kept:

Provided that the files, documentations and reports may be digitised and the Board may after digitisation dispose of hard copies of files, documentations and reports after a period of at least six (6) months from date of submission to or decision of the Authority or to any other previous entity carrying out the same functions.

Contracts of services, supply or works.

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

PART X
Offences and Penalties

Offences against this Act.

41. (1) Any person who acts in contravention of the provisions of this Act, or in contravention of any of the provisions of any regulations made under this Act, and any person who conspires, attempts, aids, abets, counsels or procures any other person, to contravene the provisions aforementioned, shall be guilty of an offence against this Act.

(2) Any person who in any way hinders or obstructs the Authority or any of its officers in the performance of any of their functions shall be guilty of an offence and shall, on conviction by the competent Court, be liable to imprisonment for a term of not more than three (3) months or to a fine (*multa*) of not less than one hundred euro (€100) but not exceeding five thousand euro (€5,000), or to both such imprisonment and fine.

Administrative penalties.

42. In the event of non-compliance, the Authority may impose an administrative penalty of not less than one hundred euro (€100) but not exceeding ten thousand euro (€10,000), or in the case of continuance of non-compliance a daily penalty of not less than fifty euro (€50) but not more than three hundred and fifty euro (€350) for each day that the non-compliance continues.

Other offences.

43. (1) Any penalty established for any offence in this Part shall be without prejudice to any other penalty established for any other offence under any other applicable law or regulations prescribed under this Act.

(2) The Authority shall have the power to establish criteria for the provision of penalties that shall be imposed by it in accordance to the circumstances of the prescribed cases including the suspension and, or revocation of licence.

PART XI
Miscellaneous

Power of the Minister to issue orders.

44. The Minister may by order make such incidental, consequential or supplemental provisions as may be necessary or expedient for the purpose of securing and giving full effect to the transfer of any undertaking or any right, power, liability or obligation to the Authority by or under this Act and may make such orders as may be necessary to make any powers or duties exercised by the Government, in relation to anything transferred to the Authority by virtue of this Act, exercisable by and on behalf of the Authority.

Power of the Minister to make regulations.

45. The Minister, acting on the advice of the Authority, may make regulations to give better effect to the provisions of this Act.

PART XII
Transfer of Powers and Responsibilities

Powers vested in the Authority and the Chief Executive Officer.

46. (1) All licensing powers and all other duties and functions of the Social Care Standards Authority and all other services for older persons shall, upon the coming into force of this Act, be vested in the Authority and the Chief Executive Officer respectively, established under this Act:

Provided that any decision or licence granted by the Social Care and Standards Authority before the coming into force of this Act shall continue to have effect as though the decision or licence had been given under the relative provisions of this Act subject to the satisfaction of all conditions stipulated in this Act.

(2) All provisions and regulations made and relating to *inter alia* high dependancy chronic care services for older persons, residential services for senior citizens and residential services for persons living with dementia in homes for senior citizens in terms of the Social Regulatory Standards for High Dependency Chronic Care Services for Older Persons Regulations, the Mandatory Measures for Residential Services for Older Persons Regulations, the Social Regulatory Standards for Residential Services for Senior Citizens Regulations, the Social Regulatory Standards for Residential Services for Persons Living with Dementia in Homes for Senior Citizens Regulations and any other regulations relating and, or relevant to services provision of older persons and which are directly related to

S.L. 582.09.

S.L. 582.14.

S.L.582.15.

S.L.582.16.

the remit of the Authority shall upon the coming into force of this Act be vested in the said Authority established under this Act.

Licensing powers in terms of the Medical and Kindred Professions Ordinance. Cap. 31.

47. All licensing powers of homes for older persons in terms of article 98 of the Medical and Kindred Professions Ordinance shall, upon the coming into force of this Act, be vested in the Authority established under this Act:

Cap. 31.

Provided that any decision or licence granted under article 98 of the Medical and Kindred Professions Ordinance before the coming into force of this Act shall continue to have effect as if the decision or licence had been given under the relative provisions of this Act subject to the satisfaction of all conditions stipulated in this Act.

Transitory provisions.

48. (1) Where any act or process has been commenced by or under the authority of the Government prior to the date of entry into force of this Act and such act or process is in relation to anything transferred to the Authority by virtue of this Act, such act or process may be carried on and completed by or under that authority of the Government.

(2) Where on the date of entry into force of this Act any legal proceeding is pending to which the Government is a party or is entitled to be a party, and such proceeding relates to anything transferred to the Authority by virtue of this Act, the Authority shall be substituted in such proceeding for the Government and shall be entitled to be so substituted.