I assent.

(L.S.)

GUIDO DE MARCO
President

17th November, 2000

ACT No. XXVII of 2000

AN ACT to provide for the establishment of an Authority to be known as the Occupational Health and Safety Authority, an Occupational Health and Safety Appeals Board, and for the exercise by or on behalf of that Authority of regulatory functions regarding resources relating to Occupational Health and Safety and to make provision with respect to matters connected therewith or ancillary thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

Preliminary

Title and commencement.

1. The title of this Act is Occupational Health and Safety Authority Act, 2000, and it shall come into force on such date as the Minister may appoint by notice in the Gazette, and different dates may be so appointed for different provisions and different purposes of the Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:-

"Appeals Board" means the Occupational Health and Safety Appeals Board established by article 21(1);

"Authority" means the Occupational Health and Safety Authority established by article 8(1);

"Chairperson" means the Chairperson of the Authority;

"Chief Executive" means the Chief Executive Officer appointed under article 10;

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

"employer" means any person for whom work or service is performed by a worker or who has an employment relationship with a worker, and includes a contractor or subcontractor who performs work or supplies a service or undertakes to perform any work or to supply services, and

(a) in relation to work performed under a contract for services means the contractor or subcontractor, but shall not include the directors, managers, partners or owners, occupiers or possessors on behalf of whom work is being carried out, except to such extent as regards any tools, materials or equipment provided by them with regard to any defects thereof or therein which are known and not declared or which could have been known;

(b) in respect of all other organisations including voluntary ones, or in respect of any other form of employment under a contract of service includes any of the persons in overall direction or having day to day management;

"financial year" means any period of twelve months ending on the 30th September:

Provided that the first financial year of the Authority shall commence on the coming into force of this Act and end on the 30th September of the following year;

"Minister" means the Minister responsible for occupational health and safety;

"officer" means an Occupational Health and Safety Officer appointed under article 15(1), and furnished with a certificate of appointment issued according to the provisions of the said article;

"person" includes a body of persons and any body corporate established by or under any law;

"prescribed" means prescribed by regulations made under this Act;

"President" means the President of the Appeals Board;

"public officer" in relation to article 24, has the same meaning assigned to it by article 124 of the Constitution, but does not include a judge of the Superior Courts or a magistrate of the Inferior Courts;

"work" means any duty, activity, task or service producing a product or result, and being performed for payment or for free or in exchange for goods, for services, for profit or for benefit;

"worker" means any person employed by an employer to perform work, or who provides a service to another person under a contract of service or for service, and includes a trainee, an apprentice and a self-employed person, but shall not include the crew of a vessel registered in Malta or any other person employed thereon as part of the ship complement;

"Workers' Health and Safety Representative" means a person, elected, chosen or designated, as prescribed in regulations,to represent workers on all matters relating to the promotion and protection of their occupational health or safety;

"work place" means any premises, place, facility, vessel or other thing or location, whether public or private, where work is carried out or to which the worker has access in the course of his employment, and without prejudice to the generality of the foregoing, shall include a vehicle or vessel where such vessel is within a port in Malta or the internal or territorial waters thereof, or at any dockyard, harbour or other similar installation in Malta, other than a warship belonging to a foreign state.

(2) In this Act words importing the masculine gender shall include females, and this inclusion shall extend to all grammatical variations and cognate expressions of the word.

Applicability of this Act.

3. This Act shall apply to all work places, to all sectors of activity, both public and private, and to all work activities, but shall not apply in the case of those activities carried out by members of the armed forces, the police force or of the civil protection services:

Provided that in the case of members of the aforementioned public services, the health and safety of workers must be ensured as far as reasonably possible in the light of the overall scope of those services.

PART II

Principles and General Duties

Declaration of principles.

4. (1) The protection of occupational health and safety is to be considered of public interest.

(2) The Authority established by virtue of this Act shall be responsible for ensuring that the physical, psychological and social well being of all workers in all work places are promoted and to ensure that they are safeguarded by whoever is so obliged to do.

General duties.

5. It shall be the duty of the Authority to see that the levels of occupational health and safety protection established by this Act and by regulations made under this Act are maintained.

Duties of employers.

6. (1) It shall be the duty of an employer to ensure the health and safety at all times of all persons who may be affected by the work being carried out for such employer:

Provided that where in pursuance of the foregoing an employer enlists competent external services or persons, the employer shall not be discharged from such incumbent duties arising out of this Act and out of regulations made under this Act:

Provided further that the workers' obligations in the field of occupational health and safety shall not affect the principle of the responsibility of the employer.

(2) The measures that need to be taken by an employer to prevent physical and psychological occupational ill-health, injury or death, shall be taken on the basis of the following general principles of prevention, that is by -

(a) the avoidance of risk;

(b) the identification of hazards associated with work;

(c) the evaluation of those risks which cannot be avoided;

(d) the control at source of those risks which cannot be avoided;

(e) the taking of all the necessary measures to reduce risk as much as reasonably practicable, including the replacement of the hazardous by the non-hazardous or by the less hazardous;

(f) giving collective protective measures priority over individual protective measures;

(g) adapting the work to the worker, particularly in so far as the design of work places, the choice of work equipment and the choice of working and production methods are concerned, in particular with a view to alleviating monotonous work and work at a predetermined work-rate, and to reducing their effect on health;

(h) by adapting to technical progress in the interest of occupational health and safety; and

(i) by the development of a coherent overall prevention policy which covers technology, the organisation of work, working conditions, social relationships and the influence of factors related to the working environment.

(3) Without prejudice to the generality of the preceding sub-article (2), it shall be the duty of an employer to provide such information, instruction, training and supervision as is required to ensure occupational health and safety.

(4) It shall be the duty of an employer to ensure that at work places wherein a sufficient number of workers are employed, there shall be elected, chosen or otherwise designated a person or persons to act as the Workers' Health and Safety Representative or Representatives, and who shall be consulted in advance and in good time by the employer on matters which may affect occupational health and safety.

Duties of workers.

7. (1) It shall be the duty of every worker to safeguard one's own health and safety and that of other persons who can be affected by reason of the work which is carried out.

(2) It shall be the duty of every worker to co-operate with the employer and with the Health and Safety Representative or Representatives at the work place on all matters relating to health and safety.

PART III

Establishment, Functions and Conduct of the Authority

Establishment and composition of the Authority.

8. (1) There is hereby established an authority which shall be known as the Occupational Health and Safety Authority.

(2) The Authority shall consist of nine members, as follows:

(a) a Chairperson, appointed by the Minister;

(b) the Director of Industrial and Employment Relations, *ex officio*, as Deputy Chairperson;

(c) a person, appointed by the Minister, with competence in occupational health and, or safety;

(d) a person appointed by the Minister responsible for health;

(e) a person appointed by the Minister responsible for economic affairs;

(f) two members appointed by the Minister to represent the interests of workers, following consultation with such body or bodies as the Minister may from time to time consider to be the principal representatives of workers;

(g) two members appointed by the Minister to represent the interests of employers, following consultation with such body or bodies as the Minister may from time to time consider to be the principal representatives of employers.

(3) The Minister shall appoint a person to be the Secretary of the Board.

(4) The Chairperson and the other members of the Authority shall hold office for a period of two years, but the members so appointed may be re-appointed on the expiration of their term of office:

Provided 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.

(5) A person shall not be qualified to hold office as a member of the Authority, if the person:-

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

(b) is legally incapacitated; or

(c) has been declared bankrupt or has made a composition or arrangement with his/her creditors; or

(d) 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

(e) 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 Authority:

Provided that the disqualification of a person under this paragraph may be waived by the Minister if the interest is declared and the declaration is published in the Gazette.

(6) Subject to the provisions of this article, the office of a member of the Authority 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 Authority, would cause that person to be disqualified for appointment as such.

(7) A member of the Authority may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing the duties as a member.

(8) If a member resigns or if the office of a member of the Authority is otherwise vacant or if a member is for any reason unable to perform the functions of the office, the Minister may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of sub-articles (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of the office resumes those functions.

(9) Any member of the Authority who has any direct or indirect interest in any contract made or proposed to be made by the

Authority, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of the interest at the first meeting of the Authority after the relevant facts have come to that member's knowledge; such disclosure shall then be recorded in the minutes of the meeting, and the member having an interest as aforesaid shall withdraw from any meetings at which such contract is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify that member from remaining a member, he/she shall report the fact immediately to the Minister and tender his/her resignation.

(10) The appointment of any person as a member of the Authority and the termination of office or resignation of any such person, as well as any additional functions assigned to the Authority by the Minister, shall be notified in the Gazette, and it shall have effect forthwith:

Provided that failure to publish the appointment or termination of office, as the case may be, shall have no effect on the validity of such appointment or termination.

Functions of the Authority.

9. (1) The Authority shall have such functions in respect of its structures as are set out in this Act and such other functions as may devolve upon it under any other law, or as may be assigned to it by the Minister.

(2) It shall be the function of the Authority to -

(a) apply the provisions of this Act and of any regulations or orders made thereunder;

(b) establish strategies in consultation with the Chief Executive Officer, by which the general national policy relating to occupational health and safety, indicated to it by the Minister, may be implemented;

(c) advise the Minister regarding the making of regulations to promote, maintain and protect a high level of occupational health and safety;

(d) monitor compliance with relevant occupational health and safety legislation and to take enforcement action;

(e) prepare regulations or Codes of Practice required to promote, maintain and protect a high level of occupational health and safety:

Provided that the Authority may appoint for this purpose, committees or sub-committees and it may co-opt on such

committees or sub-committees competent persons from outside its membership, who, in the opinion of the Authority, have professional or expert knowledge on any matter dealt with under this Act; so however that the co-opted members shall not have a vote on any matter before a committee or subcommittee;

(f) promote the dissemination of information regarding occupational health and safety, and the methods required to prevent occupational injury, ill health or death;

(g) promote education and training on occupational health and safety, and emergency and first aid response at work places;

(h) collate and analyse data and statistics on occupational injuries, ill health and deaths, and on matters ancillary to occupational health and safety:

Provided that the Authority may request data or information on any matter related to occupational health and safety, and such data or information shall be provided forthwith:

Provided further that any such data or information shall be deemed to have been given and received under the obligation of confidentiality;

(i) keep registers of such plant, installations, equipment, machinery, articles, substances, or chemicals and intended for use at work which in the opinion of the Authority provide a serious occupational health and safety risk;

(j) carry out any investigation on any matter concerning occupational health and safety, including but not limited to the investigation of any accident, injury, disease or death occurring as a result, or by reason of, any association with work, as well as investigations to ascertain the level of occupational health and safety provided at any work place, and the duty of the Authority to secure the enforcement of any provision of this Act shall not be reason to debar the carrying out of such investigations:

Provided that the Authority may appoint competent persons as far as possible from the register mentioned in sub-paragraph (1) of this subarticle to assist it in any investigations and to accompany its officials during an investigation;

(k) promote and carry out scientific research aimed at better methods of preventing occupational ill health, injury, or death;

(l) keep registers of persons competent to give advice on matters related to occupational health and safety:

Provided that the Authority may determine the minimum qualifications required before the name of a person may be entered into the register.

(3) The Authority shall take over, consolidate, and as appropriate, expand the occupational health and safety inspectorate and enforcement functions and services carried out by the Government immediately before the date of coming into force of article 8, and for this purpose such property, equipment, materials, records and documents ancillary thereto are being hereby vested in the Authority.

(4) The Authority shall establish co-operation with any Ministry, Government department or other organisation, whether local or overseas, to promote and ensure the health and safety of all persons at work.

(5) The Authority may also undertake such other activity it may deem necessary or expedient for the purposes of its functions and objectives under this Act.

(6) The Authority may, with the approval of the Minister, act as an agent or otherwise on behalf of other persons for any matter related to occupational health and safety.

Conduct of the affairs of the Authority.

10. (1) Subject to the other provisions of this Act, the affairs and business of the Authority shall be the responsibility of the Authority itself but save as aforesaid, 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 of the Authority, who shall also have such other powers as may from time to time be delegated by the Authority.

(2) The Chief Executive shall be appointed by the Minister in consultation with the Authority, for a period of three years and such period may be extended for further periods of three years each:

Provided that where the Chief Executive is absent from Malta or is otherwise temporarily unable to perform the functions of that office, the Authority, in consultation with the Minister, shall appoint an office

of the Authority to assume the duties of Chief Executive for the duration of such period during which the Chief Executive is so absent or otherwise unable to perform those functions.

(3) The Chief Executive shall attend all the meetings of the Authority but shall not vote at such meetings.

(4) The Chief Executive 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, the Chief Executive shall:

(a) be responsible for evaluating the implementation and fulfilment of the Authority's established goals, for the efficient use of its resources, and resultant benefits, and shall report directly to the Authority;

(b) develop the necessary strategies for the implementation of the objectives of the Authority;

(c) advise the Authority on any matter it may refer or on any matter which is considered necessary or expedient; and such other duties as the Authority may assign from time to time.

Relations with the Minister.

11. (1) In the exercise of its functions, the Authority shall -

(a) give effect, as soon as practicable, to any direction, not inconsistent with any provision of this Act, which the Minister may give to the Authority in relation to the policy to be followed by the Authority in the discharge of its functions, and in relation to any matter which appears to the Minister to affect occupational health and safety;

(b) afford to the Minister facilities for obtaining any information with regard to the property and activities of the Authority and for this purpose the Authority shall furnish the Minister with returns, accounts and other information with respect thereto, and afford facilities for the verification of any information furnished, in such manner and at such times as the Minister may reasonably require.

(2) The Authority shall, either on its own initiative or at the request of the Minister, advise the Minister on any matter concerning occupational health and safety.

(3) The Authority shall transmit a copy of the minutes of its meetings to the Minister as soon as may be after each meeting.

(4) The Minister shall seek the advice of the Authority before making regulations as provided in article 12:

Provided that the Minister may set a reasonable time, which shall be not less than fifteen days, for the receipt of advice on proposed regulations, and if the Authority does not give its advice within that time, the Minister may proceed to make those regulations:

Provided further that the Minister may, when the Minister deems the matter to be urgent, give notice thereof to the Authority and in such case the Authority shall give its advice within two days, failing which the Minister may proceed to make the regulations.

(5) When the Minister receives advice on matters relating to occupational health and safety from outside the Authority, the Minister shall pass such advice to the Authority for its comments thereon.

Power to make regulations.

12. (1) The Minister may make regulations for safeguarding occupational health and safety, for determining the precautions to be taken for this purpose and generally for the purpose of carrying into operation any of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, the Minister may make regulations -

(a) prescribing anything that is required or authorised by this Act to be prescribed;

(b) concerning the testing, examination and the certificates or seals of approval of any equipment, machine, device, article or thing used or intended to be used in a work place;

(c) on the importation, presence, use, handling of, or exposure to any chemical, biological or physical agent, or a combination thereof, which may be used at work;

(d) on the methods, standards or procedures for determining the amount, concentration or level of any physical, chemical or biological agent in a work place;

(e) concerning the protection of workers from the risks related to exposure to chemical, physical and biological agents at work;

(f) on the notification, reporting and investigation of deaths, diseases, injuries or other accidents or incidents involving health and safety in a work place;

(g) on the hours a worker may be required to work;

(h) relating to the safety of any equipment, machine, device, material, chemicals, process, article or thing whatsoever used or intended to be used in a work place;

(i) relating to the right of a worker to refuse to work or to do a particular work, the circumstances in which, and the conditions under which such a right is exercisable;

(j) on any other matter related to occupational health and safety.

(2) Without prejudice to any matter aforesaid, regulations made under this article may also -

(a) distinguish between different classes of work places, different classes of work and between different classes of workers, and may also make other distinctions as may be deemed appropriate;

(b) prohibit, regulate, restrict, limit or control any matter in respect of which regulations may be made;

(c) empower the Authority to require a license, certificate or other requirement in respect of any matter for which regulations may be made and to levy fees or other charges in respect thereof, or in respect of any service provided by the Authority.

Legal personality and representation.

13. (1) The legal representation of the Authority shall jointly vest in the Chairperson and the Chief Executive:

Provided that the Authority may appoint any one 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 and in any act, contract, instrument or other document whatsoever.

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

14. (1) The meetings of the Authority shall be called by the Chairperson as often as may be necessary, but at least once a month, either on his/her own initiative or at the request of any two of the other members. Provisions with respect to proceedings of the Authority.

(2) Half the number of members for the time being constituting the Authority shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairperson, or in the Chairperson's absence the Deputy Chairperson or other person appointed to act as chairperson, 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 Authority.

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

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Authority shall be invalidated merely be 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 Authority shall be valid as if that person were a member notwithstanding that some defect in the appointment or the qualification be afterwards discovered. No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of article 8(9).

PART IV

Occupational Health and Safety Officers

15. (1) The Authority shall appoint Occupational Health and Safety Officers who shall have such functions relating to the general implementation of this Act or of any regulations made thereunder, as well as for performing such work or assuming such responsibilities as may be prescribed or as may be assigned to them by the Authority. Appointment of officers.

(2) An officer shall be issued with means of proper identification signed by the Chief Executive, and such document shall be produced at the time of any examination, investigation or inspection:

Provided that the Chief Executive shall be deemed to be an officer, and the document of identification as an officer shall be signed by the Chairperson.

Powers of officers.

16. (1) An officer shall have the following powers:

(a) to enter freely and without previous notice in any work place at any time of day or night;

(b) to request the assistance of a member of the Police force in the execution of the officer's duties;

(c) to question, alone or in the presence of witnesses, including the person, if such is the case, putting forward the complaint, any employer or worker, including any person acting on behalf of any employer or carrying out work for such employer, on any of the matters falling under this Act or under any regulations made thereunder;

(d) to inspect any document the keeping of which is prescribed by this Act or by any regulation made thereunder, or any book, document, design, plan, or list of technical specifications which may throw light with regard to occupational health and safety at any particular work place;

(e) to take possession, upon giving receipt therefore, of any object required for tests or as evidence of any occupational accident, injury or disease, or of any alleged violation of this Act or of any regulations made thereunder;

(f) to examine or see to the examination of work places and of any object therein, and to take samples for examination of any article, substance or material found in any workplace or within its curtilage for the purpose of protecting occupational health and safety, and to ensure that such samples are preserved for use as evidence in any proceedings taken in accordance with this Act;

(g) to order that nothing be disturbed at a work place for any period which may be reasonably required for the purpose of any examination, investigation or inspection referred to in the foregoing paragraphs;

(h) to require the operation or the setting in motion of any equipment, machine, device, thing or process, as well as the operation of any system or procedure which, in the opinion of the officer, may be relevant to any examination, investigation or inspection referred to in paragraphs (a) to (e);

(i) to require any employer to provide at the employer's expense -

(i) a certificate signed by an architect and civil engineer relating to the safety of any building or structure, including any temporary structures;

(ii) a certificate signed by a mechanical or electrical engineer regarding the safety of any mechanical or electrical installation, as the case may be, including any temporary installation;

(iii) a certificate signed by a medical practitioner relating to the occupational health of any worker or any class of workers, which shall be presented to a medical officer of the Authority;

(iv) any information relative to occupational health and safety, including information which refers to protective measures;

(j) to require any employer, agent, manufacturer, importer, supplier, user or other person to provide at their expense any document, certificate or list of technical specifications in relation to any matter concerning occupational health and safety, the method of handling or use of any plant, installation, equipment, machinery, article, substance or chemical which is used or intended to be used at work; and

(k) for the purposes of a prosecution for any offence under this Act, or for the purposes of any appeal to the Appeals Board against an order by an officer, to disclose to the Court or to the Appeals Board such results or information received or collected during the course of the investigations.

(2) An officer shall not enter a work place which is at the time used as a dwelling house without the consent of the occupier, or unless that officer is accompanied by a police officer not below the rank of Inspector.

Orders by officers.

17. (1) An officer may give an order, verbally or in writing, to safeguard occupational health or safety, and every person shall obey such order forthwith until such time as it is revoked by an officer or until it has been revoked by the Appeals Board:

Provided that the person who receives the order, whether such person is a worker or an employer, may defend oneself from the charge of having disobeyed the order if one proves that compliance with the order would have been of immediate detriment to occupational health and safety:

Provided further that any order given verbally shall be confirmed in writing and served upon the person to whom it was given within three working days.

(2) (a) An officer may order that a work place or part of a work place be barred, and may revoke any such order.

(b) When a work place or part thereof is barred, no person shall enter the barred area without an officer's permission.

(3) Where an officer makes an order in writing under this article, that officer may affix in the work place, or on any equipment, machine, device, article or thing, a copy thereof, and no person except an officer shall remove such copy unless authorised to do so by an officer.

(4) Where an officer makes an order in writing under this article, or issues a report of inspection to an employer or to a person in charge of work, the employer or person in charge of work shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the work place where it is most likely to come to the attention of workers.

(5) An officer shall not be required to hold or afford to an employer, worker or other person an opportunity for a hearing before making an order.

Officers to be deemed public officers. Cap.9.

18. (1) Occupational Health and Safety Officers shall, for the purposes of the Criminal Code, be deemed to be public officers.

(2) No person may threaten, insult, molest or disturb inspectors in the performance of their duties, or knowingly give an officer false information, or break or tamper with any seal made, or with any monitoring equipment installed, put up or left by an officer in a work place or, in the case of personal monitoring equipment, on a worker.

Non-liability.

19. No action, disciplinary or otherwise, or other proceeding for damages, shall lie or be instituted against the Chief Executive Officer, or against an officer of the Authority for an act done or omitted to be done by them in good faith in the execution or intended execution of any power, right or duty under this Act or any regulation made thereunder.

Appeals from orders given by an officer.

20. Any person, whether such person is a worker, an employer or a third person, who deems oneself aggrieved by an order given by an officer, may appeal therefrom to the Appeals Board.

PART V

The Occupational Health and Safety Appeals Board

Establishment and composition of the Appeals Board.

21. (1) There is hereby established an Appeals Board to be known as the Occupational Health and Safety Appeals Board to hear and decide upon appeals from any order of an officer appointed under this Act.

(2) Save as provided in this article, the Appeals Board shall consist of a President and two other members who shall be appointed as follows:

(a) the President of the Appeals Board shall be one of a panel of persons appointed by the Minister, being persons who are advocates of at least seven years experience, and such persons shall serve as President either in turn or in accordance with such distribution of duties, and subject to such provisions as to inability to serve and other circumstances, as the persons on the said panel may, with the approval of the Prime Minister, establish;

(b) the two other members of the Appeals Board shall be selected by the President of the Appeals Board from a list of persons who are neither advocates nor legal procurators, appointed by the Minister to serve as Members of the Appeals Board as occasion may require.

(3) No member of the Authority and no officer of the Authority may be appointed on the Appeals Board.

(4) The names of persons appointed to serve as Presidents or as members of the Appeals Board shall be notified in the Gazette.

(5) The Appeals Board shall consist of the President and two members whenever the appeal concerns:

(i) an order relating to the barring in full of a work place, or

(ii) orders relating to the prohibition of use of any equipment, machine, plant, installation, substance, chemical or material which, were the order to be implemented, results in the cessation of all work activities, or

(iii) appeals by third persons that would involve the barring in full of a work place or the cessation of all work activities.

(6) Saving what is provided in subarticle (5) of this article, the Appeals Board shall consist of the President alone, provided that each one of the parties may request that the appeal be heard by an Appeals Board made up of the President and two members, and such requests shall be decided by the President alone during the preliminary stages of the appeal as may be prescribed by regulations which the Minister may make by virtue of subarticle (11) of this article.

(7) The President shall have the right to administer the oath and examine witnesses.

(8) The Appeals Board shall have the right to seek expert advice as it may deem fit.

(9) The Minister may, from time to time, vary the composition of the lists as provided in this article, but a person actually serving as a member of the Appeals Board shall, notwithstanding the removal of one's name from the panel, continue to serve in the proceedings as a member until the conclusion of those proceedings and for the purpose of the interpretation of any decision given therein:

Provided that in the case of the death or other impossibility of such member to continue hearing such a case, another person shall be subrogated from the existing panel to hear the case.

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

(11) The Minister may make regulations prescribing the procedure to be used for an appeal to be made to the Appeals Board and to regulate the procedure to be used by the Appeals Board.

PART VI

Administrative and Financial provisions

Staff appointments.

22. Subject to the provisions of the Constitution of Malta and of any other enactment applicable to or in connection thereto, including this Act, the appointment of officers and other employees of the Authority shall be made by the Chief Executive, and approved by the Authority. The terms and conditions of employment shall be determined by the Chief Executive with the approval of the Authority and with the concurrence of the Minister.

23. The Authority shall appoint and employ, at such remuneration and upon such terms and conditions as it may, in accordance with article 22, determine, 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.

Appointment and functions of officers and employees of the Authority.

24. (1) The Prime Minister may, at the request of the Authority, from time to time direct 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 direction.

Detailing of public officers.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in the direction, ceases to have effect after one year from the effective date of such direction, unless the direction is revoked earlier by the Prime Minister.

25. (1) Where any officer is detailed for duty with the Authority under any of the provisions of article 24, such officer shall, during the time in which such direction has effect in relation to him/ her, be under the administrative authority and control of the Authority but shall for other intents and purposes remain and be considered and treated as a public officer.

Status of public officers detailed for duty with the Authority.

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

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

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

(ii) be so employed that the remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by that public officer at the date he/she was detailed for duty as 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 be entitled to have the service with the Authority considered as service with the Government for the purpose of any pension, gratuity or benefit under the Pensions Ordinance and the Widows' and Orphans' Pension Act, and of any other right or privilege to which that public officer would be entitled, and shall be liable to any liability to which he/she would be liable, but for the fact that he/she is detailed for duty with the Authority.

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Cap. 58.

(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 duty with the Authority.

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

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

26. (1) 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 article 24 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.

(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 Authority offered that officer, 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, 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 such acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to that officer, service with the Authority 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 Authority was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if service with the Authority, were service with the Government.

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

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

(b) The classification referred to in paragraph (a) shall be carried out by a board composed of a chairperson appointed by the Minister responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.

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

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

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

PART VII

Financial Provisions

Authority to meet expenditure out of revenue.

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

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

(3) The Authority shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority, being works of infrastructure or a similar capital nature.

(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 to 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 fees, 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.

Power to borrow capital.

28. (1) For the purposes of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The Authority may also from time to time borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of fifty thousand liri, there shall be required the approval of the Minister in writing.

Advances from Government.

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

Borrowing from Government.

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

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

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

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

(5) Sums received by the Accountant General from the Authority in respect of advances made to the Authority 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 amount received by way of interest into the Consolidated Fund.

Estimates of the Authority.

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

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

(2) In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or an appropriation Act or of any other law; and the Authority shall so prepare the said estimates as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made in such forms and shall contain such information and such comparisons with previous estimates as the Minister may direct.

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

(5) The Minister shall, at the earliest opportunity and not later than six weeks after the Minister has received a copy of the estimates of the Authority, or, if at any time the House is not in session, within six weeks from the beginning of the next following session, cause such estimates to be laid before the House together with a motion that the House approves the said estimates. Not more than one sitting shall be allotted for the debate in the House on such motion and both the motion and the approval of the estimates by the House may be with or without amendment to the estimates.

Expenditure according to the approved estimates.

32. (1) No expenditure shall be made or incurred by the Authority unless it has been approved by the House as provided in article 31.

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

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

(b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister, be incurred in respect of another head or sub-head of the estimates;

(c) in respect of the first financial year, the Authority may make or incur expenditure until the approval of the estimates for that year by the House not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;

(d) if in respect of any financial year it is found that the amount approved by the House is not sufficient, or if a need has arisen for expenditure for a purpose not provided for in the

estimates, the Authority may adopt supplementary estimates for approval by the House and, pending such approval, the Authority may in special circumstances and with the approval of the Minister, incur the relative expenditure or part thereof as the said Minister may so approve, and in any such case the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates.

Publication of approved estimates.

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

Accounts and audit.

34. (1) The Authority shall cause to be kept proper books of account and other records in respect of the Authority's 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 it and approved by the Minister:

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

(3) After the end of each financial year, at the same time as a copy of the estimates of the Authority is forwarded to the Minister under article 31, the Authority shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditor or auditors on that statement or on the accounts of the Authority.

(4) The Minister shall cause a copy of every such statement and report to be laid before the House together with the motion laid before the House under article 31(5).

Deposit of revenues and payment by the Authority.

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

(2) All payments out of the funds of the Authority, except petty disbursements not exceeding such sum as may be fixed by the Authority, shall be made by such officer or officers of the Authority as shall be appointed or designated for the purpose.

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

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

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

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

(c) the method to be adopted in making payments out of the funds of the Authority; and

(d) generally with respect to any matter which is relevant to the proper keeping and control of the accounts, books and other records and the control of the finances of the Authority.

Contracts of supply and of works.

36. The Authority shall not enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to involve an expenditure exceeding three thousand liri, except after notice of the intention of the Authority to enter into such contract has been published and competitive tenders have been issued.

Annual report.

37. The Authority shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year and containing such information relating to the proceedings and policy of Authority as either of the said Ministers may from time to time require. The Minister shall cause a copy of every such report to be laid on the Table of the House together with the estimates as provided for in subarticle (5) of article 31.

PART VIII

Offences and Penalties

Offences and penalties.

38. (1) Any person who acts in contravention of the provisions of articles 6, 7, 17 or 18, or in contravention of any of the provisions of any regulations made under this Act, and any person who conspires or attempts, or 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 connection with any matter under this Act, or under any regulations made by virtue of this Act –

(a) furnishes any information which that person knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular; or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or

(c) wilfully refuses or without lawful excuse, the proof whereof shall lie on that person, withholds any material information; or

(d) knowingly or recklessly makes any incorrect statement or entry in any record or return or on any document kept or furnished under this Act or under any regulations made thereunder; or

(e) unlawfully refuses or fails to answer to the best of that person's knowledge any question made to him/her by an officer in the exercise of that officer's functions; or fails to co-operate fully with an officer in the pursuance of that officer's duties; or

(f) unlawfully refuses or fails to comply with any requirement duly provided under this Act or under any regulations made by virtue of this Act; or

(g) hinders an officer in the performance of that officer's duty under this Act or under any regulations made by virtue of this Act,

shall be guilty of an offence against this Act or regulations made by virtue of this Act.

(3) Any person who commits an offence against this Act or regulations made by virtue of this Act, shall, on conviction, be liable to imprisonment for a period of not more than two years or to a fine *(multa)* of not less than two hundred liri but not exceeding five thousand liri, or to both such fine and imprisonment; and moreover the court may, at the request of the prosecution, cancel all or any licences, warrants or permits issued to or in the name of the person found guilty in connection with the work place where the offence was committed:

Provided that no proceedings shall be taken against any person who, after receiving an intimation by the Authority for the payment of a penalty not exceeding two hundred liri for having contravened the provisions of this Act or of any regulations made by virtue of this Act, and pays such penalty to the Authority in either case within fifteen days from the date of receipt of such intimation.

Cap. 9.

(4) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against this Act shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, sitting as courts of criminal judicature.

(5) In any proceedings referred to in the foregoing sub-article it shall be lawful for the Chief Executive, or any officer delegated by the said Chief Executive, to examine or cross-examine witnesses, produce evidence, make submissions in support of the charge and generally conduct the prosecution on behalf of the police, and the sworn statement of the officer that that such officer has been duly delegated for that purpose shall be conclusive evidence of that fact.

(6) Notwithstanding the provisions of the foregoing sub-article the Chief Executive or the officer deputed in accordance with sub-article (5) may be produced as witnesses but should their evidence be required as part of the case for the prosecution they shall be heard before they commence to act as provided in sub-article (5) unless the necessity of their evidence arises subsequently.

(7) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal from any judgement given by the Courts of Magistrates (Malta) or by the Court of Magistrates (Gozo) in respect of proceedings for any offence against this Act or any regulations made by virtue of this Act.

(8) The punishments provided in this Act shall apply unless the fact constitutes a more serious offence under the Criminal Code or any other law, in which case the provision of the Criminal Code or of such other law shall apply.

(9) Notwithstanding the provisions of the Criminal Code proceedings for an offence under this Act may be commenced at any time within six years from the commission of the offence.

PART IX

Repeal

Repeal and saving.
Cap. 367.

39. (1) The Occupational Health and Safety (Promotion) Act, hereinafter called "the repealed Act", is hereby repealed.

(2) Subject to sub-article (3), any regulations made under the Factories Ordinance and saved under the repealed Act as well as any regulations made under the repealed Act, shall continue in force and have effect as if made under this Act, and may be amended or repealed accordingly, and the provisions of article 38 shall apply to any contravention of such regulations as if they were regulations made under this Act:

Provided that any the term "factory" in any such regulation made under the Factories Ordinance or under the repealed Act, and continued in force as aforesaid, shall be construed as if it were the term "workplace" and shall have the same meaning assigned to the term "workplace" in article 2 and any references in the said regulations to the Ordinance or to the Act shall be construed as a reference to this Act.

(3) The Occupational Health and Safety (Judicial Committee) (Procedure) Regulations, 1995 and regulations 56 and 57 of the Factories (Health, Safety and Welfare) Regulations, 1986 are hereby repealed. L.N. 197 of 1995. L.N. 52 of 1986.

Passed by the House of Representatives at Sitting No. 423 of the 13th November, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives