

CHAPTER 356**DEVELOPMENT PLANNING ACT**

To make provision for the planning and management of development, for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto.

28th October, 1992

1st December, 1992

ACT I of 1992 as amended by Acts: XXI of 1992, XVI and XXIII of 1997, XXIII of 2000, VI and XXI of 2001; Legal Notices 22 and 47 of 2002; and Act VI of 2002.

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PART I

PRELIMINARY

Short title.

1. The short title of this Act is Development Planning Act.

Interpretation.
Amended by:
XXIII. 1997.2;
XXI. 2001.2;
VI. 2002.57.

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

"action plan" has the meaning assigned to it by article 26;

"advertisement" means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, including any boarding or similar structure used or adapted for use for the display of advertisements;

"advertisement regulation order" means an order made under and for the purposes of article 49;

"agency of Government" means a body corporate established by law and a company in which the Government or such body corporate, or a combination thereof has a controlling interest or which is a subsidiary of such a company;

"application" means a development permission application;

"application report" means the final development permission application report;

"Audit Officer" means the Audit Officer appointed in terms of article 17C(1);

"the Authority" means the Malta Environment and Planning Authority established under article 3 and includes any body or other person acting on its behalf under powers delegated by the Authority under this Act;

"building" includes any structure or erection and any part of a building, but does not include plant or machinery comprised in a building;

"building levy" means any charge or contribution levied under article 41 or 42;

"building or work" includes waste materials, refuse and other matters deposited on land;

"building operations" includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

"the Chairman of the Board" means the Chairman of the Authority appointed in terms of article 3(4);

"conservation order" means an order made under and for the purposes of article 46;

"the Commission" means the Development Control Commission established under article 13;

"the Committee" means the Planning Consultative Committee established under article 12;

"development" has the meaning assigned to it by article 30(2);

"development brief" has the same meaning assigned to it as in article 26A;

"development permission" means a permission to carry out development granted by the Authority either on an application in that behalf or in a development order;

"development plans" includes the structure plan, subject plans, local plans, action plans and development briefs;

"development order" means an order made under and for the purposes of article 31;

"the Director of Planning" and "the Director" mean the Director of Planning appointed under article 6 and includes any person acting on his behalf or under his authority;

"enforcement notice" is any notice issued under article 52 and may include any notice which the Authority may issue from time to time in terms of articles 51 to 55;

"engineering operations" includes the formation or laying out of roads and of means of access to roads;

"erection" in relation to buildings, includes extension, alteration and re-erection;

"exempt works" means any works or development which do not require a development permission under Part IV;

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

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;

"functions" includes responsibilities, powers and duties;

"House" means the House of Representatives;

"land" includes a building;

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

"local plan" has the meaning assigned to it by article 25;

"the Mediator" means a Planning Mediator appointed in terms of article 32A(1);

"minerals" includes all minerals and substances (including oil and natural gas) in or under land of a kind ordinarily worked for removal by underground or surface working;

"Minister" means the Minister responsible for development planning;

"official manual" means the official manual referred to in article 5(2)(c);

"owner" means -

(a) a person who in his own right or as agent for another is

entitled to receive the rent of the land or, where the land is not let, would be so entitled if it were let;

- (b) where the land is subject to usufruct, bare owner or usufructuary;
- (c) an emphyteuta;
- (d) any one of the spouses, where the land to which the development relates forms part of the community of acquests;

"the Planning Appeals Board", "the Appeals Board" and "the Board", mean the Planning Appeals Board established under article 14;

"planning policy" means a policy approved in terms of article 29A or article 29B or article 29C;

"planning position statement" means a statement issued by either the Minister or the Authority in order to provide a detailed technical explanation justifying a position with respect to a specific planning issue;

"prescribed" means prescribed by regulation, rule, order or other instrument made as provided in the provisions of this Act empowering the making of any such instrument;

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

"road" means any highway or road, whether public or private, and includes any street, square, court, alley, lane, bridge, footway, passage or quay, whether thoroughfare or not;

"scheduled buildings" and "scheduled trees" have the meaning assigned to them by article 46 and 48, respectively;

"Standing Committee" means the Standing Committee on Development Planning established in terms of article 17B(1);

"structure plan" has the meaning assigned to it by articles 18 and 22;

"subject plan" has the meaning assigned to it by article 24;

"subsidiary plans" shall have the same meaning assigned to it in article 23;

"Temporary Provisions Schemes" means a planning scheme prepared and approved in accordance with the Building Permits (Temporary Provisions) Act;

"tree preservation order" means an order made under and for the purposes of article 48;

"use", in relation to land, does not include the use of land by the carrying out of any building, engineering, mining or other operations thereon;

"Users' Committee" means the Committee established under article 17A of this Act.

PART II

ADMINISTRATION

1. The Malta Environment and Planning Authority*Substituted by:
VI. 2002.57.*

3. (1) There is hereby established an authority, to be known as the Malta Environment and Planning Authority which shall consist of not less than thirteen and not more than fifteen members, of whom one shall be the Chairman of the Authority.

*Establishment of
the Malta
Environment and
Planning
Authority.*

(2) Save as hereinafter provided, the members of the Authority shall be appointed by the Prime Minister as follows:

*Amended by:
XXI.1992.2;
XXI. 2001.3;
VI. 2002.57.*

- (a) five public officers representing the Government being persons who have experience or qualifications in matters concerning any of the following: planning, the environment, the infrastructure, social policy in so far as it relates to land use, economic affairs, agriculture, tourism and transport;
- (b) eight members (hereinafter called the "independent members") shall be chosen from amongst persons of known integrity and one of whom is a person with knowledge of and experience in matters relating to the environment and the other seven being persons with knowledge of and experience in matters relating to development, including commercial or industrial activities, or social and community affairs and the environment.

(3) The two other members of the Authority shall be members of the House of Representatives of which one shall be appointed by the Prime Minister and the other by the Leader of the Opposition:

Provided that the Authority shall be properly constituted and may function notwithstanding any failure to appoint either or both members of the Authority under this subarticle.

(4) The chairman and a deputy chairman of the Authority shall be chosen by the Prime Minister from amongst the independent members of the Authority.

(5) Save as provided in subarticles (2) and (3), no person shall be qualified to be appointed as, or remain, a member of the Authority if he is:

- (a) a public officer,
- (b) a member, officer or servant of any agency of the Government, provided that for the purposes of this paragraph a member of the academic staff of the University shall not be deemed to be a member, officer or servant of an agency of the Government,
- (c) a member of the House of Representatives, or
- (d) a member of a local council.

(6) The independent members shall hold office for such period, being not less than three years, as may be specified in the letter

appointing them and if no such period is specified shall remain in office for three years. In determining such period of office the Prime Minister shall, as far as practicable, ensure a measure of rotation. The independent members may resign by letter addressed to the Prime Minister but may not be removed from office except by a resolution of the House of Representatives on the ground of misconduct or inability to perform the duties of their office.

(7) The other members of the Authority shall hold office until they are replaced by the authority appointing them, and as long as they remain public officers or members of the House, as the case may require. Members of the House may also resign from office by letter addressed to the authority appointing them.

(8) A person who has ceased to be a member of the Authority shall if he is otherwise qualified, be eligible for re-appointment; but no person shall in the aggregate be a member of the Authority for more than seven consecutive years.

(9) The provisions of the First Schedule to this Act shall apply to the Authority and regulate its proceedings.

Authority to be
body corporate.
Amended by:
XXI. 2001.4.

4. (1) The Authority shall be a body corporate having a distinct legal personality and capable, subject only to the provisions of this Act, of suing and being sued, of entering into any contract, of acquiring, holding or disposing of property of any kind both of movable and immovable, and by or under any title, and of doing any other thing or entering into any transaction whatsoever.

(2) The legal and judicial representation of the Authority shall vest in the Chairman:

Provided that the Authority may appoint any one or more of its members, or any one or more of its officers or employees, to appear in its name and on its behalf in any proceedings to which the Authority is a party or on any act, contract, instrument or other document whatsoever.

(3) In the absence of the chairman, or if the chairman is unable to perform the functions of his office, whether under this or any other provision of this Act, the deputy chairman shall perform those functions.

Functions of the
Authority.
Amended by:
XXIII. 1997.3;
XXI. 2001.5;
VI. 2002.57.

5. (1) The functions of the Authority shall be the following:

- (a) the promotion of proper planning and sustainable development of land and at sea, both public and private;
- (b) the control of such development in accordance with development plans and planning policies approved in terms of this Act;
- (c) the carrying out of national mapping, including carrying out land surveys of specific areas and keeping up to date the national geographical database to undertake the functions mentioned in paragraphs (a) and (b);
- (d) the regulation of alignment and levelling schemes and

their interpretation on site.

(2) For these purposes, and subject to the provisions of this Act, the Authority shall be responsible for:

- (a) the preparation of the development plans and planning policies including any other matter ancillary, incidental or conducive thereto, and the updating thereof following their approval in terms of this Act;
- (b) the conduct of consultations with Government departments, private organisations and other persons relating to planning;
- (c) the publication and updating, as circumstances may warrant, of an official manual containing such matters as the Minister may prescribe and which shall be made available to the public, provided that:
 - (i) no planning policy or amendment thereto approved in terms of paragraph (a) shall have effect unless it is published in the official manual,
 - (ii) a planning policy or an amendment thereto, as the case may be, shall be published in the official manual within one month from the date of its approval in terms of this Act,
 - (iii) the official manual may be published and updated in electronic form or in any other format as the Authority may approve.

(3) In the execution of its functions under this Act, the Authority shall have and may exercise all or any one or more of the powers vested in it or entrusted to it by this Act.

(4) Saving the provisions of article 36A and subject to retaining overall control and supervision, and otherwise observing the provisions of this Act, the Authority may, with the approval of the Minister, delegate any one or more of its functions under this Act under such conditions as it may deem appropriate. In particular, but without prejudice to the generality of the foregoing, the Authority may delegate as aforesaid to, or exercise concurrently with, the Commissioner of Police, or any local council, or any other body, authority or contractor, any of the functions vested in it in terms of Part V of this Act and the Authority shall also have the power to delegate any of its enforcement powers, including the levying of penalties established in this Act, to local wardens appointed in terms of the provisions of the Private Guards and Local Wardens Act in terms of such procedure as the Minister may in agreement with the Minister responsible for local councils prescribe. Notice of any such delegation shall be published in the Gazette.

Cap. 389.

(5) The Authority may also exercise all powers of control over development as may from time to time be delegated to it in writing by the Minister on behalf of any department or agency of Government.

(6) It shall be the Minister's function to ensure that the Authority is fully informed of Government's policies relative to development, and to monitor the proper execution of such policies.

(7) The Authority may with the approval of the Minister appoint advisory boards and committees to assist it in the performance of its functions under this or any other law. The functions of the said boards and committees shall be prescribed by the Authority with the approval of the Minister.

(8) (a) Without prejudice to the provisions of subarticle (7), there shall be a committee to be styled the Heritage Advisory Committee, which shall consist of two panels and which shall have the functions as set out in this subarticle.

(b) One panel shall deal with Cultural Heritage and shall be known as the Cultural Heritage Panel, and shall be constituted as follows:

- (i) a chairman and three other members appointed by the Minister responsible for culture, and
- (ii) three other members appointed by the Minister after consulting the Authority.

(c) One panel shall deal with Natural Heritage and shall be known as the Natural Heritage Panel, and shall be constituted as follows:

- (i) a chairman and three other members appointed by the Minister responsible for the environment, and
- (ii) three other members appointed by the Minister after consulting the Authority.

(d) Four members of a panel shall constitute the quorum at the meetings of a panel and eight members shall constitute a quorum at a joint meeting of the two panels. The chairman at a meeting shall have an original vote and, in the case of equality of votes, a casting vote.

(e) It shall be the function of the panel, each in the field dealt by it, to provide professional and expert advice to the Authority on matters relating to the conservation of the cultural and natural heritage in an integrated process. Each panel shall also provide advice on the application process in particular with regard to the conservation of property or areas that may be affected by an application for a development permission.

- (f) Each panel shall make available for public inspection any recommendation made by it to the Authority and shall regularly every six months report to the Authority and to the Committee of Guarantee set up under the Cultural Heritage Act.
- (g) Each panel may call upon any person to give it expert or professional advice on any matter being dealt by it.
- (h) Either chairman shall convene a joint meeting of both panels when matters affecting both the cultural and the natural heritage are involved, and in such case the joint meeting of the two panels shall be chaired by the chairman of the panel convening the meeting. The provisions of paragraph (g) shall apply also to such meetings.
- (i) Subject to the foregoing provisions of this subarticle and to any rules prescribed by the Minister with the concurrence of the Minister responsible for cultural heritage and the Minister responsible for the environment, the committee and the panels may regulate their own procedure.

Cap. 445.

(9) The Authority shall transmit a copy of the agenda, minutes and relative enclosures of its meetings to the Minister for his information.

6. (1) The Authority shall appoint a Director of Planning who shall report directly to the Board of the Authority and who shall, himself or his representative, have the right to be present at all meetings of the Authority, of the Commission and of all the meetings held by all the boards and committees appointed by the Authority.

Officers and employees of the Authority.
Amended by:
XXIII. 1997.4;
XXI. 2001.6.

(2) The Director of Planning shall head the Planning Directorate. The Authority may delegate to the Director, or to such other officer or employee of the Authority, as it may deem fit, any of the following functions:

- (a) professional, technical and administrative support,
- (b) the implementation of the Authority's decisions, and
- (c) the carrying out of the Authority's day-to-day functions,

and the Director, officer and employee of the Authority aforesaid shall be subject to such directives, orders and controls as the Authority may deem fit to give to them.

(3) The Authority shall also appoint such other officers and employees as the Authority may from time to time deem necessary in order to carry out its functions under this Act.

(4) The Authority shall also appoint one of its officers to act as secretary of the Authority. The secretary shall have the duty of calling meetings and keeping minutes and such other duties as the

Chairman may delegate to him.

(5) The officers and employees of the Authority shall be appointed on such terms and conditions as the Authority may from time to time, after consultation with the office of the Prime Minister, determine.

(6) The Prime Minister may, at the request of the Authority, 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 order; and in any such case the provisions of the Second Schedule to this Act shall have effect with respect to any public officer so detailed.

(7) The Authority may, with the approval of the Prime Minister, offer to any public officer detailed for duty with the Authority under this article permanent employment with the Authority at a remuneration and on terms and conditions specified in the offer.

Cap. 93.

(8) Every public officer who accepts permanent employment with the Authority offered to him under this article shall, for all purposes other than those of the Pensions Ordinance, cease to be in the service of the Government and shall enter into service with the Authority with effect from the date of his acceptance of the offer, or such later date agreed between him and the Authority; and for the purposes of the said Ordinance service with the Authority shall be deemed to be service with the Government within the meaning thereof.

Financial provisions.

7. (1) The Authority shall be endowed with an initial capital of five hundred thousand liri which shall be paid by the Government out of the Consolidated Fund, without further appropriation other than this Act, by warrant under the hand of the Minister responsible for finance authorising the Accountant General to make the payment.

(2) Thereafter the Authority shall be paid out of the Consolidated Fund such sums as the House of Representatives may approve.

(3) The Authority shall cause to be prepared in each financial year, and shall not later than six weeks after the end of such year, adopt estimates of the income and expenditure of the Authority for the next following financial year:

Provided that, in respect of the first financial year, the Authority shall prepare and adopt estimates not later than twelve weeks from the coming into force of this Act.

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

(5) A copy of the estimates of the Authority shall, upon their adoption by the Authority, be sent forthwith to the Minister.

(6) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates of the

Authority, or, if at any time the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid before the House together with a motion that the House approve the said estimates. One sitting day 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.

(7) No expenditure shall be incurred by the Authority that has not been approved by the House of Representatives:

Provided that:

- (a) until the expiration of six months from the beginning of a financial year or until the approval of the estimates for that year, 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) 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, but subject to its being given, the Authority may in special circumstances and with the approval of the Minister, incur the relative expenditure; and the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates:

Provided further that in respect of the first financial year of the Authority, this subarticle shall apply as if the total expenditure that may be made or incurred by the Authority until the approval of the estimates for that year by the House may not exceed one half of the amount shown in such estimates.

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

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

Accounts and
audit.
Amended by:
XVI. 1997.8.

(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 verifications, and may require such information, as he 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 7, the Authority shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister 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 of Representatives together with the motion laid before the House under the said article 7.

Annual Report.

9. (1) The Authority shall, not later than six weeks after the end of each financial year, make and transmit to the Minister a report of its activities during that year, containing such information relating to the functions and to the proceedings of the Authority as the Minister may from time to time require.

(2) The Minister shall cause a copy of every such report to be laid on the Table of the House of Representatives within two weeks, or, if at any time the House of Representatives is not in session, within two weeks from the beginning of the next following session.

Contracts of supply or works.

10. Except with the approval of the Minister granted for special reasons, the Authority shall not enter into any contract for the supply of goods or material 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 five 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.

Exemption from tax.

11. The Authority shall be exempt from any liability for the payment of any tax on income or duty on documents for the time being in force in Malta.

2. The Planning Consultative Committee

Establishment and functions of a Planning and Consultative Committee.
Amended by: XXIII. 1997.5; XXI. 2001.7.

12. (1) There shall be a committee, to be known as the Planning Consultative Committee, consisting of such number of persons as may from time to time be appointed by the Prime Minister after consultations with such organisations representative of various aspects of life in Malta as he may deem appropriate. The Prime Minister shall also appoint the chairman of the Consultative Committee.

(2) The functions of the Consultative Committee shall be to advise the Government and the Authority on any development plan or planning policy on which its advice may be sought or to which the committee believes the attention of the Government or of the Authority ought to be drawn.

(3) The Consultative Committee shall meet as frequently as may be necessary, but in no case less frequently than four times in any calendar year; and subject to the foregoing provisions, the Consultative Committee may regulate its own procedures. The Consultative Committee shall report in writing to the Minister and to the Authority on a quarterly basis about its operations.

(4) The administrative and technical support as well as any funds, required by the Consultative Committee, shall be provided by the Authority out of its own resources.

3. The Development Control Commission

13. (1) There shall be a commission, to be known as the Development Control Commission, which may have such number of divisions as the Prime Minister may by order in the Gazette prescribe. Each division shall deal with such types of applications, not being specific to a geographical area, as the Minister may after consulting the Authority prescribe:

Establishment and functions of the Development Control Commission.
Amended by:
XXIII. 1997.6;
XXI. 2001.8;
L.N. 47 of 2002.

Provided that no two divisions thereof shall deal with the same types of applications.

(1A) Each division of the Commission shall be appointed by the Prime Minister and shall consist as follows:

- (a) a chairman appointed by the Prime Minister;
- (b) three persons appointed by the Prime Minister; and
- (c) three persons appointed by the Authority.

(1B) The Authority shall transmit to the chairmen of all the divisions of the Commission a copy of the agenda, minutes and relative enclosures of its meetings for their information. The Chairmen of the divisions of the Commission, unless they happen to be members of the Authority in terms of article 3, shall be invited to attend the meetings of the Authority but shall have no right to vote during the Authority's meetings.

(2) Subject to subarticle (1) and to article 36A, the functions of the Commission shall be such of the functions of the Authority with respect to development control, including enforcement, as the Authority may from time to time delegate to it and require it to perform, subject to such conditions as the Authority may deem appropriate.

(3) The decisions of the Commission including any development permission issued by it, shall be deemed to be, and shall have the same force and effect as the decisions of the Authority, except in respect of matters which the Authority expressly reserves to itself or requires to be referred to it for determination, and the expression "decision of the Authority" wherever it appears in this Act, shall be construed accordingly.

(4) The decisions of the Commission shall only be binding if they are supported by the votes of not less than four of its members; and they shall be published as soon as practicable after the meeting at which they are taken and in any case not later than the sitting next following that sitting.

(5) The meetings of the Commission shall be open to the public, subject to the power of the Commission to exclude any member of the public if it deems it necessary so to do for the maintenance of order. Furthermore the participation of the public on any matter under consideration by the Commission shall only be allowed at the discretion of the Commission and, if so required by

it, subject to prior arrangements. At the request of any member of the Commission, the deliberations of the Commission shall be held in private but every vote shall be conducted in public. No secret vote shall be allowed. Where the Commission votes against a recommendation made by the Director, the Chairman of the said Commission shall register in the relevant file the specific planning reasons adduced by the members of the Commission who did not agree with the Director's recommendation.

(6) When the Commission puts off a decision on an application either when the applicant is required to amend his proposal, in which case the Commission shall give reasons for such a request, or for the furnishing of further information, in which case the Commission shall give reasons for requiring such further information, the Commission shall, unless there shall be mutual agreement between the Commission and the applicant on an extended period, during the meeting establish the date for the next sitting for the determination of the application, such date being not later than three weeks from the date of the meeting,

(7) Subject to the foregoing provisions, and to any rules that may be prescribed by the Authority, the Commission may regulate its own procedures.

(8) The staff of the Commission shall consist of officers and employees of the Authority detailed to service the Commission; and the Authority shall further provide the Commission, out of its own resources, with such other support as the Commission may reasonably require to carry out its functions.

(9) The Commission may at any time draw up reports, which shall be discussed by the Authority -

- (a) on any issue relevant to planning, including on any application;
- (b) concerning the development control process; and
- (c) on any subject which should be addressed by the Authority by means of a new planning policy or an amendment to an existing one.

4. The Planning Appeals Board

Establishment of
the Appeals Board.
Amended by:
XXIII. 1997.7.

14. (1) There shall be a board, to be known as the Planning Appeals Board, consisting of a lawyer, who shall preside, a person versed in planning and another person each of whom shall be appointed by the President, acting on the advice of the Minister.

(2) The President, acting on the advice of the Minister, may also appoint panels of members and in such case the composition of the Board for any one or more appeals to be heard by it shall be the responsibility of the secretary to the Board who shall, as far as is practicable, determine such composition on the basis of rotation.

(3) A member of the Board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in a civil suit; and in any such case the member shall be substituted by another person either appointed for the purpose by the President

acting on the advice of the Minister or chosen from the appropriate panel so appointed.

(4) The members of the Board shall hold office for a period of three years, and shall be eligible for reappointment.

(5) A member of the Board may be removed from office by the President acting on the advice of the Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.

15. (1) Subject to article 32A(4) and to article 47(4), the Appeals Board shall have jurisdiction to:

Functions and
procedure of
Appeals Board.
Amended by:
XXIII. 1997.8;
VI. 2001.22;
XXI. 2001.10;
VI. 2002.57.

- (a) hear and determine all appeals made by a person aggrieved, other than an interested third party, by any decision of the Authority on any matter of development control, including the enforcement of such control;
- (b) exercise such functions as are vested in it in terms of article 27(2)(j) and article 29A(4), of article 29B(4), articles 29C(4) and (5) and article 31(3);
- (c) hear and determine appeals made in terms of article 39A(3), article 40(4), article 46(9), article 48(4), article 55B(3), article 58(1), and article 61(7);
- (d) hear and determine an appeal lodged by an interested third party from a decision of the Authority on any matter of development control, provided that:
 - (i) such an appeal may only be made by an interested third party who had submitted written comments in terms of article 32(5) when the application to carry out the development is published,
 - (ii) no appeal shall lie by an interested third party from any development control decision concerning a development which is specifically authorized in a development plan,
 - (iii) a local council in whose locality the development is intended to be carried out shall always be deemed for all intents and purposes of law to be an interested third party provided that the said council has complied with the provisions of article 32(5) and it is acting in the interests of the locality,
 - (iv) an interested third party shall submit reasoned grounds based on planning considerations to justify his appeal.

(2) The decisions of the Board shall be final. An appeal shall lie to the Court of Appeal constituted in terms of article 41(6) of the Code of Organization and Civil Procedure from such decisions only on points of law decided by the Board in its decision. An appeal from a partial decision of the Board may only be filed together with an appeal from the final decision of the Board..

Cap. 12.

(3) The decisions of the Board shall be binding if they are supported by the opinion of two of its members, and the dissenting member, if any, may express his opinion separately; and all decisions of the Board shall be delivered in public and shall be published as soon as practicable after the sitting at which they are given.

(4) Where a hearing is held by the Board, advance notice of not less than fourteen days shall be given of the first sitting of the Board to the parties in such manner as the Board may deem appropriate or as may be provided in the Third Schedule:

Provided that in cases of urgency the said time limit of fourteen days may be abridged by order of the Board if the Board is satisfied that the party requesting urgency has given a valid reason in writing therefor.

(5) The sittings of the Board shall be open to the public, subject to the power of the Board to exclude any member of the public if it deems it necessary so to do for the maintenance of order.

(6) The Board may require any department or agency of the Government to provide the Board with such information or advice as the Board may deem necessary for the proper execution of its functions.

(7) The Board shall have an administrative secretariat independent from the Authority, consisting of a secretary and such other officers or employees as may be necessary for a prompt and efficient determination of the matters within the Board's jurisdiction. The secretary shall be appointed by the Minister and the other members of the secretariat shall be chosen and appointed by the secretary.

(8) Without prejudice to the provisions of subarticle (7), the funds required by the Board for the performance of its functions shall be provided by the Authority.

(9) Subject to the above and to article 37(1), appeals to the Board and the conduct of the business of the Board shall be made in accordance with the rules contained in the Third Schedule to this Act; and in the absence of such rules on any matter, the Board may regulate its own procedure.

(10) *(Deleted by Act VI.2002.57).*

(11) Where judicial proceedings are instituted against the Board before a court of civil jurisdiction, other than those in terms of subarticle (10), the Secretary shall represent the Board in such proceedings; and, saving the provisions of article 46 of the Constitution and article 4 of the European Convention Act, no precautionary act may be issued against the Board by any court.

(12) The Appeals Board, if it decides to grant a development permission, may impose a penalty, the payment of fees and contributions and other conditions, which the Authority may impose when granting a development permission; and the Board shall ensure that it complies with the provisions of article 33(1) and (2) in reviewing decisions of the Authority.

(13) When the Appeals Board modifies a decision taken by the Authority and orders the issue of a development permission, the Authority shall, unless an appeal has been lodged to the Court of Appeal (Inferior Jurisdiction) from the Board's decision, issue the permission within one month from the Board's decision, or, if in the Board's decision a condition has been imposed or a penalty inflicted, within one month from compliance by the appellant with such condition or payment of such penalty inflicted by the Board in its decision.

15A. (1) Where an appeal is lodged by an applicant or by an interested third party from any decision of the Authority referred to in article 36A or from any decision of the Authority or of the Commission concerning an application submitted by a department of government or a body corporate established by law, the Secretary of the Appeals Board shall inform the Minister of such an appeal within fifteen days from its receipt. In such case, the Minister may, within fifteen days from the date when he has received such information, either instruct the Appeals Board to proceed with the determination of the appeal or decide to refer the application to Cabinet for determination. Where the Minister does not decide to refer an application to Cabinet as aforesaid within the said period, it shall be deemed for all purposes and effects of law that he has opted to refer the said appeal to the Appeals Board for its decision.

Call in procedure.
Added by:
XXI. 2001.11.

(2) The Minister may refer to Cabinet applications called in by him in terms of subarticle (1) where such applications are -

- (a) applications in respect of development which appears to him to be of a strategic significance;
- (b) applications in respect of development which appears to him to affect matters of national security or national interests;
- (c) applications in respect of development which appears to him likely to affect the interests of other Governments;
- (d) applications in respect of development which is subject to an environmental impact assessment and which in his opinion is of national interest;
- (e) applications in respect of which the applicant is a department of Government or a body corporate established by law.

(3) Where the Minister decides to refer to Cabinet an application called in by him, he shall request the Appeals Board to draw up its recommendation on that application after having heard the parties and the Appeals Board shall send its recommendation on that particular application to the Minister who shall refer it to Cabinet. Such recommendation shall be available to the public.

(4) The Cabinet Secretary shall, within fifteen days from the date of such decision, communicate Cabinet's decision to the Authority together with the reasons in justification thereof and the Authority shall comply therewith, publish Cabinet's decision in

such manner as it may deem fit or as it may be prescribed and shall communicate Cabinet's decision to the parties within fifteen days from the receipt of such decision.

5. Common Provisions

Members of the Authority etc., to be deemed public officers for certain purposes.
Cap. 9.

16. For the purposes of the Criminal Code and of any provision of a penal nature in any other law, the members of the Authority and of any committee, board, commission or other body established by this Act, and every officer or employee thereof, shall be deemed to be and be treated as a public officer.

Inspections.
Added by:
XXI. 2001.12.

16A. Without prejudice to the provisions of article 50, for the purposes of carrying out their functions under this Act, the Board of the Authority, the Commission, the Appeals Board and such officer or committee as may be authorised by the Authority for this purpose shall have the right to enter any premises, public or private, at all reasonable time, and in the case of a dwelling house after giving previous notice of at least forty-eight hours and not before nine o'clock in the morning or after seven o'clock in the evening, and whosoever obstructs such entry shall be guilty of an offence against this article and be liable, on conviction, to a fine (*multa*) of not less than one hundred liri and not more than two thousand liri.

Publication of names of members of the Authority, etc.

17. The names of all the members of the Authority, and of any committee, board, commission or other body established by this Act, including the panels from which the Appeals Board is constituted, and any other change in such membership shall be published in the Gazette.

6. Users' Committee

Establishment and functions of the Users' Committee.
Added by:
XXIII. 1997.9.

17A. (1) There shall be a Committee, to be known as the Users' Committee, which shall consist of not less than seven and not more than eleven members being not more than one representative from each of the interested national constituted bodies recognized by the Minister for the purpose of this article. The Users' Committee shall be autonomous from the Authority and shall be appointed by and be responsible to the Minister to whom it shall report at least every six months, or earlier as the need arises.

(2) The Users' Committee shall supervise the general functioning of the Authority particularly to ensure, in the interest of the general public an expeditious and fair process and transparency and uniformity in the Authority's decisions and acts. For these purposes the Users' Committee shall monitor the running of the Authority and shall propose, to the Authority or the Minister as the case may be, such changes to administrative processes and practices as it may deem appropriate.

Standing Committee on Development Planning.
Added by:
XXI. 2001.14.

17B. (1) There shall be a Standing Committee on Development Planning which shall consist of five members, one of whom shall be the Minister, who shall also be the Committee's Chairman, and four other members appointed by the House, of whom two shall be members supporting the Government and the other two shall be members from the Opposition.

(2) Any development plan referred to the House of Representatives in terms of this Act shall be first referred to the Standing Committee. The Standing Committee shall review any such plan referred to it as aforesaid and shall recommend to the House whether the plan should be approved, with or without amendments, or rejected. The Standing Committee may also discuss any report referred to it by the Minister relating to the structure plan or any review thereof.

(3) When notice of a motion, as is referred to in article 22(2), is given by the Minister, that motion shall be referred to the Standing Committee of the House, and the said Standing Committee shall discuss the said motion and report thereon to the House.

(4) Not later than one month after a notice as is referred to in subarticle (3) has been referred to the Standing Committee of the House, the said Standing Committee shall discuss the structure plan or any review thereof, and shall, not later than one month after the said plan or review thereof has been referred to it, report thereon to the House:

Provided that where the said Standing Committee fails to report to the House within the said period of one month, the House may pass on to discuss the motion.

(5) Where the report of the Standing Committee on a motion is unanimous, the House shall proceed to vote on such motion and on any amendments that are proposed in the said report without debate.

17C. (1) There shall be an Audit Officer appointed by the Authority with the concurrence of the Minister after consulting with the Standing Committee and who shall review all the functions and workings of the Authority.

The Audit Officer.
Added by:
XXI. 2001.14.

(2) The Audit Officer shall investigate, either on his own motion or following a complaint received by him, the functions and working of the Authority. The Audit Officer may suggest to the Authority what redress, if any, should be given.

(3) The Audit Officer shall transmit a copy of all reports drawn up by him to the Board of the Authority. He shall draw up an annual report which shall be published in its entirety as part of the Authority's annual report.

(4) The Authority shall transmit a copy of all the reports drawn up by the Audit Officer to the Minister and shall inform him of any action taken by it in connection with the Audit Officer's reports and where no such action as recommended by the Audit Officer is taken, it shall inform the Minister of the reasons why no such action is taken.

(5) The Authority and the Director shall provide all reasonable assistance to the Audit Officer as he may require.

(6) The Authority and the Director shall permit the Audit Officer to view and copy all files and any other documentation in their possession.

(7) The Audit Officer shall in drawing up the reports referred to in this article, act in his individual judgement and shall not be subject to the direction of any other person or authority.

Inter-departmental
Planning
Committee.
Added by:
XXI. 2001.14.

17D. (1) There shall be a Committee, to be known as the Interdepartmental Planning Committee, consisting of one representative of each department of the Government or body corporate established by law as the Prime Minister may from time to time declare to be a department or body corporate relevant to planning. The permanent secretary in the Office of the Prime Minister, or his representative, shall be *ex officio* Chairman of the said Inter-departmental Committee. Where at any time the departments falling under the responsibility of the Prime Minister are not under the supervision of a permanent secretary or are under the supervision of more than one permanent secretary, the Chairman of the said Interdepartmental Committee shall be such public officer, or as the case may be, such permanent secretary as may be indicated by the Prime Minister.

(2) The Inter-departmental Planning Committee shall monitor the implementation of the functions conferred upon a department of the Government or a body corporate under this Act or under any development plan or planning policy.

(3) The said Committee shall co-ordinate the workings of the said departments and bodies corporate in performing their functions as aforesaid and shall also advise and assist them. The Authority shall provide the Interdepartmental Committee with such assistance which the latter might require in the execution of its functions in terms of this Act.

(4) The Authority shall keep the Inter-departmental Planning Committee informed of the performance of departments of government and bodies corporate in replying to requests for consultations by the Authority.

(5) The Minister may make regulations to regulate the procedure to be followed by the Inter-Departmental Planning Committee.

PART III

DEVELOPMENT PLANNING

1. The Structure Plan

The Structure plan
and its preparations
or review.
Amended by:
XXIII. 1997.10;
XXI. 2001.15.

18. (1) The Authority shall prepare a structure plan and shall not later than one year from the coming into force of this Act submit it to the Government for consideration and approval as provided in the following provisions of this Part of this Act.

(2) The structure plan shall be a written statement illustrated by diagrams as necessary and accompanied by an explanatory memorandum giving a reasoned justification for each of the policies and proposals contained in the plan.

(3) The Authority shall monitor the structure plan and review it as often as may be necessary, provided such review does not take place within a period of less than five years. Every such review shall be made in accordance with the goals and objectives of a revision of the structure plan as may be approved by Cabinet and take effect as provided in the following provisions of this Part of this Act.

(3A) Notwithstanding the provisions of subarticle (3), the structure plan can be reviewed in parts as the need arises by means of a Resolution of the House of Representatives, and shall come into force in accordance with the following provisions of this Part of this Act. Such a partial review of the structure plan shall not adversely affect a development permission validly issued in favour of any person before the date of the coming into force of such a review.

(3B) Cabinet may approve a statement of goals and objectives to be achieved by a partial review of the structure plan, and, or, a proposal together with a planning position statement with regard to that review. After such approval, the Minister shall send to the Authority that statement of goals and objectives, and, or, that proposal and planning position statement. When the Authority receives that statement of goals and objectives and, or, the proposal and planning position statement, it shall conform with the procedure laid down in subarticles (4) to (7), if the matters referred to therein have not already been carried out, in the same manner as if the proposal had been initiated by the Authority; and the provisions of subarticle (3A) and of article 19 shall apply. If the Authority disagrees with the Minister's proposal or with his planning position statement, it shall prepare its planning position statement indicating the changes that it proposes or its reactions thereto. The Minister shall then conform with the provisions of article 22 and, for the purposes of article 22(1), the expression "representations" shall include the Authority's planning position statement.

(4) For the preparation or review of the structure plan the Authority shall carry out surveys of those matters which affect the character and quality of the environment, its conservation and its development, including, but not limited to:

- (a) the size, composition and distribution of the population;
- (b) the agricultural, industrial, commercial, touristic and other economic activities of the country including the employment patterns arising therefrom;
- (c) leisure and recreation;
- (d) social and community services and facilities;
- (e) communications, traffic and transport;
- (f) public utility services;
- (g) the conservation and preservation of natural and man-made resources;

(h) such other matters as may be required by the Government or which may be deemed necessary by the Authority.

(5) In preparing or reviewing the structure plan, the Authority shall have regard to:

- (a) the current economic policies affecting development;
- (b) the policies of the Government with respect to the matters set out in subarticle (4);
- (c) the resources likely to be available for the implementation of the plan.

(6) During the preparation or review of the structure plan the Authority shall make known to the public the matters it intends to take into consideration and shall provide adequate opportunities for individuals and organisations to make representations to the Authority.

(7) In the preparation of the structure plan the Authority may take over or adopt any surveys or other work carried out or done in the preparation of a structure plan under the Building Permits (Temporary Provisions) Act, repealed by this Act.

(8) A partial review of the structure plan which is necessitated by the adoption of or an amendment to a subsidiary plan need not comply with the provisions of subarticles (4) and (5) if the matters referred to therein and that are relevant to the partial review have already been carried out in the preparation of the subsidiary plan.

Cap. 322.

Publication of the structure plan or its reviews.
Amended by:
XXI. 2001.16.

19. (1) When the structure plan or a review thereof has been completed, the Authority shall publish the plan together with a statement of the representations it has received and the responses it has made to those representations.

(2) The Authority shall invite representations on the plan to be submitted to it within a specified period of not less than six weeks.

(3) The structure plan, or any review thereof, together with all representations made to the Authority, shall, as soon as practicable, after the expiry of the period specified in subarticle (2), be referred to the Minister.

(4) The Minister may refer back the structure plan or review thereof to the Authority where he does not agree with the structure plan or any review thereof and he shall prepare a planning position statement stating the changes he proposes to it or his reactions to the structure plan or review thereof.

Assessment of plan or review by Panel.

Where plan or review is referred back.

20. *Deleted by: XXI. 2001.17.*

21. Where the structure plan, or any review thereof, has been referred back to the Authority, the same procedure as far as practicable shall be followed with respect to any further draft prepared and published by the Authority, except that reference back to the Authority shall not be made more than once.

22. (1) At the conclusion of the procedures set out in the foregoing provisions, the structure plan, and any review thereof, shall be considered by the Cabinet together with the Minister's planning position statement and the representations made with respect to the plan or its review.

Final consideration and approval of plan or review.
Amended by:
XXI. 2001.18.

(2) Subject to article 17B(2) to (4), the Minister shall then cause the structure plan or a review thereof as originally prepared, or as revised, by the Authority, together with the Minister's planning position statement, to be laid before the House together with a motion for a resolution that the structure plan be approved by the House, with such amendments, if any, as may be specified in the resolution.

(3) The structure plan and any review thereof as approved by the House shall have effect as from such date as may be specified for that purpose by the Minister by order in the Gazette; and for the purposes of this Act, other than those provisions relative to the preparation, consideration and submission of the structure plan or its review, the expression structure plan and any reference to a review thereof means the structure plan, and any review thereof, as approved by the House of Representatives:

Provided that if at the date of commencement of this Act there is a structure plan prepared under the Building Permits (Temporary Provisions) Act, and approved by the House of Representatives, such structure plan, as so approved, shall be the structure plan, and shall be treated as if it were the structure plan prepared by the Authority under this Act, for all the purposes thereof, and as if all the provisions of this Act relative to the preparation, consideration and submission of the structure plan had been complied with.

Cap. 322.

2. Subject Plans, Local Plans, Action Plans and Development Briefs

Substituted by:
XXI. 2001.19.

23. Where the Authority considers that for the proper and effective management of development it is necessary to prepare more detailed proposals than can be appropriately embodied in the structure plan, the Authority may prepare such subsidiary plans, that is to say subject plans, local plans, action plans and development briefs, as appears to it to be necessary.

Subsidiary plans.
Amended by:
XXI. 2001.20.

24. (1) A subject plan is a plan which deals with a policy or matter which is contained in the structure plan but which requires for its implementation a more detailed specification than is contained in the structure plan.

Subject plans.
Amended by:
XXI. 2001.21.

(2) A subject plan shall consist of a written statement supported by such maps and diagrams as may be considered necessary.

(3) Except as otherwise stated in the plan, a subject plan shall apply to all relevant areas of the structure plan, whether or not such areas are also covered by a local plan, an action plan or a development brief.

25. (1) A local plan is one which is made by the Authority for

Local plans.

any area where the Authority considers that the rate of development or re-development cannot be satisfactorily managed, or where special factors cannot be taken into account solely on the basis of the structure plan.

(2) A local plan shall consist of a map or maps of a suitable scale supported by a written statement and by such diagrams as may be necessary.

Action plans.
Amended by:
XXI. 2001.22.

26. (1) An action plan is made by the Authority for -

- (a) an area where the Authority considers that it has to pay particular attention in order to better manage the rate of development or re-development or where special factors have to be taken into account which otherwise cannot be taken; or
- (b) an area where a department or an agency of the Government intends to carry out, or cause to be carried out by agreement with the private developer, substantial development on its own land or on land it intends to acquire by agreement or by compulsory purchase.

(2) An action plan may form part, or be the whole of, a local plan.

(3) In addition to the information required to be contained in a local plan, an action plan made in terms of subarticle (1)(b) shall also show the land which is in public ownership and the land which is intended to be brought into public ownership.

Development brief.
Added by:
XXI. 2001.23.

26A. (1) A development brief is a document setting out detailed planning guidance for the development of a specific site or small area where the Authority considers such guidance is necessary to secure proper and orderly development of that site or area, or to implement a policy or policies in a development plan.

(2) A development brief shall consist of a written statement supported by such maps and diagrams as may be considered necessary.

(3) A development brief shall contain guidance and information on the following matters as may be considered necessary:

- (a) a description of the site and its location;
- (b) guidelines on the development of the site, including:
 - (i) land uses and site layout,
 - (ii) building form, heights and design,
 - (iii) any building and landscape features to be retained,
 - (iv) access, parking and circulation requirements,
 - (v) landscaping and nature conservation aspects;
- (c) tenure of the site;
- (d) services and infrastructure;

- (e) the format and content of submission requirements;
- (f) any other information which may be relevant to the site and to the purpose of the development brief.

27. (1) In the preparation or review of a subsidiary plan the procedure set out in this article shall be followed with respect to the subsidiary plan.

Procedure for
subsidiary plans.
Substituted by:
XXI. 2001.24.

(2) Where the Authority prepares a subsidiary plan or a review thereof as aforesaid, it shall seek the Minister's approval in terms of the following procedure:

- (a) during the preparation or review of a subsidiary plan, the Authority shall make known to the public the matters it intends to take into consideration and shall provide adequate opportunities for individuals and organisations to make representations to the Authority;
- (b) when the subsidiary plan or a revision thereof has been prepared, the Authority shall publish the plan together with a statement of the representations it has received and the responses it has made to those representations. The Authority shall invite representations on the plan to be submitted to it within a specified period of not less than six weeks; where in such a subsidiary plan or revision thereof it is proposed that any land be excluded from a Temporary Provisions Scheme Boundary or a development boundary as indicated in a local plan, the Authority shall publish in the Gazette and in two local daily newspapers a notice showing the land that is to be excluded;
- (c) the Authority shall adopt the subsidiary plan after taking into consideration all the representations submitted to it as aforesaid;
- (d) the Authority shall refer the subsidiary plan together with its planning position statement to the Minister for his approval. It shall also forward to the Minister the statement of representations and the responses it has made to those representations and all the relative documentation and studies in relation to the preparation of the subsidiary plan;
- (e) where the Minister agrees with the subsidiary plan he shall approve it as submitted by the Authority and the Authority shall upon such approval publish the same together with the statements, responses, documentation and studies referred to in paragraph (d);
- (f) where the Minister does not agree with the subsidiary plan as adopted by the Authority he shall prepare a planning position statement stating his proposed changes or his reactions to the Authority's subsidiary plan and shall refer back the subsidiary plan to the Authority together with his planning position statement; where in such a subsidiary plan or revision

thereof it is proposed that any land be excluded from a Temporary Provisions Scheme Boundary or a development boundary as indicated in a local plan, the Authority shall publish in the Gazette and in two local daily newspapers a notice showing the land that is to be excluded;

- (g) where the Authority does not agree with the Minister following the referral back to it of the subsidiary plan by the Minister, it shall draw up a planning position statement and shall refer it back to the Minister;
- (h) the Minister shall then issue a final planning position statement. He shall forthwith communicate it to the Authority which shall forthwith amend the subsidiary plan in accordance with the Minister's final planning position statement and submit the same for the Minister's final approval. Upon such approval the Authority shall publish the subsidiary plan together with its own planning position statements and those of the Minister together with the advice of the Appeals Board given in terms of paragraph (j), if any, and together with the statements, responses, documentation and studies referred to in paragraph (d);
- (i) where the subsidiary plan or any part thereof extends the scope of or is in conflict with the structure plan, the Minister shall comply with the provisions of articles 18 to 22 with regard to such subsidiary plan or any part thereof, provided that those parts of the subsidiary plan that do not extend the scope of or are not in conflict with the structure plan shall come into force on the date of approval by the Minister;
- (j) if doubt arises as to which procedure should be followed in respect of a subsidiary plan or as to whether a subsidiary plan or a planning position statement extend the scope of or are in conflict with the substance of the structure plan, the matter may be referred at any time by the Authority or by the Minister to the Appeals Board, provided that where the Authority is of the opinion that the Minister's final planning position statement extends the scope of or is in conflict with the substance of the structure plan, it may refer the matter to the Appeals Board within one month from the date of receipt of the Minister's final planning position statement. The Appeals Board shall rule within one month from the date of referral to it of the matter as to which procedure shall apply and the decision of the Board shall be final.

Review of
subsidiary plans.
Substituted by:
XXI. 2001.25.

28. (1) Every subsidiary plan shall be reviewed as frequently as may be necessary or as may be made necessary by a review of the structure plan:

Provided that a subsidiary plan may not be reviewed before

the lapse of two years from its last review unless such review is necessitated by a review of the structure plan.

(2) Where as a result of such a review the Authority proposes to alter a plan in any significant respect, or where it is proposed that a plan be withdrawn, any such proposal shall be subject to the same procedures, and shall be treated, as a new plan.

(3) Minor modifications not affecting the substance of the plan may be carried out by the Authority either on its own motion when it considers to do so in the interests of proper planning of the area or following a minor modifications application submitted to it by any person. Modifications shall not be considered to be minor when they would alter the general thrust of the plan or affect a Temporary Provisions Scheme boundary or a development boundary indicated in a local plan.

(4) For the purpose of subarticle (3), the following shall be considered to constitute minor modifications:

- (a) changes in the alignment of roads and buildings in a Temporary Provisions Scheme or in a local plan; and
- (b) changes in zoning, other than
 - (i) changes in height limitations; and
 - (ii) changes in zoning of a site which is not designated for the purpose of development.

(5) Where the Authority is considering a minor modification in terms of subarticle (4)(a), the provisions of article 32 shall apply *mutatis mutandis* to such a modification.

(6) Where the Authority is considering a minor modification in terms of subarticle (4)(b), it shall follow the following procedure:

- (a) where the proposal for such a minor modification originates from the Authority itself, it shall comply with the provisions of article 27(2)(a) to (j);
- (b) where the proposal for such a minor modification originates in a minor modifications application, the Authority shall publish such proposal and invite representations on the said application within a specified period of not less than six weeks. The Authority shall then decide the application after taking into consideration all representations submitted to it. The provisions of article 29C(4) and (5) shall also apply.

(7) No appeal from a decision concerning a minor modifications application shall lie to the Appeals Board.

(8) Minor modifications to a plan shall be carried out as aforesaid and in accordance with such procedures as the Minister after consultation with the Authority may prescribe.

29. (1) If at any time or for any location a structure plan is not in force or does not exist, the Authority may prepare a subsidiary plan or plans, but any such plan shall only become operative if it is

Subsidiary plans in the absence of structure plan.

prepared and approved in the same manner as a structure plan or, if a structure plan is in operation, the subsidiary plan may be adopted by the Authority as being within its scope and not in conflict therewith.

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(2) Without prejudice to the provisions of article 63, pending the preparation and approval of the structure plan, or, if a structure plan made under the Building Permits (Temporary Provisions) Act is in force, pending the preparation and adoption or approval of subsidiary plans, the Authority may adopt any subsidiary plans prepared under the Act aforesaid and in force at the commencement of this Act; and upon such adoption such subsidiary plans shall be treated as plans of the Authority approved as required by this Act.

Added by:
XXI. 2001.26.

3. Planning Policies not contained in a Development Plan and Preparation of a Subsidiary Plan or a Planning Policy

Planning Policy
not contained in a
Development Plan
prepared by the
Authority.
Added by:
XXI. 2001.27.

29A. (1) Where the Authority considers that for the proper and effective management of development or for the proper development of land and sea it is necessary to prepare more detailed policies and design guidance other than those already contained in a development plan, the Authority may prepare and adopt such planning policies as it considers appropriate subject to the provisions of this article.

(2) Such planning policies shall be in a form which the Authority considers appropriate to the subject matter, and may be supported by such maps, diagrams, drawings and illustrations as may be considered necessary by the Authority.

(3) A planning policy shall be in conformity with all development plans and may elaborate or provide further guidance on the detailed policies or proposals contained in the said development plans.

(4) When the Authority adopts a planning policy (be it a new planning policy or a revision of an existing planning policy) not contained in a development plan, it shall refer it to the Minister for his approval and the procedure mentioned in article 27(2)(a) to (j) shall *mutatis mutandis* apply:

Provided that where minor modifications not affecting the substance of the planning policy are being proposed, the period mentioned in article 27(2)(b) shall be a period of not less than three weeks.

Request by
Minister to the
Authority to
prepare a
subsidiary plan or a
planning policy not
contained in a
Development Plan.
Added by:
XXI. 2001.27.

29B. (1) The Minister may request the Authority to make a subsidiary plan or a planning policy on any particular matter.

(2) He may also request the Authority to review a subsidiary plan or a planning policy which is already in force. The Minister shall send to the Authority the reasons for making such a request together with a statement of goals and objectives to be attained by the subsidiary plan or planning policy or a revision of such plan or policy.

(3) The Minister shall inform the Authority in writing of his request made in terms of the preceding subarticles of this article.

(4) The provisions of article 27(2) shall apply *mutatis mutandis* to such a subsidiary plan, a planning policy or a review of such plan or such policy:

Provided that where minor modifications not affecting the substance of a planning policy are being proposed, the period mentioned in article 27(2)(b) shall be a period of not less than three weeks.

(5) If the Authority, upon a request by the Minister in terms of subarticle (1), informs the Minister, within thirty days of receipt of such a request, that it is unable, for whatever reason, to prepare such a subsidiary plan or planning policy, the Minister shall instruct the Authority to delegate such functions in terms of article 5(4) with regard to that particular subsidiary plan or planning policy and in so doing it shall ensure that the provisions of this Part are complied with.

29C. (1) Where the Authority is unable to prepare a subsidiary plan or planning policy or fails to delegate such function as is envisaged in article 29B(5), the Minister shall request any person, other than the Authority, to prepare on his behalf a subsidiary plan or a planning policy or a revision of such a plan or such policy.

Minister may request the preparation by any person of a subsidiary plan, planning policy or revision thereof.
Added by:
XXI. 2001.27.

(2) The Minister shall consult the Authority on the terms of reference which are to form the basis of the preparation of a subsidiary plan or a planning policy or a revision of such plan or policy by the said person. The Minister shall then furnish the said person with the relative terms of reference and shall also indicate to the said person the documentation which shall be presented to the Minister when the subsidiary plan, planning policy or a revision of such plan or policy is drawn up. On receipt of such documentation, the Minister shall forward a copy of such documentation to the Authority.

(3) The Minister shall also request the said person to comply with article 27(2)(a) and (b) and, for the purposes of the said paragraphs, the expression "the Authority" shall be construed as a reference to the said person and such person shall revise, if necessary, the subsidiary plan, planning policy or a revision thereof after taking into consideration the representations he may have received in terms of article 27(2)(b).

(4) If the Authority agrees with such a plan, policy or revision thereof, it shall adopt it for submission to the Minister for his approval; and the provisions of article 27(2)(d) to (j) shall, *mutatis mutandis*, apply.

(5) If the Authority does not agree with the said plan, policy or revision of such plan or such policy, it shall draw up a planning position statement indicating the changes to be made to the said plan, policy or revision thereof and shall refer both the said plan, policy or revision of such plan or such policy and its planning position statement to the Minister; and the provisions of article 27(2)(g) to (j) shall *mutatis mutandis* apply.

(6) The subsidiary plan, planning policy or the revision of such plan or policy shall only be prepared by an environmental or spatial

planner having such qualifications as the Minister may prescribe.

PART IV

DEVELOPMENT CONTROL

1. Requirement of permission to develop land

Developments to
require permission.
Substituted by:
XXIII. 1997.11.
Amended by:
XXI. 2001.28.

30. (1) Subject to the provisions of this article and to the following provisions of this Part of the Act, no development shall be carried out after the coming into force of this Act except with the permission of the Authority, in this Act referred to as development permission.

(2) For the purposes of this article, and, unless the context otherwise requires, for all other purposes in this Act, "development" means the carrying out of building, engineering, quarrying, mining or other operations for the construction, demolition or alterations in, on, over, or under any land or the sea or the making of any material change in use of land or building other than:

- (a) maintenance operations, which affect only the interior of a building or do not materially affect the external appearance of the building;

Provided that maintenance operations shall not include demolition and rebuilding works, irrespective of where such demolition and rebuilding works are carried out;

- (b) internal alterations to a building which do not affect the external configuration of appearance thereof and comply with any regulations made under article 60;
 - (c) the use of land for agriculture, animal husbandry and forestry (including afforestation), except where such use consists of:
 - (i) the erection of buildings or amounts to intensive raising of crops or animals; or
 - (ii) the reclamation of land for agriculture by the deposit of material on such land; or
 - (iii) the conversion to agricultural use of land which is not currently used for agricultural purposes; and
 - (d) in the case of buildings or other land that are used for a purpose of any class specified in an order made by the Authority under this Act, the use thereof for any other purpose of the same Class.
- (3) For the purpose of this article:
- (a) the use of a building resulting in an increase or a reduction in the number of dwelling units in which the building was previously used; or

- (b) the deposit of refuse or waste materials on land; or
- (c) the use for the display of advertisements of any external part of a building that is not normally used for the purpose,

involves a material change in the use of that building or land, or part thereof, without prejudice, in the case of advertisements, to any regulations made under this Act with respect to their control.

(4) For the purpose of this article, development includes clearing of valleys from accumulated sediment and development in relation to the sea includes land reclamation from the sea, aquaculture and beach developments and their related uses.

31. (1) The Authority in consultation with the Chamber of Architects may make orders regulating development, including any notification thereof, or any aspect thereof, in such circumstances and under such conditions as may be specified in the order, being development within the scope of, and not in conflict with, the proposals contained in the structure plan.

Development
order.
Amended by:
XXIII. 1997.12;
XXI. 2001.29.

(2) A development order shall be published in the Gazette and shall have effect from the date specified or indicated therein. The development or any aspect thereof regulated by such an order shall be called "exempt works".

(3) The provisions of article 27(2)(j) shall apply to a development order as they apply to subsidiary plans.

(4) A development order shall include works of a relatively minor nature such as internal works, minor additions to existing buildings, minor variations during construction, repairs to dangerous structures, and reconstruction of damaged buildings which repairs and reconstruction are to be carried out in the existing style or according to development plans or planning policies.

(5) Copies of development orders shall be readily accessible to the public by the Authority on the payment of the prescribed fee.

(6) The Authority in consultation with the Chamber of Architects shall periodically review development orders to minimise the development requiring the Authority's permission.

(7) Works carried out under development orders, under the supervision of a person holding a warrant of *perit* or under the supervision of such other persons who are competent for the purpose as the Minister may by regulations prescribe and where required in the order are to be notified in writing to the Authority.

(8) A development order may regulate:

- (a) development described as permitted development in a development order which does not require that written notification of such development be given to the Authority;
- (b) development described as permitted development in a development order provided that written notification

of such development is to be given to the Authority;

- (c) development described as permitted development in a development order provided that written notification of such development is to be given to the Authority and the Authority has endorsed such development as being permitted development.

(9) No new development in terms of a development order may be carried out on a site if on the said site there exists illegal development of whatever nature unless that new development is one which the Minister may prescribe and which is covered by a development order as mentioned in subarticle (8)(a) and (b).

Application for
development
permission.
Amended by:
XXIII. 1997.13;
XXI. 2001.30.

32. (1) Any person wishing to carry out development, not being development for which permission is given in a development order and to be carried out in accordance with the provisions thereof, shall apply to the Authority for development permission, in such manner, on such form and giving such information as the Authority may prescribe.

(2) Any person may also apply to the Authority for a determination as to whether a proposal constitutes development and requires development permission.

(3) An applicant for development permission shall certify to the Authority that he is the owner of the site or that he has notified the owner of his intention to apply by registered letter of which a copy has been received by the Authority.

(4) The Authority shall, at the expense of the applicant, cause the proposal and the name of the applicant to be published in the local press and advertised by a notice on the site. The Authority shall be responsible to affix the notice on the site and the applicant shall be responsible to ensure that the notice remains affixed for a period of twenty days from the date the notice is so affixed. A copy of any application and the relative site plan shall be served by the Authority on the local council in whose locality the development is being proposed to be carried out. In the case of major projects the Authority may require the applicant to publicise his application in such other manner as it may deem necessary. The Minister may prescribe other methods to provide publicity to an application in addition to the above.

(5) Any person may, on the basis of issues relevant to planning, make representations objecting against any development. Such objection shall be in writing and shall contain a reasoned justification therefor, and shall be received by the Authority within a period of fifteen days from the publication of the notice referred to in subarticle (4), provided that the Authority may for major projects extend the aforesaid period up to thirty days and in such case it shall give notice of such extension in the said publication. Such period may be shortened to seven days in urgent cases as may be indicated in the publication. The Authority shall consider and decide on the objection. Any person who has made written objections to the development as aforesaid shall be informed by the Authority or the Commission, as the case may be, where fresh plans

have been filed, if such is the case, and he shall also be invited to be present at the Authority's or the Commission's sitting when such application shall be discussed.

(6) An application shall be considered as having been *ex lege* suspended if no communication is received from the applicant within two months from receipt by the said applicant of a notice of suspension of an application issued by the Authority. The said notice shall be sent by the Authority to the applicant after the expiration of a period of two months from the date of service upon the applicant of a request in writing for further information or for amended plans was made to him by the Authority, unless the applicant requests an extension of time for such information or amended plans, in which case the period of two months shall be accordingly extended by two months:

Provided that an application shall be deemed to be withdrawn if it shall remain suspended for a period of six months and it is not reactivated by the applicant by notice in writing to that effect to the Authority giving the information or amended plans requested by the Authority.

32A. (1) There shall be such officers, to be known as the Planning Mediators, whose function shall be to act as a mediator at the request of an applicant seeking development permission between the Director and the applicant after the communication by the Director to the applicant of the application report. The Authority or the Commission, as the case may be, shall consider any opinion expressed by the Mediator but they shall not be bound by it.

Planning Mediator.
Added by:
XXI. 2001.31.

(2) There shall be a panel of Mediators appointed by the Minister after consultation with the Authority. A Mediator shall be appointed from among persons versed in planning or in architecture and civil engineering or in any other discipline relevant to planning.

(3) Subject to the foregoing provisions and to any regulations made under subarticle (5), a Mediator may regulate his own proceedings.

(4) No appeal shall lie to the Appeals Board in terms of article 15(1)(a) from anything done by the Mediator.

(5) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article and, without prejudice to the generality of the foregoing, he may -

- (a) establish the procedure to be followed by a Mediator;
- (b) prescribe those types of applications which an applicant may not refer to a Mediator;
- (c) prescribe a tariff of fees for services rendered by a Mediator;
- (d) prescribe the procedure to be followed by the Director during consultation meetings with the applicant and his representative;

Development
permissions.
Amended by:
XXIII. 1997.14;
XXI. 2001.32.

- (e) prescribe the procedure to be followed in the formulation of an application report by the Director.
- 33.** (1) In its determination upon an application the Authority shall -
- (a) apply the following:
- (i) development plans, including the height limitations shown in the Temporary Provisions Schemes or in local plans, unless the limitation may be modified by applying a planning policy which deals specifically with the maximum building height which may be permitted on a site, which policy shall take into consideration both the site coverage and the building volume which may be permitted on a site,
 - (ii) planning policies:
- Provided that subsidiary plans and planning policies shall not be applied retroactively so as to adversely affect vested rights arising from a valid development permission; and
- (b) have regard to:
- (i) any other material consideration, including aesthetic and sanitary considerations, which the Authority may deem relevant;
 - (ii) representations made in response to the publication of the development proposal.
- (2) The Authority shall have power to grant or to refuse a development permission, and in granting such permission the Authority shall be entitled to impose such condition which it may deem appropriate:
- Provided that upon a refusal or the imposition of particular conditions, the Authority, or the Commission, as the case may be, shall give specific reasons based on existing development plans and planning policies for such refusal or for any particular conditions that may have been imposed.
- (3) A development permission may be granted for a limited period or in perpetuity, but shall in all cases cease to be operative if development has not been completed within five years of its issue, provided that the Authority may, on the application of the person holding the development permission, extend the said permission to such further period or periods as it may consider reasonable.
- (3A) In granting a development permission, the Authority may require the development to be completed within a specified period of time as it may establish provided that the Authority shall state the reasons justifying such requirement.
- (4) Except as may be otherwise provided in the permission, a development permission shall enure for the benefit of the land and for all persons for the time being interested therein, but without prejudice to the other provisions of this Act affecting its validity or

operation. The permission shall automatically pass on to new owners upon the notification of the transfer of ownership by registered letter to the Authority.

(5) In granting a development permission, the Authority may require the applicant to carry out the development in stages. The Authority shall inform the applicant in the said permission which are the said stages and, following the completion of each stage, the applicant shall request the Authority to carry out an inspection of the works carried out; and, if following such an inspection, it is found that the works have been carried out in terms of the development permission and approved plans, the Authority shall authorize the applicant to carry out the next stage of the development.

(6) Where the Authority, in the case of major projects, considers it appropriate to closely monitor specific conditions in a development permission by appointing a person competent for the said purpose, it shall do so at the expense of the applicant.

34. (1) In any case in which the Authority may under this Act grant permission to develop land it may grant permission for the retention on land of any buildings or works constructed or carried out thereon, or for the continuance of any use of land, without permission under this Act or after such permission has ceased to be valid or operative; and references in this Act to permission to develop land or carry out any development on land, and to applications for such permission, shall be construed accordingly:

Supplementary provisions re development permissions.
Amended by: XXIII. 1997.15; XXI. 2001.33.

Provided that permission under this subarticle shall not be granted except on an application for such permission and unless the applicant or his predecessor in title has:

- (a) forthwith upon being required so to do, ceased to carry out any works he was required to interrupt; and
- (b) paid such fines or made such other payments as may be due by reason of any offence against this Act.

(2) A permission under this article may be granted so as to take effect from the date on which the buildings or works were constructed or carried out or the use was commenced, or from the date the development permission ceased to be valid or operative, as the case may be.

(3) A development permission may specify the purposes for which a building may be used; and if no purpose is specified the permission shall be construed as including permission to use the building for the purpose for which it is designed.

(4) Where a development permission is given for a limited period only, nothing in this Act shall be construed as requiring permission to be obtained thereunder for the resumption, at the expiration of that period, of the use of the land for the purpose for which it was normally used before the permission was granted, but no account shall be taken of any use made in contravention of this Act.

(5) The Authority may, prior to the issue of or in issuing a

development permission, demand from the person in whose favour the permission will be issued, as a condition for the issue of the development permission, to provide a bond in favour of the Authority in order to guarantee compliance with the conditions of the permission once issued, or in order to guarantee payment in respect of damages which may be caused to the environment or to the infrastructure. The Authority may, after the issue of a development permission, if the development is not being carried out in accordance with the permission, or is otherwise causing damage to the environment or the infrastructure, demand the said person in whose favour the permission has been issued, as a condition for the continuance of the development permission, to provide a bond in favour of the Authority in order to guarantee compliance with the conditions of the permission, or in order to guarantee payment in respect of damages which may be caused to the environment or to the infrastructure:

Provided that nothing in this subarticle shall be interpreted as authorizing the Authority to demand a bond in an amount not commensurate with the nature of the development project:

Provided further that such a bond may only be forfeited by the Authority if there is clear evidence that the applicant has not complied with the conditions of the development permission and the reasons for forfeiting the bond shall be communicated in writing to the applicant.

Register of applications.
Substituted by:
XXIII. 1997.16;
XXI. 2001.34.

35. (1) The Authority shall keep and make available for public inspection at such reasonable times as it may determine, a register or registers -

- (a) of all applications for development permission received by it containing the name of the applicant and details of the proposal including documents and detailed plans; and
- (b) of all decisions including documents and detailed plans made on such applications.

(2) The Authority shall make available for public inspection as aforesaid -

- (a) the application report of all applications and any planning report regarding such applications;
- (b) all development permissions issued by the Authority together with the relative plans and documents, including the reasons for the grant of such permissions;
- (c) all environmental impact statements, environmental planning statements and traffic impact statements:

Provided that for the purposes of this subarticle the application report and any plans concerning applications which relate to national security, defence, banks, prisons, the airport and other institutions or premises whose security it is desirable to safeguard as the Authority may establish shall not be made accessible to the public:

Provided further that for the purposes of this article, in the case of a file held by the Authority, the said file shall not be accessible to the public except for that part of the file containing the information mentioned in paragraphs (a) to (c).

(3) No copies shall be given by the Authority of any plans accompanying any application, other than those contained in an environmental impact statement or an environmental planning statement, to any person apart from the applicant or his representative and, for the purposes of consultation, to any department or agency of government.

(4) Copies may be given, on the payment of such fee as may be prescribed by the Authority, of the application report and of a development permission (other than the plans attached to such a permission).

36. (1) Subject to the provisions of this article, the Authority shall take a decision on any application for development which is -

- (a) within a temporary provisions scheme boundary or a development boundary as indicated in a local plan; and
- (b) in conformity with development plans and planning policies

Decisions to be taken without delay.
Substituted by:
XXIII. 1997.17;
XXI. 2001.35.

not later than twelve weeks after it has validated the application:

Provided that the Authority may extend the said period by an additional period of twenty-six weeks by posting a registered letter to the applicant giving the reasons, based on planning issues, for such an extension.

(2) Notwithstanding the provisions of subarticle (1), where the Authority, within the original or extended period mentioned in subarticle (1), has informed the applicant that the application requires an environmental impact assessment, whether under any other law, or because of any other consideration, or where a traffic impact statement is required, or where the Authority requires consultation with government departments or agencies, or where a mediator is appointed, or during such period when the Authority's offices are closed as the Minister may prescribe, the period taken for the submission by the applicant of an assessment or statement acceptable to the Authority, or for a response to be given by government departments or agencies, or for the formulation by the mediator of an opinion, or when the Authority's offices are closed as stated, shall not, in each case, be considered as forming part of the original or extended period mentioned in subarticle (1):

Provided that the said period shall not be suspended where the Authority's request for the carrying out of such assessments or statements or for consultations with government departments or agencies is made later than twenty-eight days prior to the expiry of the original or extended time mentioned in subarticle (1).

(3) If a government department or agency does not respond in writing to the Authority not later than four weeks from the date of receipt of request by the Authority it shall be deemed not to object to such application.

(4) The period mentioned in subarticle (1), original or extended, shall also be suspended during such period until the applicant, at the Authority's request, submits amended plans, new information or a reply to any objection made by the Authority on any application:

Provided that the said period shall not be suspended where the Authority's request for any amended plans, new information or replies to its objection is made later than fourteen days prior to the expiry of the original or extended period mentioned in subarticle (1).

(5) When the original or extended period mentioned in subarticle (1) has expired, and the Authority has not taken a decision on the application, the applicant may request the Chairman of the Board by means of a registered letter that his application be dealt with in terms of the following subarticles of this article.

- (6) (a) On receipt of a registered letter mentioned in subarticle (5), the Chairman of the Board shall first establish whether the original or extended period mentioned in subarticle (1) has expired. If the Chairman of the Board is of the opinion that such is not the case, he shall inform the applicant accordingly giving reasons therefor.
- (b) If such period has expired, the Chairman of the Board shall order the Director to process the application, to draw up the application report and to refer same to the Chairman of the Board within five working days from the date of receipt, by the Chairman of the Board, of such a letter.
- (c) When the Chairman of the Board receives the Director's report, or, following the lapse of the five working days mentioned in paragraph (b), he shall put the application on the agenda of the next sitting of the Authority or of the Commission, as the case may be, and the Authority or the Commission, as the case may be, shall determine whether the application conforms to subarticle (1) during the first sitting or, with the consent of the applicant, during another sitting and the provisions of article 13(6) shall not apply.
- (d) If the Authority or the Commission, as the case may be, decide that the application conforms to subarticle (1), the Authority or the Commission, as the case may be, shall forthwith grant the development permission, with or without conditions as it may deem proper.
- (e) If the Authority or the Commission decide that the application does not conform to subarticle (1), the Authority or the Commission, as the case may be, shall refer the application to the Director for processing according to law.
- (f) If the application is not brought before the Authority or the Commission for determination as mentioned in

paragraph (c) or if the Authority or the Commission, as the case may be, after taking a decision in terms of paragraph (d) fails to issue the permission within four weeks, the application shall be deemed to have been approved and the Secretary of the Authority shall forthwith issue the relative development permission subject to such standard conditions which are normally imposed in a development permission.

- (7) (a) When an application does not fall under subarticle (1), the Authority shall take a decision on the application not later than twenty-six weeks after it has validated the application.
- (b) The provisions of the proviso to subarticle (1), and of subarticles (2), (3) and (4) shall *mutatis mutandis* apply to the period of twenty-six weeks mentioned in paragraph (a).

36A. The Authority shall not delegate to the Commission or to any other body or person the determination of the following applications:

Applications the decisions whereof cannot be delegated.
Added by:
XXI. 2001.35.

- (a) applications in respect of development of a national or strategic significance or affecting matters of national security or other national interests;
- (b) applications in respect of development which could affect the interests of other governments;
- (c) applications in respect of development which is subject to an environmental impact statement;
- (d) requests for reconsideration where the decision to be reconsidered was taken by the Authority itself.

37. (1) If an applicant considers that conditions imposed upon a development permission, or a refusal of such a permission, is unreasonable he may, without prejudice to his right of appeal, either request the Authority or the Commission, as the case may be, to reconsider its decision or he may lodge an appeal with the Appeals Board under article 15. A request for reconsideration shall not be made concurrently with an appeal. A request for reconsideration and an appeal under this subarticle, as the case may be, shall be made within thirty days of receipt of the decision of the Authority or of the Commission, as the case may be. Where a request for reconsideration has been made, an appeal may be made to the Appeals Board within thirty days of receipt of the decision taken in the reconsideration.

Appeals from decisions of Authority.
Amended by:
XXIII. 1997.18.
Substituted by:
XXI. 2001.36.

(2) No reconsideration may be demanded by an interested third party, even if such interested third party has made written objections in accordance with the provisions of article 32(5).

(3) During the reconsideration stage, the Authority or the Commission, as the case may be, may request the applicant to file fresh plans, in which case the Authority or the Commission, as the case may be, shall give reasons for such a request provided that the substance of the development shall not change and any person who

has made written objections to the development in terms of article 32(5) shall be informed that such fresh plans have been so filed and shall also be invited to be present at the Authority's or the Commission's sitting, as the case may be, when such application shall be discussed. Both the applicant and the objectors, if any, shall be informed of the date and time of the meeting and, if present, may address the Authority or the Commission, as the case may be, with regard to the planning matters concerning the said application.

(4) The Minister may make regulations to prescribe the procedure to be followed during the reconsideration stage.

Application for
development
permission by
Government and
its agencies.
Amended by:
XXI. 2001.37.

38. (1) A department of the Government or a body corporate established by law shall seek development permission in accordance with such regulations or rules (if any) as may be prescribed under article 60; and every proposal by any such department or body shall be published and made the subject of public representations in the same manner as a private proposal for development, or as may be prescribed as aforesaid.

(2) A department of the Government or body corporate as aforesaid shall not dispose of land, or promise the disposal of land, for a specified use unless such use has been approved by the Authority or is allowed under a development plan or a subsidiary plan.

Applications for
mining of
minerals.

39. (1) Where an application to develop land consists in the mining of minerals the Authority may, and, where planning and environmental standards so require, shall, require the applicant to provide a scheme for the treatment of the working and surrounding areas during the working period and for the treatment of the said areas when working is completed.

(2) The Authority shall not grant permission for the mining of minerals unless it is satisfied that planning and environmental standards will be met and the site will be kept and eventually left in acceptable conditions.

(3) Where the Authority has required a scheme to be submitted as provided in subarticle (1), the scheme, as accepted by the Authority, shall be made a condition of any permission granted by it; and the Authority shall further require such guarantees to be given by the applicant as it deems necessary to ensure that the scheme will be adhered to.

2. Revocation or modification of permission to develop land

Revocation and
modification of
development
permission.
Added by:
XXI. 2001.38.

39A. (1) The Authority may, only in the cases of fraud or where public safety is concerned or where there is an error on the face of the record, by order revoke or modify any development permission granted under this Act, stating in such order its reasons for so doing; and, prior to deciding to revoke or modify a development permission in terms of this subarticle, the Authority shall inform the person who will be affected by its decision of the date and time of its meeting where the Authority shall also hear the said person's submissions if the latter opts to attend.

(2) For the purposes of subarticle (1) -

"fraud" means the submission to the Authority of any information, declaration or plan on the basis of which the Authority has approved a development permission, where such information, declaration or plan is false, misleading or incorrect, irrespective of whether such deceit is the result of a wilful or negligent act:

Provided that the Authority shall not revoke or modify a development permission on the basis of fraud where the fraudulent information did not have a material bearing on the issuing of the development permission; and

"error on the face of the record" means an error on the face of a record which offends against the law.

(3) The applicant shall have a right to appeal the Authority's decision to the Appeals Board within thirty days from the date of service of a revocation order or a modification order.

(4) No compensation shall be payable by the Authority when it acts under the provisions of subarticle (1) where the reason for the revocation or a modification of a development permission is based on fraud or error of law on the face of the record.

(5) Where the reason for revocation or modification of a development permission is public safety, the following rules shall apply:

- (a) any demolition or other work that may be necessary for compliance with the order shall be carried out by, or at the expense of, the Authority;
- (b) if on a claim made to the Authority within twelve months of the date of the revocation order or the modification order, it is shown that any person interested in the land has incurred expenditure that is rendered useless by the revocation or modification, or has otherwise sustained loss or damage that is directly attributable to the revocation or modification, the Authority shall, subject to paragraph (c), pay to that person compensation in respect of that expenditure, loss or damage;
- (c) no compensation shall be payable under this article -
 - (i) in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of the revocation or modification,
 - (ii) in respect of any work carried out before the grant of the permission that is revoked or modified, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission;
- (d) where compensation is payable under this article in respect of expenditure incurred in carrying out any work on land, if the competent authority under the Land Acquisition (Public Purposes) Ordinance acquires any interest in that land, any compensation

payable in respect of the acquisition of that interest shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under this article.

Planning obligations.
Added by:
XXI. 2001.38.

40. (1) A planning obligation may be entered into in those cases where the Authority, in connection with a grant of development permission, seeks to impose on the applicant for development permission an obligation -

- (a) to carry out works -
 - (i) on the land in respect of which development permission is sought, or
 - (ii) on any other land or
 - (iii) on the land mentioned in both sub-paragraphs (i) and (ii); or
- (b) to make some payment or confer some extraneous right or benefit,

where the Authority considers that it would be in the interests of the proper planning of the area. The Authority shall seek to obtain these benefits or gains by means of conditions attached to a grant of development permission or by means of a planning obligation entered into by a public deed made by the applicant for development permission with the Authority.

(2) Any person interested in land may, by agreement with the Authority, enter into a planning obligation -

- (a) restricting the development or use of that land in any specified way;
- (b) requiring specified operations or activities to be carried out, in, on, under or over that land;
- (c) requiring that land to be used in any specified way; or
- (d) requiring a sum or sums to be paid to the Authority on a specified date or dates or periodically.

(3) The Minister may, in consultation with the Authority, make regulations for giving better effect to the provisions of this article and may, without prejudice to the generality of the foregoing:

- (a) prescribe the procedure how a planning obligation may be entered into, enforced, modified and discharged;
- (b) establish any restrictions, conditions or the payment of any sums of money which may be imposed in such planning obligations; and
- (c) regulate appeals to the Appeals Board made in terms of subarticle (4).

(4) The applicant and any person interested in land may appeal to the Appeals Board from a planning obligation entered into in terms of subarticle (1).

3. Charges and contributions in respect of development

41. (1) The Authority shall have power to levy a charge in respect of any permission to carry out development, including any application therefor, in accordance with a schedule of charges established by it with the concurrence of the Minister and of the Minister responsible for finance, taking account of the nature of the development, the timing of the development in relation to the planned phasing thereof, of the conditions attaching to the permission and of any other relevant consideration.

Charges and contributions.
Amended by:
XXI. 2001.39.

(2) A charge made under this article shall be known as the Development Permission Fee.

42. (1) The Authority shall have power to levy a contribution towards the cost of the infrastructure services and other services or facilities arising from any permission to develop land from the person applying for such permission or carrying out such development, in accordance with such rates as the Authority may, with the concurrence of the Minister and of the Minister responsible for finance, from time to time determine, taking account of the services involved, the areas of development and other material considerations.

Contributions towards infrastructure.
Amended by:
XXIII. 2000.30.

(2) A contribution levied under this article shall be known as the Infrastructure Services Contribution.

(3) The sums collected by the Authority under this article shall be paid to the Government each year after a deduction therefrom is made to cover the reasonable costs incurred in the determination and levying of the contribution:

Provided that with respect to contributions leviable by the Authority on behalf of the Malta Transport Authority in terms of article 20 of the Code of Police Laws, such regulations shall be made with the concurrence of the Minister responsible for the Malta Transport Authority and the Minister responsible for finance, and such contributions leviable, as aforesaid shall, notwithstanding anything contained in this Act, be paid by the Authority to the Malta Transport Authority each year after a deduction therefrom is made to cover the reasonable costs as may be agreed between the two authorities incurred in the determination and levying of the contributions.

Cap. 10.

43. No development permission shall be granted, and no development authorised by a development order shall be carried out, unless and until any fee or contribution payable under articles 41 and 42 has been paid to and received by the Authority; and any works carried out without such payment having been made and received shall be deemed to be development carried out without the permission of the Authority.

Development to commence after payment of fee and contribution.

44. (1) The schedule of charges and the rates of contributions established under articles 41 and 42, as from time to time in force, shall be published in the Gazette and shall have effect as so published.

Publication of charges and contributions.

(2) The charges and contributions levied under the articles

aforesaid shall be collectively known as the "building levy".

4. Other powers of development control.

Discontinuance or
removal orders.
Amended by:
XXI. 2001.40.

45. (1) The Authority may, having regard to the development plans, planning policies and to other material considerations, by notice served on the owner or occupier of any land, require any existing use or activity or any works to be discontinued or any building, plant, equipment or other thing whatsoever to be removed from any land, or requiring both such discontinuance and removal.

(2) Where a discontinuance or removal order is made in respect of an activity, works or use, or of a building, plant, equipment or other thing lawfully carried on or in existence on the land mentioned in the notice before the commencement of this Act, or which was started or came into existence after the commencement of this Act in accordance with a development permission under this Act, the Authority shall be liable to pay compensation for any losses sustained as a result of the notice:

Provided that any benefits derived from the same notice shall be offset against the losses aforesaid.

Scheduled property
and conservation
orders.
Amended by:
XXIII. 1997.20;
XXI. 2001.41.

46. (1) The Authority shall prepare, and from time to time review, a list of areas, buildings, structures and remains of geological, palaeontological, cultural, archaeological, architectural, historical, antiquarian, or artistic or landscape importance, as well as areas of natural beauty, ecological or scientific value (hereinafter referred to as "scheduled property") which are to be scheduled for conservation and may in respect of all or any one or more of the scheduled property make conservation orders to regulate their conservation:

Provided that upon the issue of a conservation order the owner shall have the right to immediate access at reasonable times to all documentation of the Authority concerning the said order for the purpose of studying the relative findings and considerations and the owner may contest the said decision in writing with the Authority within thirty days from the date when the order is notified to him or is published in the Gazette, whichever is the later.

(2) The list of conservation orders, and any additions or amendments thereto, shall be published in the Gazette and in a local newspaper. The Authority shall also notify any one of the owners of any property subject of a conservation order of the fact of its inclusion in the list and of any conservation order made with respect to it. Notice of such conservation order shall also be affixed on site. If none of such owners is known, or if it is not reasonably possible to effect service on such owners, the said notice shall only be affixed on site and no service on such owners as aforesaid need be made. Notice of such conservation order shall be registered in an index held for that purpose which identifies the property subject to that order. The said index shall be held in an electronic form in such a way that researches to determine whether a property is subject to such an order may be carried out. The Authority shall keep a copy of the said index in the office of the Land Registry and

shall issue a certificate which indicates whether a particular property is subject to the said order on the payment of such fee as may be prescribed.

(2A) Where the Authority has scheduled property in terms of this article, it shall register the said property in the index mentioned in subarticle (2) indicating the said property as having been scheduled, and the provisions of the said subarticle concerning the indexing of conservation orders shall *mutatis mutandis* apply. The list of scheduled property, and any additions or amendments thereto, shall be published in the Gazette and in a local newspaper. The Authority shall also notify any one of the owners of the scheduled property of the fact of its inclusion in the list. A notice of the said scheduling shall also be affixed on site. If none of such owners is known, or if it is not reasonably possible to effect service on such owners, the said notice shall only be affixed on site and no service on such owners as aforesaid need be made.

(2B) For the purposes of subarticles (2) and (2A), "site" means a single property or more than one property, irrespective of who is the owner of that property, which forms part of the land which is scheduled or which is subject to a conservation order in terms of this article.

(3) The carrying on of any work in, and the demolition, alteration or extension of, any scheduled property is prohibited or restricted as provided in this article or in a conservation order.

(4) No works of any description shall be carried out in or on any scheduled property and no scheduled property shall be demolished, altered or extended except with the permission of the Authority granted on an application made to it and giving such details as the Authority may require or in accordance with the provisions of a conservation order; and for the purpose of this article, damage to or destruction of any part of a scheduled property shall be deemed to be a demolition thereof.

(5) A permission of the Authority and a conservation order granted or made under this article may contain such conditions and other provisions as the Authority may deem necessary or expedient; and a conservation order may regulate any matter affecting scheduled property.

(6) In respect of any scheduled property, the Authority shall also have power to require the owner, by notice in writing, to undertake such works generally, or as may be specified in the notice, as may be necessary to ensure that no further deterioration occurs. In default, the Authority may give a further notice to the owner to carry out and complete the works within a specified time, and if the owner is still in default it may itself carry out, or cause to be carried out, the necessary works and recover the cost thereof from the owner of the scheduled property.

(7) If any scheduled property is demolished in contravention of any of the provisions of this article then, in addition to any penalty or other effect under this Act, every person convicted of such offence shall be liable to pay compensation to the Authority calculated on the basis of whichever is the highest of the following:

- (a) the value of the thing destroyed,
- (b) the cost of restoration or repair,
- (c) the financial benefit which could be achieved as a consequence of the demolition.

(8) An owner of scheduled property has a right to demand the reconsideration of any scheduling of his property. Such demand shall be entered in writing with the Authority within thirty days of notification or publication in the Gazette, whichever is the later, of the scheduling and the Authority shall decide within three months of receipt by it of the demand for reconsideration.

(9) Any person who feels aggrieved by a decision of the Authority under this article may appeal to the Appeals Board for a revocation or modification of such a decision.

(10) The Minister's endorsement shall be sought when the Authority deschedules a scheduled property or when it downgrades the protection afforded to a scheduled property, and no such descheduling or downgrading shall be valid before it is endorsed by the Minister.

(11) When the Appeals Board decides to deschedule a scheduled property or to downgrade the protection afforded to a scheduled property, the Board shall seek the Minister's endorsement and the period for lodging an appeal from the Board's decision to the Court of Appeal shall commence to run from the date in which the Board would have informed the appellant accordingly of the Minister's decision.

(12) Notwithstanding the provisions of article 15, an appeal to the Appeals Board from a scheduling of property or the issue of a conservation order shall not stay the execution of such scheduling or conservation order.

Emergency
Conservation
Order.
Amended by:
XXIII. 1997.21;
XXI. 2001.42.

47. (1) If property which is not scheduled but which the Authority believes could have an importance or value as is described in subarticle (1) of article 46 sufficient to have it listed, is at risk of being demolished, damaged or destroyed, the Authority may make an emergency conservation order and take such further steps for the protection of such property as it may deem necessary and the provisions of the proviso to subarticle (1) of article 46 shall apply:

Provided that in case of urgency the Chairman of the Authority may make an emergency conservation order without the need of consulting the other members of the Authority.

(2) An emergency conservation order shall be published in the Gazette and shall have effect immediately on its publication.

(3) An emergency conservation order shall, for a period of six months from its publication in the Gazette, have the same effect as the inclusion of the property to which it refers in the list of scheduled property. It shall cease to have any effect on the expiration of the period aforesaid.

(4) Notwithstanding the provisions of article 15, an appeal to

the Appeals Board from an emergency conservation order shall not stay the execution of such order.

48. (1) The Authority shall prepare, and from time to time review, a list of individual trees, groups of trees or woodlands (hereinafter referred to as "scheduled trees") which it considers should be protected, and may in respect of all or any one or more of them make tree preservation orders regulating such protection.

Protected trees and
Tree Preservation
Orders.
Amended by:
XXI. 2001.43.

(2) No scheduled tree shall be cut down, lopped, topped or wilfully damaged or destroyed except with the permission of the Authority on an application made to it or as may be allowed under a tree preservation order.

(3) A permission of the Authority and a tree preservation order granted or made under this article may contain such conditions and other provisions as the Authority may deem necessary or expedient; and a tree preservation order may regulate any matter affecting scheduled trees.

(4) The provisions of the proviso to subarticle (1), article 46(2A) and (8) to (12) and article 47 shall apply to scheduled trees as if for references therein to scheduled property there were substituted references to scheduled trees.

49. (1) The Authority may make orders for restricting or regulating advertisements, which shall be known as advertisements regulation orders, and which, without prejudice to the generality of the aforesaid may provide:

Advertisements.

- (a) for regulating the dimensions, appearance and position of advertisements, the sites on which advertisements may be displayed and the manner in which they are to be affixed to land;
- (b) for requiring the consent of the Authority to be obtained for the display of advertisements or of advertisements of any class or classes specified in the order;
- (c) for regulating the manner in which the consent aforesaid may be obtained, whether by application of provisions of this Act relating to permissions to develop land or otherwise;
- (d) for enabling the Authority to require the removal of any advertisement that is being displayed in contravention of any order made under this article, or otherwise against any provision of this Act, or the discontinuance of the use for the display of advertisements of any site that is being used for that purpose in contravention of any order or provision aforesaid, and for applying any of the provisions of this Act with respect to enforcement, subject to such adaptations and modifications as may be specified in the order, or otherwise provide for the enforcement of the order and of any notices issued thereunder;
- (e) for exempting from the requirements of the order, or

any provisions thereof, the display of advertisements or the use of sites for such display, of such class or classes specified in the order, or the continued display or use aforesaid for such period or periods as may be specified in the order;

- (f) for directing that any law affecting the display of advertisements for the time being in force shall not apply to the display of advertisements in any area to which an order made under this article applies;
- (g) for prescribing matters that are to be, or may be prescribed.

(2) An advertisements regulation order may be made to apply to advertisements that are being displayed on the date the order comes into force, or to sites being used for the display of advertisements on the date aforesaid:

Provided that a person affected adversely by any such application of the order shall, on a claim made to the Authority within twelve months from the date on which he is so affected, and in such manner as may be prescribed by the Authority, be entitled to recover from the Authority compensation in respect of any expenses reasonably incurred by him to comply with the order and in respect of any remaining value of the advertisement.

(3) Where the display of advertisements involves the development of land within the meaning of this Act, permission for that development shall be deemed to be granted for the purposes of this Act if the display is made in conformity with the provisions of this article and of any order made thereunder.

(4) For the purposes of this Act, but without prejudice to the generality and the normal meaning of the expression, a person shall be deemed to display an advertisement if -

- (a) the advertisement is displayed on land of which he is the owner or occupier; or
- (b) the advertisement gives publicity to his goods, trade, business or other concerns,

unless he proves that the advertisement was displayed without his knowledge or consent and can further show that he took all reasonable steps to have the display discontinued as soon as he became aware of the display.

PART V

ENFORCEMENT OF CONTROL

Right of entry.
Substituted by:
XXI. 2001.45.

50. Notwithstanding the provisions of any other law, any officer or servant of the Authority or any other person, if authorised by the Authority in this respect, may, at any reasonable time, and if so required by the Authority with the assistance of the Police Force enter upon any land and inspect, survey, or verify whether illegal

development is taking or has taken place, or do anything that is ancillary or consequential thereto.

51. (1) The Authority shall monitor all development operations to ensure that development is carried out only in accordance with the requirements of this Act and in compliance with the decisions lawfully taken under this Act.

Monitoring of development.

(2) The Authority shall also undertake a review of all development carried out before the coming into force of this Act not in compliance with plans or policies in force at the time the development took place; and in respect of any such development the Authority shall have such powers as it has in respect of development carried out after the coming into force of this Act in order to ensure that the plans and policies aforesaid are enforced or, if this is not reasonably possible, to regularise any such development to the extent the Authority deems adequate in the circumstances.

52. (1) If it appears to the Authority that any development is being carried out without the grant of permission required under this Act, or that any conditions subject to which such permission was granted in respect of any development are not being complied with, the Authority shall serve a stop notice on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient requiring works or the development to be stopped forthwith:

Enforcement procedure.
Amended by:
XXIII. 1997.22.
Substituted by:
XXI. 2001.46.

Provided that the Authority may issue a partial stop notice requiring work to be stopped forthwith only in relation to that part of the development to which the notice applies and not in relation to the whole development.

(2) A copy of the notice mentioned in subarticle (1) may also be served on any builder, contractor or workman on the site and the Authority may also affix such notice in a prominent position at a point of entry onto the site.

(3) The Authority shall also inform -

- (a) the local council in whose locality the land mentioned in subarticle (1) is found;
- (b) the *perit* responsible for the said works, if known,

that a stop notice as aforesaid has been issued by the Authority. The Authority shall register all stop and all other enforcement notices in terms of this Act in the index mentioned in article 46(2), and the provisions of the said article concerning indexing of conservation orders shall *mutatis mutandis* apply to stop and other enforcement notices in terms of this Act:

Provided that the non-compliance with the provisions of this subarticle shall in no case invalidate any notice issued under subarticles (1) and (2).

(4) Any notice made under this article shall contain a detailed description of the infringements being alleged and a site plan indicating the land which is the subject of such a notice shall be

annexed thereto.

(5) If it appears to the Authority that any development of land has been carried out after the coming into force of this Act without the grant of permission required in that behalf under this Act, or that any conditions subject to which such permission was granted in respect of any development have not been complied with, the Authority may, having regard to the provisions of development plans, planning policies and any other material consideration, serve on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient an enforcement notice and shall inform the persons mentioned in subarticle (3) of such an enforcement notice, requiring such steps as may be specified in the notice to be taken within such time as may also be so specified for restoring the land to its condition before the development took place or for removing such development or for securing compliance with the conditions aforesaid, as the case may be; and in particular, but without prejudice to the generality of the aforesaid any such notice may, for the purpose aforesaid, require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on the land of any building or other operations.

(6) A notice given under any of the foregoing provisions of this article shall -

- (a) in respect of any requirement stopping or prohibiting further works or development or requiring the cessation of a use, take effect immediately upon service of the notice in terms of subarticle (1) notwithstanding that an application for development permission for the development referred to in the enforcement notice has been submitted or an appeal has been lodged against the enforcement notice;
- (b) in respect of any other requirement, shall take effect at the expiration of such period (being not less than fifteen days and not more than thirty days after service thereof) as may be specified therein.

(7) When an application for development permission has been submitted before the expiry of the period mentioned in subarticle (6)(b) -

- (a) for the retention on the land of any buildings or works to which the enforcement notice relates; or
- (b) for the continuance of any use of the land to which the enforcement notice relates,

the operation of the notice, in respect of any requirement other than a requirement stopping or prohibiting any further work or development, or requiring the cessation of a use, shall be suspended pending the final determination of the application, and if the permission applied for is granted on that application and comes into operation, the enforcement notice shall cease to have effect:

Provided that any application to regularise the development shall be dismissed forthwith if a requirement in the notice stopping

or prohibiting further work or development, or requiring the cessation of a use, has not been complied with or if any penalty or other payment for which any person has become liable under this Act in respect of the relevant development has not been paid.

(8) Where an application is dismissed as aforesaid, the Authority may exercise its powers under article 55A(1) notwithstanding that a second or subsequent application intended to regularize the illegal development may have been filed with the Authority concerning the same or part of the same site, irrespective of whether the said application is filed by the same applicant or by another applicant.

(9) Any person who feels aggrieved by any enforcement notice served on him may, within fifteen days from the service of the notice, appeal against it to the Appeals Board, and on any such appeal the Board:

- (a) if satisfied that permission was granted under this Act, or under any other law which preceded this Act regulating building permits, for the development to which the enforcement notice relates, or that no such permission was required in respect thereof, as the case may be, and that the conditions subject to which such permission was granted have been complied with, shall quash the enforcement notice to which the appeal relates or such part thereof in respect of which the Board is satisfied as aforesaid;
- (b) in any other case, shall dismiss the appeal.

(10) The appellant shall submit to the Board together with his appeal a copy of all relevant development permissions, other permits or other relevant information in terms of which development permission has been granted to carry out the development mentioned in the notice served on him which is the subject of the appeal proceedings; and if the Board is satisfied that no such development permission or permits exist or that there is no authorization, howsoever called, in terms of which the development could have been carried out, the Board shall forthwith dismiss the appeal.

(11) If before an appeal is lodged or during the pendency of an appeal, the appellant submits to the Authority an application for development permission regarding the land mentioned in the enforcement notice, the Board shall dismiss the appeal if it is satisfied that the said application is intended to regularize the development mentioned in the enforcement notice.

(12) Where an appeal is dismissed, the Appeals Board may direct that, in respect of any requirement, other than a requirement stopping or prohibiting any further work or development, or requiring the cessation of a use, the enforcement notice shall not come into force until such date, being a date not earlier than fifteen days after the determination of the appeal, as the Board thinks fit.

(13) The Board may correct any defect or error in the enforcement notice provided that the appellant shall be given

sufficient time to prepare and put forward his case.

(14) Where the illegal development is being carried out at sea the provisions of this article shall apply in such manner that any reference therein to the owner of the land or the occupier of the land shall be deemed to be a reference to the person carrying out the development, and any reference to land shall be deemed to be a reference to the area at sea where the development occurs.

Enforcement
procedure to apply
to scheduled
property, trees, etc.
Substituted by:
XXI. 2001.47.

53. If it appears to the Authority that anything which is prohibited or restricted or subject to a condition by or under any of the provisions of article 46, 48 or 49 is being done or carried on or has been done or carried on in contravention of any such prohibition, restriction or condition or without any permission or other requirement, or without compliance with any condition, mentioned in those articles or any orders made thereunder, the Authority shall serve a notice on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient and shall also inform of the issue of such notice the persons mentioned in article 52(3), requiring such steps as may be specified in the notice, including the discontinuance of anything being done or carried on, to be taken within such time as may also be specified in the notice. The provisions of the proviso to article 52(3) shall also apply to any notice under this article.

Other enforcement
notices.
Amended by:
XXI. 2001.48.

54. A notice under articles 53 and 55 is also in this Act referred to as "enforcement notice" and, unless the context otherwise requires and subject to such modifications and adaptations as may be necessary to give full effect to the provisions of those articles, wherever that expression appears in this Act it shall include a notice given under those articles.

Injury to amenity.
Substituted by:
XXI. 2001.49.

55. If it appears to the Authority that the amenity of any area is injured by the appearance or condition of any building or any land, being a garden, vacant site or other open land, or by the appearance of a site upon which development or construction or any other works are taking or have taken place, the Authority shall serve an enforcement notice on the owner of the land or on the occupier of the land or on both as the Authority deems most expedient and shall also inform of the issue of such notice the persons mentioned in article 52(3), requiring such steps to be taken for abating the injury as may be specified in the notice. The provisions of the proviso to article 52(3) shall also apply to any notice under this article.

Supplementary
provisions as to
enforcement.
Added by:
XXI. 2001.50.

55A. (1) If any steps or other action, including any discontinuance, stoppage or similar requirement, required to be taken by an enforcement notice have not been taken within the time specified therein, the Authority may enter on the land, or the area at sea and take such steps or other action as aforesaid, including the disabling or removal of any equipment, machinery, tools, belongings, vehicles or other objects that may be on site and the carrying out of any works necessary to comply with what is requested in the enforcement notice and may for such purpose request the assistance of the Police Force, any local council, any department of Government or any agency of Government; and the Police Force shall for such purpose exercise such powers as are

vested in them at law.

(2) Where the removal of an illegal development involves by necessity the removal also of a development which is not illegal, the Authority may proceed to remove also such other development, the removal of which is necessary as aforesaid.

(3) Notwithstanding the provisions of any other law and saving the provisions of article 46 of the Constitution and article 4 of the European Convention Act, no precautionary act may be issued by any court against the Authority restraining it from the exercise of any of the powers conferred upon it by this article. Cap. 319.

(4) All expenses reasonably incurred by the Authority in the exercise of its powers under this article shall be recoverable as a civil debt by the Authority from the owner of the land subject to such right of recovery such person may have against any other person. The Authority shall not be liable for any damages as a result of the exercise of its powers under this article unless it is proved that such damage resulted from gross negligence on the part of the Authority, its officers and agents.

(5)* Subject to subarticle (6)(g), when an enforcement notice has not been appealed or where an enforcement notice has been appealed but has been confirmed by the Appeals Board or by the Court of Appeal, as the case may be, and the owner of the land subject to an enforcement order fails to comply with the said order within the period therein prescribed, such person shall be liable to a maximum penalty of not more than five liri for every day the default continues after the expiration of the said period as the Authority may prescribe under subarticle (6)(g); and the Authority may recover such penalty from the said person as a civil debt owing to it.

(6) The Authority may, with the concurrence of the Minister and the Minister responsible for finance, make regulations:

- (a) to authorise and regulate clamping, towing, removal and storage by the Authority of any object used in illegal development and the sale by auction of same;
- (b) to exclude the Authority from any liability, other than liability for gross negligence, incurred in connection with the execution of its duties under the said regulations;
- (c) providing for the disposal of objects used in illegal development when the said objects are not claimed by their owners within such time as may be prescribed;
- (d) establishing fees payable to the Authority for the removal of clamps, for towing, for the storage of objects used in illegal development and for the auction or other form of disposal of such objects;
- (e) establishing the circumstances where objects used in illegal development can be confiscated by court order

*This subarticle is not yet in force.

and to establish the relative procedure for their confiscation and disposal;

- (f) establishing offences and the relative punishments in relation to matters referred to in paragraphs (a) to (e), which punishments shall not exceed a maximum fine (*multa*) of five thousand liri; and
- (g) specifying the type of development the provisions of subarticle (5) shall apply to and for establishing the relative penalty.

Cap. 9.
Cap. 446.

(7) Article 21 of the Criminal Code and the provisions of the Probation Act shall not apply to any offence established under subarticle (6).

Procedure applying
to certain types of
illegal
development
carried out prior to
1 January, 1993.
Added by:
XXI. 2001.50.

55B. (1) Notwithstanding the other provisions of this Act, the following procedure shall apply to illegal development carried out prior to 1st January 1993 within a Temporary Provisions Scheme boundary or a development boundary as indicated in a local plan other than when such illegal development consists in change of use or where such development is not in conformity with the alignment of roads and buildings as specified in or interpreted from a Temporary Provisions Scheme or local plan.

(2) Any person who, after 1st July, 2000 is served with an enforcement notice in respect of development to which subarticle (1) applies, shall have the right to claim that such notice shall not be applicable, provided that he proves to the Authority's satisfaction that the said development was completed prior to 1st January 1993. The said person shall also furnish the Authority with the requisite proof to that effect including any relevant documentary evidence and such other evidence as the Authority considers necessary.

(3) When an enforcement notice is not applicable in terms of subarticle (2), the development in question shall not be considered as having been regularised in terms of this Act unless and until a development permission has been granted to cover the development in question and a penalty fixed by the Authority within the limits established in article 58 has been paid:

Provided that a person requested to pay such a penalty may appeal from such request in the manner provided for in article 58.

(4) When the Authority receives an application for development permission requesting amendments, alterations, additions or extensions to a development which includes illegal development to which subarticle (1) applies, the applicant shall request the Authority to sanction the said illegal development in terms of the provisions of this Act, if such sanction is possible in terms of law. Where such sanctions is not possible, no further enforcement proceedings shall be instituted by the Authority. Where the illegal development has not been sanctioned no further development permission, other than for that type of development which may be prescribed by the Minister, after consultation with the Authority, from amongst the development mentioned in article 31(8)(a) and (b), may be granted with respect to the land in

question unless and until the illegal development is removed.

(5) Where any person claims to the Authority that an enforcement notice is not applicable in terms of subarticle (2) and the Authority does not accept such claim, the period of fifteen days mentioned in article 52(9) shall commence to run from the date that the Authority serves such person with a notice to the effect that it is not accepting such claim.

(6) The provisions of this article shall be without prejudice to any enforcement notices issued, and to any criminal proceedings instituted, prior to 1st July, 2000.

(7) The Minister may, after consultation with the Authority, make regulations to give better effect to the provisions of this article.

PART VI

DEVELOPMENT OFFENCES AND PENALTIES

56. (1) Any person who -

- (a) carries out any development on any land or allows any development to be carried out on land of which he is an owner without a development permission as in force at the time of such development, or, if the development is carried out with a development permission, fails to comply or to cause compliance with any condition, restriction or other limitation to which the permission is subject; or
- (b) acts in contravention of any of the provisions of article 46, 47 or 48 in respect of any scheduled property or tree, an emergency conservation order, or of any advertisement regulation order made under article 49; or
- (c) having been served with an enforcement notice or other notice under articles 45, 52, 53 or 55, fails to comply with any of the requirements of such notice within the time therein specified; or
- (d) hinders, obstructs, molests or interferes with, or attempts to hinder, obstruct, molest or interfere with, any officer or employee of the Authority, or any police officer, or any public officer, or any employee or servant of any department of Government or of any agency of Government or of any local council, in the execution of his duties under the law or fails to comply with any reasonable requirement demanded of him by any such person as aforesaid or otherwise to assist him in the carrying out of the said duties, or knowingly furnishes such person with false information or neglects or refuses to give any information required for the purpose aforesaid; or

Offences.
Amended by:
XXI. 2001.51.

- (e) makes a declaration for any of the purposes of this Act which is false, misleading or incorrect in any material respect,

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of not less than five hundred liri and not exceeding fifty thousand liri, and in respect of an offence under paragraph (d) or, in the case of an offence under paragraph (c) if the offender persists in the offence for more than three months, also to imprisonment for a term of not less than three months and not exceeding three years:

Provided that, and without prejudice to the provisions of article 46(7) and article 55A(3) and (4) and without prejudice to the maximum fine above established, the minimum fine (*multa*) to which an offender is liable under this article shall not be less than the value of any work carried out without permission or in violation of any conditions to which such permission was subject.

(2) The Court, besides awarding the punishment referred to in subarticle (1), shall order the offender to remove the causes of the offence and to undo anything which was done without a permission or to comply with the conditions imposed in the permission, as the case may be, within a time sufficient for the purpose, but in any case not exceeding three months from the date of the judgment, to be fixed by the court; and, if the offender fails to comply with any such order within the time so fixed, he shall be liable to a fine (*multa*) of not less than twenty-five and not more than fifty liri, as the court may fix, for every day the default continues after the expiration of the said time.

(3) Proceedings against any person for any offence as is mentioned in subarticle (1) shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as courts of criminal judicature in accordance with the provisions of the Criminal Code:

Cap. 9.

Provided that, notwithstanding the provisions of article 376(1)(b) of the Criminal Code, the Court shall, at the request of the prosecution or of the accused, take down evidence given by the witnesses in the manner provided for either in article 390(6) of the said Code or in any law for the time being in force.

Cap. 9.
Cap. 446.

(4) Article 21 of the Criminal Code and the provisions of the Probation Act shall not apply to any offences referred to in this article.

(5) The filing of an application intended to regularise any illegal development to which a prosecution refers, and the filing of an appeal against a refusal of such an application shall not be a bar to the continuation of such a prosecution and the court shall continue to hear such a case and shall give judgement and shall issue an order in terms of subarticle (2) as if such an application or such an appeal had never been filed:

Provided that where such a development has been regularised no fine under subarticle (2) shall be due in respect of the time after the development has been regularised.

57. In any proceeding or prosecution under this Act, a copy of any order, notice, decision or other document purporting to have been made under this Act and purporting to have been signed by the Chairman of the Authority or by the Director of Planning, shall be accepted as evidence of the order, notice, decision or other document, and of the facts appearing therein, without further proof.

Certified copies of certain documents as evidence.

58. (1) Notwithstanding any other law providing for the trial and punishment of offences, where the Authority believes that a person has committed an offence against this Act, other than an offence under article 56(d), the Authority may give notice in writing to such person describing the offence of which the person is accused, indicating the steps to be taken to remedy the offence and the fine which he is required to pay in respect of that offence:

Special procedure.

Provided that the Authority may not require the payment of a fine higher than one thousand liri.

(2) Where a notice under this article has been given, the person named in the notice may, within twenty-one days of the service of the notice, accept responsibility for the offence specified in the notice and within the same period or such further period as the Authority may allow, remedy the offence and pay, or undertake in writing to pay, the fine indicated in the notice or such fine as the Authority may accept in lieu, and in any such case:

- (a) the person named in the notice shall be deemed to have committed the offence and to have admitted his guilt in respect thereof, and the fine paid, or agreed to be paid, shall be the fine to which he became liable to pay;
- (b) if the offence is remedied and the fine is paid within the period, or further period, aforesaid, no further proceedings may be taken against the said person in respect of the same facts;
- (c) if the fine (*multa*) is not paid within the period, or further period, aforesaid, it shall be treated as if it were a fine ordered to be paid by the court which would have had jurisdiction to take cognizance of the offence, and proceedings may be taken accordingly as if it were an order of that court.

(3) Where the person to whom notice is given under subarticle (1) does not accept or, having accepted such responsibility, fails to remedy the offence within the time aforesaid, ordinary proceedings may be taken against him in accordance with the provisions of the Criminal Code, of this Act and of any other law applicable to the offence.

Cap. 9.

(4) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given in proceedings arising out of this Act or of any regulations, rules or orders made thereunder.

Cap. 9.

PART VII

SUPPLEMENTAL

Power to make regulations etc. to include power to revoke, etc.
Cap. 249.

Regulations.
Amended by:
XXI. 2001.53.

59. Without prejudice to the provisions of article 6 of the Interpretation Act, any power conferred by this Act to make regulations, rules, orders, lists, schedules and any other instrument of like nature, includes the power from time to time to revoke, replace, amend, alter or add to any such instrument as aforesaid.

60. (1) The Minister may, after consultation with the Authority, make regulations to regulate or otherwise provide for any matter relating to development or other activities affecting land or sea, in order to give fuller effect to the provisions of this Act, and in particular, but without prejudice to the generality of the aforesaid, may by such regulations:

- (a) regulate buildings and the construction, demolition or alteration thereof, as well as any other matter relating thereto, taking account of all relevant considerations, including safety, aesthetics, health and sanitation;
- (b) prescribe the form of any notice, order or other document authorised or required by this Act to be made, served or given;
- (c) prescribe the manner in which a building levy or other charge made under this Act is to be established, made, reviewed, collected, utilised or otherwise dealt with;
- (d) to the extent not otherwise provided, prescribe the procedure to be followed by any body established by this Act, and to amend, substitute, add to or otherwise alter anything contained in the schedules to this Act concerning the matters aforesaid;
- (e) prescribe the fees payable to the Authority for any service provided by it, or in respect of any matter for which it is considered that a fee should be payable;
- (f) prescribe what type of information held by the Authority shall be accessible to the public as well as to establish the procedure concerning access thereto and the relative fees to be paid to obtain copies of such information;
- (g) to regulate how any notice or communication to or from the Authority which in terms of this Act shall be in writing may be made in electronic form;
- (h) for any other purpose for which regulations are authorized or required to be made otherwise than by the Authority.

Provided that when the Minister makes regulations concerning the procedure before the Planning Appeals Board he shall also consult the Planning Appeals Board:

Provided further that regulations concerning the procedure before the Court of Appeal and appeals before it under this Act shall be made by the Minister responsible for Justice who shall not

be required to consult with the Authority.

(2) Any regulation made under this Act may provide for any matter relating to liability for the observance of such regulations, and the persons who may be liable, and for any matter relating to the enforcement of the said regulations, including, but not limited to, the imposition of a fine (*multa*) not exceeding one thousand liri in respect of any contravention of, or failure to comply with, the provisions of such regulations.

61. (1) The following provisions shall have effect with respect to any development which has taken place or is to take place after the date of the coming into force of this Act, hereinafter referred to as "new development".

Certificate of development according to permission.

(2) No service consisting in the supply of water or electricity to any new development shall be provided by any authority unless there is in respect of such development a certificate issued by the Authority stating that the development is in accordance with a development permission.

(3) In any of the circumstances in which the Authority may serve a notice under any of the provisions of article 52, or if the Authority has served such a notice, the Authority may make an order prohibiting the transfer *inter vivos* by any title whatsoever of any land in respect of which a notice as aforesaid may be, or has been, served, and the transfer or creation of any real right thereon, by any title *inter vivos* whatsoever.

(4) An order made under this article shall contain a description of the land to which it applies, being a description sufficient for the purposes of any transfer thereof by notarial deed, and shall be addressed to and served on the Director of the Public Registry of Malta in the case of land situated in the Island of Malta and on the Director of the Public Registry of Gozo in the case of land situated in Gozo.

(5) Each of the Directors of the Public Registry shall keep a register of orders made under this article and shall enter therein all such orders and the particulars thereof, including the date of their service on him, together with any further orders adding to, amending or revoking an order, in such order and manner, and complemented by such indices as he may deem appropriate to facilitate the identification of any land to which they refer.

(6) An order made under this article may at any time be added to or amended or revoked by the Authority by a further order and shall be revoked if the Authority is satisfied that the circumstances justifying the order have been remedied or otherwise ceased to exist; but no such addition, amendment or revocation shall have effect until the order making it has been served on the Director of the Public Registry. Any revocation of an order shall be without prejudice to the making of a new order.

(7) The provisions of article 15 shall apply to an order made under this article, and to any refusal to revoke such an order, as they apply to a decision of the Authority referred to in subarticle (1) (a) of that article.

(8) Any transfer of any land in respect of which an order has been served under this article and has not been revoked, and any transfer of any real right thereon, made by an act *inter vivos* under any title whatsoever, shall be null and without effect.

Site plans to accompany notices and orders.
Added by:
XXI. 2001.55.

61A. (1) For the purposes of article 45, article 46(2) and (2A), article 48(4), article 53 and article 55, the notice or order mentioned therein shall be accompanied by a site plan.

Service of notices, etc., under this Act.

62. (1) Where any notice or other instrument or document whatsoever is required or authorised to be served or given by or under this Act, it may be served or given in any of the following manners:

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person or, if such person has furnished an address for service, at that address; or
- (c) by sending it in a registered letter addressed to that person at the place of abode or the address for service aforesaid; or
- (d) in the case of a body corporate or other body of persons, by delivering it to an officer or servant thereof at the registered or principal office, or sending it in a registered letter addressed to the body aforesaid at that office; or
- (e) in any case in which it is not reasonably possible to effect service in any of the foregoing manners whether on all or on any one or more of the persons on whom service is to be made or notice is to be given, by affixing the document to be served or given in a conspicuous place on the land to which it relates and keeping it so affixed for a period of not less than seven days.

(2) Where the notice or other document is required or authorised to be served or given to any person as having an interest in land, and the name of that person cannot be ascertained after reasonable inquiry, or is required or authorised to be served on an occupier of land, the notice shall be deemed to be duly served or given if it is served or given in any of the manners indicated in subarticle (1) and addressed to the person having an interest in the land by the description of "owner" or "occupier", or "owners" or "occupiers", as the case may require.

Savings.
Cap. 10.
Cap. 87.
Cap. 322.
Cap. 303.

63.* (1) Any permission issued or granted under any of the provisions of Part I and Part V of the Code of Police Laws[†], the Aesthetic Buildings Ordinance[†], the Building Permits (Temporary Provisions) Act[†] or the Building Development Areas Act[†] and in

*This article originally consisted of two subarticles and paragraphs repealing the enactments herein mentioned. These provisions have been omitted under the Statute Law Revision Act, 1980.

force on the date immediately preceding the coming into force of this Act, shall continue to be operative for the period and under the conditions for which and under which it was so issued or granted, but shall for any purpose other than duration be deemed to be a permission granted by the Authority.

(2) Any development plan made under the Building Permits (Temporary Provisions) Act^{*}, in force on the date immediately preceding the coming into force of this Act, shall remain operative and have effect as if it were a development plan made under this Act; and shall be treated accordingly. Cap. 322.

(3) Any regulations made under article 14 of the Aesthetic Buildings Ordinance[†], and so much of the said Ordinance as is necessary for the continued applicability and enforcement of such regulations, shall remain in force until an advertisement regulation order is made under this Act. Cap. 87.

[†]Repealed by this Act.

^{*}Repealed by this Act.

[†]Repealed by this Act.

Amended by:
XXIII.1997.23.

FIRST SCHEDULE

(Article 3)

Provisions with respect to the Authority

1. The Authority may act notwithstanding any vacancy amongst its members, provided there is a quorum present at the meeting.

2. The quorum of the Authority shall consist of the chairman or deputy chairman and not less than half the number of the other members constituting the Authority at the time of the meeting.

3. The meetings of the Authority shall be called by the chairman either on his own initiative or at the request of any two members of the Authority; and the Authority shall also meet at such times as it may itself decide. The provisions of article 13(5) shall *mutatis mutandis* apply to the Authority.

4. The chairman, or the deputy chairman acting in his place, shall have an original vote, and where the votes are equally divided, a second or casting vote. All members of the Authority present at its meetings shall cast their vote in favour or against any motion put to the vote.

5. A member of the Authority who has a direct or indirect interest in any matter coming before the Authority for consideration shall, not later than the first meeting held after the relevant circumstances have come to his knowledge, disclose the nature of his interest. Such disclosure shall be recorded in the minutes of the meeting and the member:

- (a) shall not take part in any discussion or decision of the Authority with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum for any such discussion or decision.

6. All acts done by any person in good faith as a member of the Authority shall be valid and effective as if he were a member even if some defect in his qualification for appointment is subsequently discovered.

7. Without prejudice to the provisions of article 57, any document purporting to be an instrument made or issued by the Authority and signed by the Chairman of the Authority or the Director of Planning on its behalf shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

8. Subject to the provisions of this Act, including this Schedule, the Authority may regulate its own procedure:

Provided that where the Authority performs functions normally delegated to the Development Control Commission, article 13(5) of the Act shall apply to it as it applies to the Commission.

SECOND SCHEDULE

*Amended by:
XXIII.1997.23.*

(Article 6)

**Provisions with respect to Public Officers detailed for
duty with the Authority**

1. A direction under article 6(6) shall apply to the officer specified therein for a period ending, unless the officer retires from the public service, or otherwise ceases to hold office, at an earlier date, or a different date is specified in the direction, on the happening of any of the following events, that is to say:

- (a) the acceptance by such officer of an offer of transfer to the service of, and permanent employment, with the Authority, made in pursuance of article 6(7); or
- (b) the revocation by the Prime Minister of any direction made by him under article 6(6) in relation to such officer.

2. When a public officer is detailed for duty with the Authority as aforesaid such officer shall, during the time the direction has effect in relation to him, be under the administrative control of the Authority; but he shall for other intents and purposes remain, and be considered and treated as, a public officer.

3. Without prejudice to the generality of the foregoing, a public officer detailed for duty as aforesaid -

- (a) shall not during the time he is so detailed -
 - (i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at the date on which he was detailed for duty; or
 - (ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment during the said period had such officer not been detailed for duty with the Authority; and
- (b) shall be entitled to have his service with the Authority considered as service with the Government for the purpose of any pension or gratuity under any law for the time being in force, and for any other right or privilege to which he would have been 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 Authority.

4. When an application is made as provided in paragraph 3(a)(i) of this Schedule, the same consideration shall be given to it as if the applicant had not been detailed for duty with the Authority.

*Amended by:
XXIII. 1997.24;
VI. 2001.22;
L.N. 22 of 2002.*

THIRD SCHEDULE

(Article 15)

**Proceedings before the Planning Appeals Board
and appeals therefrom**

1. Any person who feels aggrieved by a decision of the Authority as provided in article 15(1) of may appeal to the Planning Appeals Board within thirty days from the date the decision is communicated to the person on whose application the decision was taken.

2. The application shall contain the grounds for the appeal and the request of the appellant, and a copy of it shall be communicated to the Authority before the appeal is heard. The Authority shall file its reply within thirty days of service upon it of the application. The reply shall be served upon the appellant.

3. The appellant shall appear before the Board either in person or by agent on the day and at the time fixed for the hearing, make his submissions and produce such evidence as the Board may allow:

Provided that the Board may postpone the hearing of the appeal if it is satisfied that the appellant was prevented from appearing before it owing to illness or absence from Malta or other similar reasonable cause.

4. The Board shall give the Authority an opportunity to make its submissions in justification of its decisions, and bring such evidence as the Board may consider necessary.

5. The Board shall have the power to summon witnesses and to administer the oath to any person appearing before it.

6. The Board shall have power to confirm, revoke or alter the decision appealed against and give such directions as it may deem appropriate.

7. The decisions of the Board shall be final and no appeal shall lie therefrom except on a question of law only.

8. If the appellant or the Authority are dissatisfied with any point of law decided by the Board, they may appeal to the Court of Appeal (Inferior Jurisdiction) by an application filed as provided in article 15(10).

9. All hearings of the Board shall be held in public and all decisions of the Board shall be given in public.

10. Subject to the foregoing provisions and to the provisions of this Act, the Board shall regulate its own procedure.

11. The Minister responsible for justice may by regulations made under this rule establish fees payable in the registry of the courts in relation to the filing of judicial acts in connection with appeals before the Court of Appeal (Inferior Jurisdiction) under this Act:

Provided that until such fees have been so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.
