

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

3rd May, 1996

ACT No. XIII of 1996

AN ACT to provide for the licensing, regulation and control of persons operating, engaged or employed in private guard services and in warden services and to provide for 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:—

1. (1) This act may be cited as the Private Guards and Local Wardens Act, 1996. Short title and commencement.

(2) This Act shall come into force on such date as the Minister may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

PART I

Preliminary

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

“Bye-Laws” means any Bye-Laws and any other legislation which may from time to time be entrusted to Local Councils by delegation or agreement as stipulated in the Local Councils Act, 1993; Act XV of 1993.

“Commissioner” means the Commissioner of Police;

“local warden” means an individual whose services are rendered in the provision of local warden services;

“local warden services” means such services as may be required by Local Councils in the discharge of their duties and responsibilities for the control, regulation and enforcement of Bye-Laws, including the provision of services for the control and regulation of access and movement by pedestrians or vehicles, generally or on particular occasions and the provision of similar services;

“Minister” means the Minister responsible for the Police;

“private guard” means an individual employed or engaged by a private guard agency in the provision of private guard services on behalf of the said agency;

“private guard agency” means any individual or body of persons, whether corporate or unincorporate, providing any private guard services and includes any such individual or body employing or engaging an employee to provide guard services in any place of entertainment as may be prescribed;

“private guard services” means any guard service, other than guard services provided by any government department or authority under the provisions of any law other than this Act, provided either by an individual or by a body of persons, whether corporate or unincorporate, in relation to:-

(a) the prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property;

(b) the prevention or detection of fraud or theft, loss, misappropriation or concealment of merchandise, money, bonds, stocks, notes or other documents or papers;

(c) the control, regulation or direction of the movement of the public in private or restricted areas, whether by the use of a vehicle or otherwise, to assure the protection of property;

(d) the protection of individuals from bodily harm;

- (e) the protection of property;
- (f) the provision of persons for the purpose of guarding money or any other property in transit or for the transportation of such money or other property;
- (g) the provision of armoured cars for the transportation of such money or other property;
- (h) the provision, installation and servicing of safes, alarms, and other security equipment or ancillary items as the Minister may prescribe;
- (i) private investigative services;
- (j) the provision of security consultancy services;
- (k) the operation of premises offering safe deposit facilities other than such operation by banks;
- (l) any other service which the Minister may from time to time by order prescribe;

but shall not include any such services provided to any person, other than a private guard agency or a Local Council, by his employee whether full-time, part-time or casual, but shall include the provision of private guard services by such employees where such services are rendered in a place of entertainment as may be prescribed by the Minister during such times as these are open to the public;

“private investigative services” means obtaining, selling or supplying to any person any information relating to:-

- (a) the identity, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person or a body of persons;
- (b) the background or antecedents of any applicant for employment;
- (c) enquiries for missing persons or property;
- (d) damage to or loss of property;

- (e) the prevention or detection of industrial espionage

“security consultancy services” means the provision of advice relating to the security of property, premises, personnel, plant machinery and equipment;

“warden agency” means an individual or a body of persons whether corporate or unincorporate, who provide local warden services.

PART II

Private Guard Services

Private guard agencies and guards to be licensed.

3. No person shall operate as a private guard agency or act as a private guard or offer his services as such, unless such person is licensed in accordance with the provisions of this Act.

Use of private guard services.

4. No person shall employ, engage or permit the use of private guard services unless such services are provided by a private guard agency or by private guards, as the case may be, licensed in accordance with the provisions of this Act.

Employment of private guards.

5. No private guard agency shall provide any person for duties in, or connected with, private guard services unless such person is licensed as a private guard in accordance with the provisions of this Act.

Applications for licence of private guard agency and private guards.

6. (1) Any person desiring to be licensed as a private guard agency or as a private guard shall make an application in writing to the Commissioner.

(2) Such application shall in the case of a private guard agency, contain the following information which shall be accompanied by such documentation in support thereof, as the case may require:—

(a) the full name and business address, and in the case of an individual the Identity Card Number and in the case of a commercial partnership, the registered number and office of the partnership;

(b) the name under which the applicant intends to carry on his activities;

(c) the nature of the activities which the applicant intends to carry on;

(d) in the case of a body of persons the names and addresses and Identity Card Numbers of the shareholders, partners, directors, secretaries and any other officers of the body and where any of such persons is a partnership the registered number and office of the partnership and the number of persons they propose to employ;

(e) a declaration by the applicant stating that he has no financial or other interest which could in any way conflict with the services to be provided by the private guard agency; such other interest shall include any other business or economic activity carried out or being carried out, or services provided or being provided, or employment held or being held, by the applicant;

(f) if an applicant was previously carrying on any business activity, the financial statements for the last three years, and if under any other law such financial statements are required to be audited, the audited financial statements;

(g) experience relevant to private guard services held by any person mentioned in paragraphs (a) and (d) above.

(3) In the case of a private guard the application shall contain the following information which shall be accompanied by such documentation in support thereof, as the case may require:-

(a) the full name, address and Identity Card Number;

(b) the date and place of birth;

(c) full details of the applicant's working experience;

(d) a declaration by the applicant stating that he has no financial or other interest which could in any way conflict with the services to be provided as a private guard;

(e) academic, training and other qualifications held to act as a private guard.

(4) An application under this section shall be accompanied by such fee as may be prescribed.

(5) The Commissioner may, in the circumstances of any particular case require additional information or that any information submitted under this section be supported by such relevant documentation as he may require.

Publication of
application.

7. The Commissioner shall, within 15 days of the receipt of such application, give notice in the Gazette of such application with such details as he may consider appropriate.

Objection to
application.

8. (1) Any person may, within one month from the publication of such notice, object in writing to the issue of such licence on any of the grounds listed in section 10 of this Act.

(2) The Commissioner shall consider any such objection and shall verify any statements made therein. For this purpose the Commissioner may require the person objecting to produce or indicate proof to substantiate any statement made in any such objection.

(3) Any objection made under the provisions of this section shall be treated as confidential.

Acceptance or
refusal of
application.

9. Having considered the application made and any objections received under section 8 hereof the Commissioner shall within four weeks from the lapse of one month mentioned in subsection (1) of section 8 of this Act:—

(a) either issue a licence to the applicant to act as a private guard agency or as a private guard; or

(b) refuse the application.

Refusal to issue
licence.

10. The Commissioner shall refuse an application in any of the following circumstances:

(a) where the applicant or any officer of the applicant or any person who has an effective control of the services to be provided by the applicant —

(i) has been convicted in Malta or elsewhere of any crime against the safety of the state, or of any crime of voluntary harm or injury to any person or any crime against property or public trust or any other serious crime; or

(ii) has been declared bankrupt or his financial position is precarious or otherwise renders the applicant unsuitable; or

(iii) has been discharged from the police or armed forces or the prison services because of any offence or other misbehaviour; or

(iv) is a public officer or a member of the police or armed forces or the prison services; or

(b) when he considers that it is in the public interest to refuse such a licence; or

(c) where the applicant does not possess the necessary qualifications as may be prescribed by or under this Act.

11. (1) If the Commissioner refuses to issue a licence to an applicant to act as a private guard agency or as a private guard, he shall forthwith communicate in writing such decision to the applicant stating the reason for such refusal: Referral to Minister.

Provided that in the case of a refusal under paragraph (b) of section 10 of this Act, it shall be sufficient to state that the licence has been refused in the public interest.

(2) The Commissioner shall concurrently also submit a copy of such documentation to the Minister stating, in the case of a refusal in the public interest, the actual reason for such refusal.

(3) On the receipt of a licence or of the notice of refusal, the applicant may, within one calendar month from such receipt, make submissions in writing to the Minister requesting that any terms or conditions attached to such licence be removed or changed, or in the case of a refusal that the licence be issued.

(4) The Minister shall determine such request and shall communicate his decision to the Commissioner and the applicant. The Minister's decision shall be final and the Commissioner shall act in conformity therewith.

12. (1) A licence issued by the Commissioner under section 9 of this Act:— Issue of licence of a private guard or a private guard agency.

(a) shall be valid for a period of one year from its date of issue;

(b) may be limited to any of the private guard services;

(c) shall be subject to the specific condition that the holder of the licence shall inform the Commissioner of any change in the information submitted in relation to the relevant application;

(d) shall be subject to such other terms and conditions as the Commissioner may deem fit to attach to such licence.

(2) Subject to the other provisions of this Act, a licence issued under this Act may be renewed from year to year on the expiration of its validity and on the payment of such fee as may be prescribed.

(3) The issue of a licence under this Part shall in no way be deemed to vest any right or privilege to the holder thereof to do any thing, of whatever nature, in relation to third parties or their property which such person did not have the right to do prior to the promulgation of this Act.

Withdrawal and suspension of licence.

13. (1) Where the holder of a licence does not conform to any term or condition under which the licence has been issued or where such circumstances arise which could have justified the refusal of an application for such licence, the Commissioner may either withdraw or suspend such licence.

(2) Where a licence has been withdrawn or suspended the Commissioner may grant a new licence or withdraw the suspension where the circumstances giving rise to the withdrawal or suspension have been removed or no longer exist.

(3) On the receipt of a notice of withdrawal or suspension the holder of a licence may, within one calendar month from such receipt, make submissions in writing to the Minister requesting the removal of such withdrawal or suspension.

(4) The provisions of subsections (3) and (4) of section 11 of this Act shall *mutatis mutandis* apply to a submission made to the Minister under subsection (3) of this section.

PART III

Local Warden Services

Warden agencies and local wardens to be licensed.

14. No person shall act as a warden agency or as a local warden or offer his services as such unless such person is licensed in accordance with the provisions of this Act.

Use of local warden services.

15. No person shall employ, engage or permit the use of local warden services unless such services are provided by a warden agency or by local wardens, as the case may be, licensed in accordance with the provisions of this Act.

Employment of local wardens.

16. No warden agency shall provide any person for duties in, or

connected with, local warden services unless such person is licensed as a local warden in accordance with the provisions of this Act.

17. (1) Subject to the provisions contained in this Part the provisions of sections 6, 7, 8, 9, 10, 11, 12 and 13 of this Act shall apply “mutatis mutandis” in relation to a licence for a warden agency or for a local warden in the same way as they apply to an application for a licence for a private guard agency or for a private guard, as the case may require.

Application of sections 6 to 13 to warden agencies and local wardens.

(2) An application for a licence for a warden agency or for a local warden shall be accompanied by such fee as may be prescribed.

18. (1) A local warden shall have the power to stop any person, whom he suspects to have committed any breach of any Bye-Laws, for the purpose of identifying such person and taking his particulars, but may not detain any person except as provided in the following subsection of this section.

Power of local wardens to detain persons and obtain particulars.

(2) A local warden may detain any person for the purpose of taking him before a police officer or until the arrival of a police officer, where such person refuses to stop and give his particulars or for the purpose of preventing such person from committing a breach of any Bye-Laws where such person has been warned to desist and has not desisted voluntarily.

(3) Any person who refuses to give, or untruthfully gives to any local warden in the exercise of his duties, his name, surname, address and other particulars that may be lawfully required shall be guilty of a contravention and shall on conviction be liable to a fine (*ammenda*) of Lm25.

19. (1) No person shall in any way assault or resist by violence any local warden in the execution of his duties under this Act.

Resistance and violence against local wardens.

(2) Saving any higher punishment to which he may be liable under any other law any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of one to six months:

Provided that no punishment shall be awarded for the mere act of assault or resistance against any person who, although he shall have attempted to commence, or shall have actually commenced to act, shall at the first warning given by the person assaulted or to whom resistance is offered, or by any public authority, desist from the further commission of the crime.

Abuse of authority.
Cap. 9.

20. The provisions of sections 112, 113, 114, 115 and 119 of the Criminal Code shall apply to a local warden.

PART IV

General

Indemnity
insurance.

21. (1) Every person licensed under this Act shall for as long as he is so licensed be covered by an indemnity insurance, in such manner and for such amount as may be prescribed against any liability which such person may incur for compensation in respect of any loss or damage that any other person may suffer as a result of any act done or omitted to be done by the person aforementioned or by any of his employees in the carrying out of any services provided under a licence issued in accordance with the provisions of this Act. Such insurance shall be made by the employer if the person licensed is an employee.

(2) Every person bound to be covered by an indemnity insurance under this section shall each year within a week of taking out or renewing such indemnity insurance inform the Commissioner in writing of the insurance company and the relative number of the insurance policy.

(3) For the purposes of this section every person bound to be covered by an indemnity insurance shall, together with the information required under subsection (2) of this section, submit a list of persons, if any, employed with him.

(4) Any changes to the list of employees submitted under the provisions of subsection (3) hereof shall be notified to the Commissioner within one week from the occurrence of any such change.

(5) Any person who fails to comply with any of the provisions of this section shall be deemed to operate without the licence required under this Act.

Use of uniforms.

22. (1) Every person licensed as a local warden shall, while on duty and only during such time, or while travelling to or from his turn of duty, wear such distinguishable uniforms and other identity and, or, distinctive badges or marks as approved by the Commissioner.

(2) Every person licensed as a private guard shall carry such

identity card or document as shall be prescribed and shall wear such distinctive uniform and other identity and, or, distinctive badges or marks as may be prescribed.

23. No person shall provide courses for the provision of academic, training and other qualifications that may be required for a person to obtain or hold a licence as a private guard or as a local warden, unless the said courses are approved by the Minister in accordance with regulations as may be prescribed.

Courses approved to provide training, etc.

24. The Minister may make regulations for the purpose of carrying into effect the provisions of this Act, and may, without prejudice to the generality of the foregoing, by such regulations prescribe:-

Power to make regulations.

(a) fees payable under this Act or for any services under or pursuant to this Act, and different fees may be so prescribed for different services or for different licences under this Act;

(b) the forms to be used for any of the purposes under this Act;

(c) the academic, training and other qualifications that may be necessary for the granting or holding of a licence under this Act;

(d) for the approval of courses to provide academic, training and other qualifications necessary for the granting of a licence under this Act;

(e) anything that may or is to be prescribed under this Act:

Provided that in the case of regulations made in relation to local wardens, local warden services or warden agencies, such regulations shall be made with the concurrence of the Minister responsible for local government.

25. Any person —

Offences and penalties.

(a) who operates a private guard agency or a warden agency in contravention of any of the provisions of this Act or of any licence issued thereunder or acts in breach of the provisions of section 23 of this Act, shall be guilty of an offence and shall be liable on conviction, to a fine (*multa*) not exceeding Lm10,000 and to imprisonment for a term not exceeding one year or to both such fine and imprisonment;

(b) who acts or is employed as a private guard or as a local warden in contravention of any of the provisions of this Act or of any licence issued thereunder shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding Lm2,000 and to imprisonment for a term not exceeding six months or to both such fine and imprisonment;

(c) who employs, engages or permits the use of private guard services or of warden services in contravention of section 4 or section 15 of this Act or otherwise is in breach of any provision of this Act other than those to which paragraphs (a) and (b) hereof apply shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding Lm500.

Transitory provisions.

26. (1) On the date of the coming into force of this Act and for a period of six months thereafter, any person who by not later than one month following the date of the coming into force of this Act shall have given notice in writing to the Commissioner that on the date of the notice he was delivering any private guard services which require a licence under this Act indicating the type of services being delivered and any persons engaged or employed in or with such services may continue to deliver the services indicated in the notice without the need of any licence under this Act.

(2) The provisions of section 4 of this Act shall not apply during the period of six months mentioned in subsection (1) of this section.

Amendments to the Local Councils Act, 1993.

27. The Local Councils Act, 1993, shall be amended as follows:—

(a) section 51 shall be amended as follows:—

(i) in subsection (1) thereof the word “only” shall be deleted; and

(ii) in subsection (2) thereof for the words “shall only” there shall be substituted the word “may”; and

(b) section 72 shall be amended as follows:—

(i) in subsection (1) thereof the words “for prescribing any form or procedure for which no express procedure is contained in this Act, and” shall be deleted; and

(ii) immediately after subsection (2) thereof there shall be added the following new subsection:—

“(3) The Minister may also, in addition to such regulations make or authorise the making of such forms, procedures, guidelines and directions as he may deem necessary or expedient, in relation to any function vested in or delegated to Local Councils by or under this Act, so as to secure a uniform level of operation, including the engagement of the services of local wardens and the procurement of other services and goods, or to establish minimum standards or to provide for such other matter as may be ancillary or incidental to the exercise of such functions.”.

Passed by the House of Representatives at Sitting No. 530 of the 22nd April, 1996.

LAWRENCE GONZI
Speaker

JOSANNE BONELLO
Acting Clerk to the House of Representatives.