MALTA

ATT Nru. V ta' l-2005

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex jirregola l-Arkivji Nazzjonali u jagħmel disposizzjonijiet għall-ħatra ta' l-Arkivista Nazzjonali u disposizzjonijiet oħra anċillari għal dan.

ACT No. V of 2005

AN ACT enacted by the Parliament of Malta.

AN ACT to regulate the National Archives, and to make provisions for the appointment of the National Archivist and for other dispositions ancillary thereto.

I assent.

(L.S.) EDWARD FENECH ADAMI
President

13th May, 2005

ACT No. V of 2005

AN ACT to regulate the National Archives, and to make provisions for the appointment of the National Archivist and for other dispositions 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

Short title and coming into force.

1. The title of this Act is the National Archives Act, 2005, and it shall come into force on such date as the Minister may by notice in the Gazette establish, and different dates may be so established for different purposes and different provisions thereof.

Interpretation.

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

"archival repository" means a building or part of a building in which archives are preserved and made available for consultation;

"archives" means records of enduring value selected for permanent preservation;

"Council" means the National Archives Council established under article 14 of this Act;

"current records" means records regularly used for the conduct of the current business of an institution;

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

Provided that the first financial year of the National Archives shall begin on the coming into force of this Act and shall end on the 31th December of the next following year.

"heads of public offices" means the Permanent Secretaries, Heads of Departments of Government, Chief Executive Officers and officials in a comparable positions responsible for the administration and operation of any public office;

"Local Council" means a local council established under the Local Councils Act; Cap. 363.

"Minister" means the Minister responsible for the National Archives;

"National Archives" means the entity called the National Archives of Malta established under article 3 of this Act;

"National Archivist" means the head of the National Archives appointed under article 5 of this Act;

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

"private records" means records other than public records as specified in the Schedule of this Act;

"public office" means any body established by the Constitution or by or under any law, or with any partnership or other body in which the Government of Malta, or any such body as aforesaid, have a controlling interest or over which they have effective control;

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

"public records" means the records specified in the Second Schedule to this Act;

"records" means recorded information regardless of form or medium created, received and maintained by any public office in pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business;

"Records Officer" means the person so appointed under article 16 of this Act;

"retention and disposal schedule" means the control document recording appraisal decisions and prescribing retention or disposal action in respect of records.

Part II

Constitution, Composition and Functions of the National Archives

National Archives.

3. (1) There shall be a body, to be called the National Archives of Malta, under the responsibility of the National Archivist. The mission of the National Archives is to preserve the collective memory of the Maltese nation through the protection and accessibility of all public archives regulated by this Act.

Legal personality and judicial representation.

(2) The National Archives 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 property for the purpose 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.

Objects and functions of the National Archives.

4. (1) The functions of the National Archives shall be:

(a) to safeguard the collective memory of the Maltese nation and protect the rights of citizens through the selection, preservation and access to the archives in whatever medium to the highest of standards;

(b) establish and maintain a register to be known as the National Register of Archives;

(c) to monitor with powers of inspection the record-keeping practices within public offices;

(d) accept and acquire private records of national significance by gift, purchase, bequest or deposit;

(e) provide leadership to Maltese archives in such areas as preservation of archival records, records management and national cooperation schemes;

(f) promote the professional training of archivists and records managers.

(2) For the purposes of sub-paragraph (b) of paragraph (1) of this article, the National Register of Archives shall contain particulars, in such form as the National Archivist considers appropriate, of:

(i) archives open for public inspection and location of holdings;

(ii) records of national significance in private archives, after the necessary permission has been granted by the owner of the records; and

(iii) any other details or information which will benefit the promotion of the archives and the provision of research facilities to the general public.

Appointment of National Archivist.

5. (1) There shall be a National Archivist who shall be a person with professional qualifications, recognised competence and reputation in the domain of archives, and who shall be appointed by the Minister following consultation with the Archives Council for a period of three years under such terms and conditions as is established in his letter of appointment. On the expiry of his term such a person may be re-appointed for a further term or terms of three years:

Provided that the first National Archivist shall be appointed by the Minister for an initial period of three years.

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

(3) There shall also be an Assistant National Archivist for Gozo with the same professional qualfications as the National Archivist and who shall be appointed in the same manner and for the same periods of time as the National Archivist.

Functions and duties of the National Archivist.

6. (1) The National Archivist shall be the chief executive officer of the National Archives, and he shall also be responsible for the preservation of all public records of enduring value other than any records whose transfer may have been deferred under subarticle(5) of article 8 of this Act, and shall in particular:

(a) provide professional assistance, advice and guidance on the establishment and management of filing and registry systems in public offices and on the training of the staff of public offices in record keeping;

(b) inspect the record keeping practices and systems of public offices which are obliged to deliver records to the National Archives;

(c) agree with the heads of public offices on, and ensure the implementation of, the retention and disposal schedules relating to records specific to each such office, which schedules shall be sufficient authority for taking the action specified at the due date;

(d) establish and ensure compliance with standards for the management of public records;

(e) ensure the arrangement and description of the archival holdings and provide appropriate finding aids to facilitate access to them;

(f) ensure that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the National Archives, insofar as such records are open to inspection under article 10 of this Act;

(g) give advice to users on the use of the preserved records and documentary material of the Archives, and increase the knowledge of national history and support studies in it;

(h) establish a reference library on archival theory and practice;

(i) make the holdings of the National Archives known by organising outreach events and the lending of public records elsewhere subject to conditions which he may specify in line with article 9 of this Act;

(j) prescribe rules to be observed by those wishing to consult public records in the National Archives or any other archival repository under his control;

(k) dispose of public records in his custody if in his opinion they do not warrant preservation by the National Archives or the preservation by the National Archives of copies of them in such form as he may determine will suffice;

(l) enter into arrangements with other institutions for the joint management or conservation or restoration of archives, and for the provision of reprographic or other technical facilities; and

(m) prepare and sell publications or objects related to the functions of the National Archives.

(2) The National Archivist shall furthermore:

(a) assume full responsibility for the administration and organization and the administrative control of the officers and employees of the National Archives and for such purpose assign to each officer or employee such duties as may be required;

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

(c) advise the Minister and the Council on any matter they may refer to him or on any matter which he considers necessary or expedient;

(d) perform such other duties as the Minister may assign to him from time to time.

Oath of Secrecy.

7. The National Archivist and every employee of the National Archives shall, before assuming duties in the National Archives, subscribe to the oath contained in the First Schedule.

Records to be deposited in the Archives.

8. (1) The records to be preserved in the National Archives shall be the public records listed in the Second Schedule to this Act.

(2) Archives of a particular nature which are regulated by any other law, in force from time to time shall be kept and shall be regulated in accordance with that law provided that such archives are preserved and made accessible according to standards agreed upon with the National Archivist.

(3) Notwithstanding the provision of sub-article (2) above, the Minister may in concurrence with the Minister responsible for a particular archive, order the transfer of documents kept in such archives to the National Archives, and this under such conditions as may be

agreed upon by the Minister and the Minister responsible for those Archives; and where any such document is transferred to the National Archives, for the purpose of any law regulating the deposit of that document in the existing archives, such document shall be deemed to be properly deposited in accordance with such law, and all responsibility relative to such document, including the issue of copies and extracts therefrom, as well as the authentication thereof, shall upon the transfer of such documents vest in the National Archivist.

(4) The National Archivist may certify that particular departmental records which are more than thirty years old do not warrant transfer to the National Archives for preservation, and any records so certified shall be retained in the appropriate public office or, as the case may be, returned to that public office, where they may be retained, or disposed of, subject to the granting of an authorisation under article 6 of this Act.

Deferment of Transfer.

(5) The National Archivist may defer the acceptance of the transfer of records and archives into his custody if accommodation for them is not available or other arrangements for their reception cannot be made.

Records may not be taken out of the National Archives without permission.

9. (1) No record or object preserved in the National Archives may, without the written permission of the National Archivist, be taken out from the premises of the National Archives. A copy of every permission granted by the National Archivist shall be preserved in the National Archives and shall be available for inspection.

(2) Loans of public records outside Malta may not be made without the written permission of the Minister given following consultation with the National Archivist and the Council.

(3) Provided that where a document to be found in the National Archives is to be exhibited in Court, or otherwise used in the original, the National Archivist shall exhibit or otherwise use the original after making a copy thereof for preservation in the archives if that is possible.

Access to records.

10. (1) Notwithstanding the provisions of any other law, when a record is deposited at the National Archives public access to such records shall only be regulated by the provisions of this Act.

(2) Public records in the National Archives, or in any other archival repository under the control of the National Archivist, shall be available for public inspection after the expiration of a period of thirty years from their creation, except insofar as a longer or shorter period may have been prescribed by the Minister following consultation with

the Minister responsible for the public office which created the records or its successor in function.

At the expiration of the period of thirty years prescribed in subsection (1) any records selected for permanent preservation which are still classified as confidential, or secret shall be examined by the Council to ascertain whether their continuing classification is necessary and, if it is not, they shall be de-classified and shall become open to public inspection under subarticle (1) of this article.

(3) The Minister may, on the advice of the National Archivist, limit access by the public to documents and objects where: -

(a) they contain information which has been obtained by a public authority under an obligation of secrecy or confidentiality; or

(b) the security of the State or the personal safety of any individual so require; or

(c) the fragility of the archives so warrants; or

(d) the need for organisation of the archives makes it necessary.

(4) Without prejudice to the provisions of article 9 of this Act, every copy of a document, issued as a true copy duly sealed with the seal of the National Archives and signed by the National Archivist, shall for the purposes of any law, be deemed an authentic copy and for the purpose of evidence in any court or tribunal be deemed equivalent to the original.

Right of preference exercisable by the Government.

11. (1) In case of sale of any record or work which in the opinion of the Minister, following consultation with the National Archivist, has archival or historical importance, the Government shall have the right of acquiring the same in preference to all other persons on equal conditions.

(2) Such right of preference shall be exercised by the National Archivist by means of a judicial act served on the purchaser within two months from the date on which the vendor or the purchaser gives notice to the Minister, by means of a judicial act or a registered letter, of the sale indicating the name and address of the purchaser and the conditions of sale, or, if no such notice is given, within six months

on which it shall come to the knowledge of the Minister that a sale has been effected.

(3) Any person who is responsible for any act or omission having the effect of frustrating the exercise of the right of preference appertaining to the Government under this article shall be guilty of an offence under this Act and shall be liable for the penalties contemplated in this Act.

Relations with the Minister.

12. In the exercise of his functions under this Act, the National Archivist 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 him, in relation to the policy to be followed by him in the discharge to his function, and in relation to any matter which appears to the Minister to affect the nation's archival heritage;

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

Exemption from certain taxes.

13. The National Archives shall be exempt from any liability for payment of any tax, other than customs or excise duties, or tax on income or duty on documents for the time being in force in Malta.

National Archives Council.

14. (1) There shall be a National Archives Council, appointed by the Minister, which shall be composed as follows:-

(a) a Chairperson;

(b) the Superintendent of Cultural Heritage *ex officio* or his representative;

(c) the Chairperson of Heritage Malta *ex officio* or his representative;

(d) the National Librarian *ex officio* or his representative;

(e) the Permanent Secretary in the office of the Prime Minister *ex officio* or his representative;

(f) a person to represent the non-governmental archives or records centres;

(g) three other persons chosen from amongst persons known to be users of and familiar with archives, records management and information professions, or working in non-governmental organizations dedicated to information and archives, one of whom shall be appointed by the Minister responsible for Gozo.

(2) The National Archivist and the Assistant National Archivist for Gozo shall attend all the meetings of the Council but shall not vote at such meetings:

Provided that the Council may, if it deems so fit, require the National Archivist and the Assistant National Archivist for Gozo not to attend any of the meetings or any part of a meeting.

(3) The members of the Council shall be appointed for a term of three years, but the members so appointed shall be eligible for reappointment on the expiration of their term of office.

(4) The meetings of the Council shall be called by the Chairperson as often as may be necessary but at least once every two months either on his own initiative or at the request of any two of the other members.

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

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

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

Functions of the Council.

15. (1) Without prejudice to the provisions of this Act, the Council shall:

(a) promote the National Archives and other record keeping entities;

(b) ensure and facilitate the collaboration between the different stakeholders with direct or indirect responsibility for the protection and management of the archives sector;

(c) advise the Minister on the management of archives in Malta;

(d) draw the attention of the Minister or of any organisation or person responsible for archives to any urgent action that may be considered necessary for the better management of archives and records;

(e) advise the Minister on any matter arising from the provisions of this Act and on any other matter referred to it by the Minister.

(2) The Council shall also biannually convene a National Forum about the archives to discuss the state of the archives generally after receiving a relative report to be drawn up by the Council. There shall be invited to attend at such Forum, among others, Departments and other Government entities, Mayors of Local Councils, owners of private archives and their archivists, non-governmental organisations having an interest in the maintenance and safeguarding of archives and public records, the University of Malta, other education institutions, specialists, consultants, representatives of the commerical sector, persons who make use of the archives, and any such other party showing to the Council in writing that it has an interest therein. The Forum procedures shall be published and sent to the Minister.

(3) The Council shall give public notice one month in advance of the meeting of the Forum which shall be chaired by the President who is to be appointed by the Council.

Responsibility of Departmental Records Officers.

16. (1) There shall be in every public office a Records Officer or Officers. It shall be the duty of every head of public office to send a yearly return to the National Archivist with details of the Records Officer and other details about the upkeep of records in their public office as may be required by the National Archivist.

(2) Records Officers shall be responsible for creating and maintaining adequate documentation of the functions and activities of their respective public offices through the establishment of good records keeping practices, including;

(a) creating and managing current records within appropriate filing and registry systems;

(b) drafting with the National Archivist retention and disposal schedules relating to records specific to each public office:

Provided that such schedules shall only come into effect when approved and signed by the National Archivist, and in the case of records containing personal data, also after consultation with the Commissioner for Data Protection;

(c) implementing retention and disposal schedules issued in accordance with article 6 of this Act;

(d) provide access to the National Archives for inspections of records in accordance with article 6 of this Act;

(e) inform the National Archivist as soon as it is known that a function or functions of the pubic office will be transferred to another public office or organisation, or that an activity carried on by the public office or an activity of some other body connected with its work is to be wound up;

(f) prepare, and provide the National Archives with, lists of records to be transferred to the Archives for permanent preservation in accordance with guidelines issued by the National Archivist;

(g) arrange the material to be transferred to the National Archives according to archival best practice agreed with the National Archivist;

(h) provide for the safe transfer of records to be preserved at the National Archives.

Part III

Administrative and Personnel Provisions

Staff appointments.

17. (1) Subject to the provisions of the Constitution and of any other law including this Act applicable thereto, the appointment of officers and other employees of the National Archives shall be made by the National Archivist. The terms and conditions of employment shall be determined by the National Archivist with the approval of the Minister.

Appointments and functions of officers and employees.

(2) The National Archivist shall appoint and employ, at such remuneration and upon such terms and conditions as he may in accordance with subarticle (1) determine, such officers and employees

as may from time to time be necessary for the due and efficient discharge of the functions of the National Archives.

(3) The members of the Council, all officers and employees of the National Archives shall be deemed to be public officers within the meaning of the Criminal Code.

Detailing of public officers.

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

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

Status of public officers.

(3) Where any officer is detailed for duty with the National Archives in accordance with this article, such officer shall during the time in which such direction has effect in relation to him, be under the administrative authority and control of the National Archivist but shall for other intents and purposes remain and be considered and treated as a public officer.

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

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

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

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

(b) shall be entitled to have the service with the National Archives considered as service with the Government for the purpose of any pension, gratuity or benefit under the Pensions

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Ordinance, and the Widows' and Orphans' Pensions 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 would be liable, but for the fact that he is detailed for duty with the National Archives.

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

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

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

19. (1) The National Archives may, with the approval of the Prime Minister, offer to any officer detailed for duty with it under any of the provisions of article 18 permanent employment 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.

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(3) Every officer who accepts permanent employment with the National Archives, under the provisions of subarticle (1), shall for all purposes other than those of the Pensions Ordinance, and of the Widows' and Orphans' Pensions Act, be deemed to have ceased to be in service with the Government and to have entered into service with the National Archives 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 National Archives shall be deemed to be service with the Government within the meanings thereof respectively.

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(4) Every such officer as aforesaid who immediately before accepting permanent employment with the National Archives 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 National Archives was service with the Government.

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

(6) (a) For the purposes of this article the posts and salary grades with the National Archives 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 National Archivist. 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 National Archives.

(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 IV

Financial Provisions

Revenues of the National Archives.

20. (1) Without prejudice to the following provisions of this article, the National Archives shall so conduct its affairs that every effort shall be made to meet as much as possible of the expenditure required for the proper performance of its functions out of its revenues.

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

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

(4) Any revenue shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied to the National Archives for its purposes, and without prejudice to the generality of the powers given to the Minister by this subarticle, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees rates and other payments levied in accordance with subarticle (2) of this article.

Power to borrow capital.

21. (1) For the purposes of any requirements of a capital nature, the National Archives may, with the approval in writing of the Minister in consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The National Archives may also, with the approval of the Minister in consultation with the Minister responsible for finance, 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.

Advances from Government.

22. The Minister responsible for finance may, after consultation with the Minister, make advances to the National Archives of such sums as the Minister responsible for finance may agree to be required 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.

Estimates of the National Archives.

23. (1) The National Archivist shall prepare 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 for the next following financial year:

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

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

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

Expenditure according to the approved estimates.

24. (1) No expenditure shall be made or incurred by the National Archives unless it has been approved by the House.

(2) Notwithstanding the provisions of subarticle (1) –

(a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the House, whichever is the earlier date, the National Archives 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 National Archives 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 National Archives may adopt supplementary estimates for approval by the House and pending such approval, the National Archives may in special circumstances and with the approval of the Minister, acting in consultation with the Minister responsible for finance, 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.

Accounts and audit.

25. (1) The National Archivist shall cause to be kept proper books of account and other records in respect of the operations of the National Archives and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the National Archives 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 National Archives 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 National Archives is forwarded to the Minister under article 23, the National Archivist 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 National Archives.

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

Deposit of revenues and payment by the National Archives.

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

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

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

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

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

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

(c) the method to be adopted in making payments out of its fund; and

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

Contracts of supply and of works.

27. The National Archives shall not, except with the approval of the Minister granted after consultation with the Minister responsible for finance, award or 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 National Archives, which is estimated by the National Archivist to involve an expenditure exceeding three thousand Liri, or such other amount as the Minister responsible for finance may authorize, except after notice of its intention to enter into such contract has been published and competitive tenders have been issued.

Annual report.

28. The National Archivist 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 National Archives during that financial year and containing such information relating to its proceedings and policy as either of the said Ministers may from time to time require. The Minister shall, not later than four weeks from the receipt of such report, cause a copy of every such report to be laid on the Table of the House.

Part V

Transfer of certain Assets to the National Archives

Transfer of assets to the National Archives.

29. (1) The property and undertakings owned by the Government and used by it immediately before the date of the coming into force of this Part of this Act, for the operation of any of the functions which by this Act are being transferred to or vested in the National Archives shall, on the date aforesaid, by virtue of this Act and without further assurance, be transferred to and vested in the National Archives

under the same title by which they were held by the Government immediately before the said date. The provisions of this subarticle shall not apply to immovable property.

(2) The use and administration of the immovable assets from time to time specified in the Order made by the Minister responsible for lands in consultation with the Minister and published in the Gazette (hereinafter referred to as "the immovable assets'') being immovable assets which immediately before the coming into force of this Part of this Act were owned by the Government and used by it for the operation of any of the functions which by this Act are being transferred to or vested in the National Archives, shall, with effect from such day as may be specified in any such Order and by the virtue of this Act and without any further assurance, be vested in the National Archives.

(3) The transfer and vesting aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality aforesaid, shall include all plant, equipment, apparata, instruments, vehicles, craft, buildings, structures, installations, land, roads, works, stocks and other property movable or immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

(4) Any transfer of property, whether moveable or immovable, shall be subject to all those terms and conditions that the Minister may deem necessary to ensure that such property is exclusively used for the purposes of the functions of the National Archives or purposes ancillary thereto.

Construction of laws, etc.

30. Subject to the provisions of this Act, all laws, rules, regulations, orders, judgements, decrees, wards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements, subsisting immediately before the date of the coming into force of this Part of this Act affecting or relating to any of the properties or undertakings transferred to the National Archives by or under this Act shall have full force and effect against or in favour of the National Archives, and shall be enforceable freely and effectually, as if instead of the Government or governmental authority the National Archives had been named therein or had been a party thereto, and otherwise in substitution of the Government or governmental authority.

Part VI

Offences

Unauthorised removal or destruction or damage of public records.

31. (1) Any person who:

(a) receives or retains any public record knowing that it has been illegally removed in Malta or illegally exported from any other country; or

(b) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest or interfere with, any officer or employee of the National Archives or any police officer in the execution of duties provided for under this Act, or fails to comply with any lawful order by any such officer or employee or police officer as aforesaid, or knowingly furnishes such officers or employees with false information or neglects or refuses to give any information required by or under this Act,

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa)* of not less than two hundred liri and not exceeding five thousand liri, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment:

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

(2) The Court, besides awarding the punishment referred to in this article, may order the convicted offender to remove the causes of the offence and to undo anything which was done without the authorisation required under this Act, within a time sufficient for the purpose and, if the offender fails to comply with any such order within the time so fixed, he shall be liable to a further fine *(multa*) of not less than twenty-five liri and not more than fifty liri, as the court may fix, for every day during which the default continues after the expiration of the said time.

(3) Any public record which has been or which may be removed without proper authorisation under this Act, may be reclaimed by the National Archives.

Part VII

Miscellaneous

Copyright.

32. (1) In making available for inspection or providing copies of public records in his custody the National Archivist shall not be in breach of the copyright of such records.

(2) The provision of copies of public records by the National Archivist does not imply the transfer of any copyright therein to the recipients.

(3) The publication of facsimile copies of public records in the custody of the National Archivist in which copyright of the Government of Malta subsists is prohibited except with the consent of the National Archivist and subject to such conditions as he may require and to the payment of such fees as may be prescribed under this Act.

Power to make regulations.

33. The Minister may, after consultation with the National Archivist, make regulations to give effect to any of the foregoing provisions of this Act, or to regulate or otherwise provide for any matter relating to public records, and may in particular, but without prejudice to the generality of the foregoing make regulations for any of the following purposes:

(a) to provide for the proper management and preservation of public records and the manner in which the public may have access to the documents and objects in the National Archives;

(b) to establish the standards and the manner in which copies and other reproductions of documents and objects in the National Archives, may be made;

(c) to establish the fees and dues which may be payable by or under, or for services rendered persuant to, the provisions of this Act;

(d) to ensure the better fulfilment of the functions of the National Archives, the National Archivist, and the Council;

(e) to regulate the appointment of officers and employees with the National Archives;

(f) to establish guidelines for best preservation practice;

(g) to provide for any forms or procedures which may be necessary or expedient and for which no express procedure is contained in this Act;

(h) to regulate movement of public records and the periods within which such records shall remain closed to public inspection;

(i) where not otherwise provided in this Act, to prescibe rules regulating the powers and duties of, and the procedures to be followed by the National Archives;

(j) to amend the Schedule annexed to this Act;

(k) to prescribe anything else which may or is to be prescribed under this Act.

Transitional provisions for Records in the National Archives.

34. Records and other materials in the custody of the Curator of the National Archives on the day before the coming into operation of this Act are hereby transferred to the custody of the National Archivist subject to any terms and conditions that were applicable to those records and other materials on that day.

Repeals and amendments. Cap. 339.

35. (1) The National Archives Act, 1990, and any rules and regulations made thereunder are hereby repealed.

(2) All references in other Acts and regulations to the National Archives of Malta or to the Curator of the National Archives shall be construed as applying to the National Archives or to the National Archivist thereof and all references to the National Archives Act, 1990, shall be construed as referring to this Act.

Amendment of the Notarial Profession and Notarial Archives Act, Cap. 55.

36. In subarticle (3) of article 22 of the Notarial Profession and Notarial Archives Act, for the words "in receiving those deeds only to which the Government or any corporate body established by law is a party" there shall be substituted the words "in receiving those deeds only to which the Government, any corporate body established by law, or, as may be authorized by the Minister in each case, any partnership or any other body in which the Government of Malta or any such body as aforesaid have a controlling interest or over which they have effective control, is a party".

Amendment of the Criminal Code, Cap. 9.

37. The Criminal Code shall be amended as follows:

(a) in article 144 thereof:

(i) in subarticle (1) thereof, for the words "to imprisonment for a term from thirteen months to three years" there shall be substituted the words "to a fine (*multa*) of not less than two hundred liri and not more than ten thousand liri or to imprisonment for a term from thirteen months to seven years or to both such fine and imprisonment";

(ii) immediately after subarticle (2) thereof there shall be inserted the following new subarticle:

"(3) Where the destruction, mutilation, damage, or alteration of any thing referred to in subarticle (1) of article 144 is caused through imprudence, negligence, unskillfulness in an art or profession or through non-observance of any regulation the offender shall be liable to a fine (*multa*) of not more than four thousand liri or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.";

(b) in article 279 thereof, for the words "seven years." there shall be substituted the words "seven years:" and immediately thereafter there shall be added the following proviso:

"Provided that where for any reason mentioned in subarticle (2) of article 325 it is not possible to estimate the value of the thing stolen the said value shall be deemed to exceed one thousand liri."; and

(c) immediately after paragraph (h) of article 271 thereof there shall be inserted the following new paragraph:

"(i) when it is committed on any public record as defined in article 2 of the National Archives Act.".

FIRST SCHEDULE

(Article 7)

Form of Oath

I, …….....…… swear/solemnly affirm that I will fully and honestly fulfil my duties as National Archivist/ employee of the National Archives in conformity with the requirements of the National Archives Act, 2005, and of all orders made thereunder, and that I will not, except in the performance of my duties under that Act and such orders and except when information has fallen into the public domain, disclose or make known during my service as National Archivist/employee of the National Archives or at any time thereafter, any matter which comes to my knowledge relating to any person, Government department or other public office by reason of my service as National Archivist/ employee of the National Archives.

(So help me God.)

SECOND SCHEDULE

(Article 8)

List of Public Records

1. Public records and archives to be preserved in any archival repository which falls under the responsibility of the National Archives are those records and archives created, received and maintained by:

(a) the office of the President

(b) the House of Representatives

(c) the office of the Cabinet of Ministers

(d) any ministry, department, commission, authority, agency or other public office:

Provided that in the case of public corporations or other para-stata or public organizations which are or have been privatised the provisions of this Schedule shall only apply up to the date when the Government of Malta or any body owned or controlled by it no longer has effective control.

(e) any embassy or other foreign representation of the Government of Malta outside Malta and by any officer serving in such a post

(f) the Electoral Commission or any committee or officer thereof

(g) the Courts of Justice, or any other court or tribunal with jurisdiction within Malta or by any judge, magistrate or other officer of such a court

(h) any local council or authority, or committee or sub-committee or officer thereof

(i) any predecessor or successor of any of the institutions, bodies or individuals designated in paragraphs (a) to (h) above

(j) any other body or individual so designated by the Minister by regulation made in accordance with this Act.

2. Records originated by the Ministry for Gozo, Gozo sections of government departments, and by public bodies established for Gozo shall be deposited at the Gozo S ection of the National Archives.

3. All public records and archives which at the time of the coming into force of this Act were in the custody of the National Archives of Malta shall be considered to be public records for the purposes of this Act.

Passed by the House of Representatives at Sitting No. 265 of 10th May, 2005.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives