

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 17,144, 25 ta' Settembru, 2001

Taqsima A

MALTA

ATT Nru. XXI ta' l-2001

ATT mahruġ b'ligi mill-Parlament ta' Malta.

ATT biex jemenda l-Att dwar l-Ippjanar ta' l-Iżvilupp, Kap. 356.

ACT No. XXI of 2001

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Development Planning Act, Cap. 356.

I assent.

(L.S.)

GUIDO DE MARCO
President

25th September, 2001

ACT No. XXI of 2001

AN ACT to amend the Development Planning Act, Cap. 356

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

1. (1) The title of this Act is the Development Planning (Amendment) Act, 2001, and shall be read and construed as one with the Development Planning Act, hereinafter referred to as “the principal Act”. Short title and commencement.

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

(3) A notice under subarticle (2) of this article may make such transitory provisions as appear to the Minister responsible for development planning to be necessary or expedient in connection with the provisions thereby brought into force.

2. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) after the definition of the expression “agency of Government”, the following new definitions shall be added:

““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 subarticle (1) of article 17C of this Act;”;

(b) after the definition of the expression “building operations” the following definition shall be added:

“ “the Chairman of the Board” means the Chairman of the Authority appointed in terms of subarticle (4) of article 3 of this Act;”;

(c) the definition of the expression “conditions” shall be deleted;

(d) after the definition of the expression “development” the following definition shall be added:

“ “development brief” has the same meaning assigned to it as in article 26A of this Act;”;

(e) the definition of the expression “development plans” shall be substituted by the following:

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

(f) the definition of the expression “enforcement notice” shall be substituted by the following:

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

(g) in the definition of the expression “exempt works” the words “development permit” shall be substituted by the words “development permission”;

(h) the following definition shall be added after the definition of the expression “functions”:

“ “House” means the House of Representatives;”;

(i) the following definition shall be added after the definition of the expression “land”:

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

(j) the following definition shall be added after the definition of the expression “local plan”:

“ “the Mediator” means a Planning Mediator appointed in terms of subarticle (1) of article 32A of this Act;”;

(k) the following definition shall be added after the definition of the expression “Minister”:

“official manual” means the official manual referred to in paragraph (c) of subarticle (2) of article 5 of this Act;”;

(l) the definition of the expression “owner” shall be substituted by the following:

“ “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;”;

(m) the following definitions shall be added after the definition of the expression “the Planning Appeals Board”:

“ “planning policy” means a policy approved in terms of article 29A or article 29B or article 29C of this Act;

“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;”;

(n) the following definition shall be added after the definition of the expression “scheduled buildings”:

““Standing Committee” means the Standing Committee on Development Planning established in terms of subarticle (1) of article 17B of this Act;”; and

(o) the following definitions shall be added after the definition of the expression “subject plan”:

“ “subsidiary plans” shall have the same meaning assigned to it in article 23 of this Act;

Cap. 322. “Temporary Provisions Schemes” means a planning scheme prepared and approved in accordance with the Building Permits (Temporary Provisions) Act;”.

Amendment of article 3 of the principal Act.

3. Article 3 of the principal Act shall be amended as follows:-

(a) subarticle (2) thereof shall be substituted by the following:

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

(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;”; and

(b) the words “government authority” in paragraph (d) of subarticle (5) thereof shall be substituted by the word “council”.

4. The words “judicial proceedings” in the proviso to subarticle (2) of article 4 of the principal Act shall be substituted by the words “proceedings to which the Authority is a party,”.

Amendment of article 4 of the principal Act.

5. Article 5 of the principal Act shall be amended as follows:-

Amendment of article 5 of the principal Act.

(a) subarticle (1) thereof shall be substituted by the following:

“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) above;

(d) the regulation of alignment and levelling schemes and their interpretation on site.”;

(b) subarticle (2) shall be amended as follows:-

(i) paragraph (a) thereof shall be substituted by the following:-

“(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.”;

(ii) paragraph (c) thereof shall be substituted by the following:

“(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) of this subarticle 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.”;

(c) subarticle (4) thereof shall be substituted by the following:

“(4) Saving the provisions of article 36A of this Act 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

Cap. 389.

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.”; and

(d) the following subarticles shall be added after subarticle (6) thereof:

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

6. Article 6 of the principal Act shall be amended as follows:

Amendment of article 6 of the principal Act.

(a) subarticle (1) thereof shall be substituted by the following:

“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.”;

(b) subarticles (2) to (6) thereof shall be respectively re-numbered as subarticle (4) to (8) thereof; and

(c) the following new subarticles shall be added after subarticle (1) thereof:

“(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.”.

7. Article 12 of the principal Act shall be amended as follows:

Amendment of article 12 of the principal Act.

(a) for the words “chairman of the Committee” in subarticle (1) thereof there shall be substituted the words “chairman of the Consultative Committee”;

(b) for the words “on any policy or proposal contained in a development plan” in subarticle (2) thereof there shall be substituted the words “on any development plan or planning policy”; and

(c) for the word “Committee” wherever it occurs in subarticles (2), (3) and (4), there shall be substituted the words “Consultative Committee”.

Amendment of
article 13 of the
principal Act.

8. Article 13 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be substituted by the following:

“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:

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

(b) the following subarticles shall be added after subarticle (1) thereof:

“(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 of this Act, shall be invited to

attend the meetings of the Authority but shall have no right to vote during the Authority's meetings.”;

(c) the words “The functions of the Commission” in subarticle (2) thereof shall be substituted by the words “Subject to subarticle (1) of this article and to subarticle (9) of article 36 of this Act, the functions of the Commission”;

(d) subarticles (4) and (5) thereof shall be substituted by the following:

“(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.”;

(e) subarticles (6) and (7) thereof shall be re-numbered as subarticles (7) and (8) thereof;

(f) the following subarticle shall be added as subarticle (6) thereof:

“(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,”; and

(g) the following subarticle shall be added after subarticle (8) thereof:

“(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.”.

Amendment of
article 14 of the
principal Act.

9. Article 14 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be substituted by the following:

“14. (1) There shall be a board, which shall have such number of divisions as the Minister may by order in the Gazette prescribe, 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. Saving the provisions of subarticle (3) of this article, the Minister may make regulations to regulate the distribution by types of appeals amongst the divisions of the Appeals Board, provided that such distribution shall not be specific to a geographical area and that no two divisions of the Board shall deal with the same types of appeals.”; and

(b) subarticle (3) thereof shall be substituted by the following:

“(3) A member of the Board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in terms of Sub-Title II of Title II of Book Third of

the Code of Organization and Civil Procedure; 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; or the appeal, when there is more than one division of the Board in office, may be referred by order of the Board from one division of the Board to another.”.

- 10.** Article 15 of the principal Act shall be amended as follows: Amendment of article 15 of the principal Act.

(a) subarticles (1) and (2) thereof shall be substituted by the following:

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

(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 paragraph (j) of subarticle (2) of article 27 and subarticle (4) of article 29A, of subarticle (4) of article 29B, subarticles (4) and (5) of article 29C and subarticle (3) of article 31 of this Act;

(c) hear and determine appeals made in terms of subarticle (3) of article 39A, subarticle (4) of article 40, subarticle (9) of article 46, subarticle (4) of article 48, subarticle (3) of article 55B, subarticle (1) of article 58, and subarticle (7) of article 61 of this Act;

(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 subarticle (5) of article 32 of this Act 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 subarticle (5) of article 32 of this Act 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 subarticle (6) of article 41 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.”;

(b) subarticle (4) thereof shall be substituted by the following:

“(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 to this Act:

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.”;

(c) the words “article 37” in subarticle (9) thereof shall be substituted by the words “subarticle (1) of article 37”;

(d) the following subarticles shall be added after subarticle (9) thereof:

“(10) The Minister responsible for justice may make regulations to prescribe the procedure to be followed in the case of appeals lodged to the Court of Appeal (Inferior Jurisdiction) from decisions of the Board.

(11) Where judicial proceedings are instituted against the Board before a court of civil jurisdiction, other than those in terms of subarticle (10) of this article, 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 subarticles (1) and (2) of article 33 in reviewing decisions of the Authority.”; and

(e) the following subarticle shall be added after subarticle (12) thereof:

“(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.”.

11. The following new article 15A shall be added after article 15 of the principal Act:

Addition of new article 15A to the principal Act.

“Call in procedure.

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 of this Act 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.

(2) The Minister may refer to Cabinet applications called in by him in terms of subarticle (1) of this article 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.”.

“Inspections. 16A. Without prejudice to the provisions of article 50 of this Act, 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.”.

13. The words “the Authority or the Minister as the case may be,” in subarticle (2) of article 17A of the principal Act shall be substituted by the words “the Audit Officer,”.

Amendment of article 17A of the principal Act.

14. The following new articles 17B, 17C and 17D shall be added after article 17A of the principal Act:

Addition of new articles 17B, 17C and 17D to the principal Act.

“Standing Committee on Development Planning.

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 subarticle (2) of article 22 of this Act, 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) of this article 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.

The Audit
Officer.

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.

(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.

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.”

15. Article 18 of the principal Act shall be amended as follows: Amendment of article 18 of the principal Act.

(a) subarticle (3) thereof shall be substituted by the following:

“(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.”;

(b) the following new subarticles shall be added after subarticle (3) thereof:

“(3A) Notwithstanding the provisions of subarticle (3) of this article, 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) of this article, 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) of this article and of article 19 of this Act 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 of this Act and, for the purposes of subarticle (1) of article 22, the expression “representations” shall include the Authority’s planning position statement.”; and

(c) the following new subarticle shall be added after subarticle (7) thereof:

“(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) of this article 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.”.

- 16.** The following subarticles shall be added after subarticle (2) of article 19 of the principal Act: Amendment of article 19 of the principal Act.

“(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) of this article, 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.”.

- 17.** Article 20 of the principal Act shall be deleted. Deletion of article 20 of the principal Act.

- 18.** Article 22 of the principal Act shall be amended as follows: Amendment of article 22 of the principal Act.

(a) for the words “recommendations of the Assessment Panel” wherever they appear in subarticles (1) and (2) thereof, there shall be substituted the words “Minister’s planning position statement”; and

(b) for the words “The Minister” in subarticle (2) thereof, there shall be substituted the words “Subject to subarticles (2) to (4) of article 17B, the Minister”.

- 19.** The heading “2. Subject Plans, Local Plans and Action Plans” immediately after article 22 of the principal Act shall be substituted by the following: Amendment of heading after article 22 of the principal Act.

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

- 20.** The words “local plans and action plans” in article 23 of the principal Act shall be substituted by the words “local plans, action plans and development briefs,”. Amendment of article 23 of the principal Act.

Amendment of article 24 of the principal Act.

21. The words “local or an action plan.” in subarticle (3) of article 24 of the principal Act shall be substituted by the words “local plan, an action plan or a development brief.”.

Amendment of article 26 of the principal Act.

22. Article 26 of the principal Act shall be amended as follows:–

(a) for subarticle (1) thereof there shall be substituted the following:–

“(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.”; and

(b) for subarticle (3) thereof there shall be substituted the following:–

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

Addition of new article 26A to the principal Act.

23. The following new article 26A shall be added after article 26 of the principal Act:

“Development brief.

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.”.

24. Article 27 of the principal Act shall be substituted by the following:-

Substitution of article 27 of the principal Act.

“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.

(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) hereof;

(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) of this subarticle, if any, and together with the statements, responses, documentation and studies referred to in paragraph (d) hereof;

(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 of this Act 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."

25. Article 28 of the principal Act shall be substituted by the following:-

Substitution of
article 28 of the
principal Act.

"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) of this article, 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 paragraph (a) of subarticle (4) of this article, the provisions of article 32 of this Act shall apply *mutatis mutandis* to such a modification.

(6) Where the Authority is considering a minor modification in terms of paragraph (b) of subarticle (4) of this article, 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 paragraphs (a) to (j) of subarticle (2) of article 27 of this Act;

(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 subarticles (4) and (5) of article 29C of this Act 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.”.

26. The following heading and articles shall be added after article 29 of the principal Act:

Addition of new heading after article 29 of the principal Act.

“3. Planning Policies not Contained in a Development Plan and Preparation of a Subsidiary Plan or a Planning Policy.”.

27. The following new articles 29A to 29C shall be added after the heading following article 29 of the principal Act:

“Planning policy not contained in a Development Plan prepared by the Authority.

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.

Addition of new articles 29A, 29B and 29C to the principal Act.

(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 paragraphs (a) to (j) of subarticle (2) of article 27 of this Act shall *mutatis mutandis* apply:

Provided that where minor modifications not affecting the substance of the planning policy are being proposed, the period mentioned in paragraph (b) of subarticle (2) of article 27 of this Act 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.

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 subarticle (2) of article 27 of this Act 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 paragraph (b) of subarticle (2) of article 27 of this Act 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) of this article, 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 subarticle (4) of article 5 of this Act with regard to that particular subsidiary plan or planning policy and in so doing it shall ensure that the provisions of this Part of this Act are complied with.

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

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 subarticle (5) of article 29B, 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.

(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 paragraphs (a) and (b) of subarticle (2) of article 27 of this Act 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 paragraph (b) of subarticle (2) of article 27 of this Act.

(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 paragraphs (d) to (j) of subarticle (2) of article 27 of this Act 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 paragraphs (g) to (j) of subarticle (2) of article 27 of this Act 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."

Amendment of
article 30 of the
principal Act.

28. Article 30 of the principal Act shall be amended as follows:

(a) the following proviso shall be added to paragraph (a) of subarticle (2) thereof:

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

(b) the words “involves a material change in the use of that building,” in subarticle (3) thereof shall be substituted by the words “involves a material change in the use of that building or land;” and

(c) the words “development in relation to” in subarticle (4) thereof shall be substituted by the words “development includes clearing of valleys from accumulated sediment and development in relation to”.

Amendment of
article 31 of the
principal Act.

29. Article 31 of the principal Act shall be amended as follows:

(a) the words “and agreement” in subarticle (1) thereof shall be deleted and the words “regulating development” shall be substituted by the words “regulating development, including any notification thereof;”;

(b) the words “permitted policies or conditions” in subarticle (4) thereof shall be substituted by the words “development plans or planning policies”;

(c) the words “of subarticle (5) of article 27” in subarticle (3) thereof shall be substituted by the words “of paragraph (j) of subarticle (2) of article 27”; and

(d) the words “are to be notified” in subarticle (7) thereof shall be substituted by the words “and where required in the order are to be notified” and the words “under the supervision of a person holding a warrant of architect and civil engineer” shall be substituted by the words “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

(e) immediately after subarticle (7) thereof the following subarticles shall be added:

“(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 paragraphs (a) and (b) of subarticle (8) of this article.”.

30. Article 32 of the principal Act shall be amended as follows: Amendment of article 32 of the principal Act.

(a) subarticles (4) and (5) thereof shall be substituted by the following:

“(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) of this article, 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."; and

(b) the following new subarticle shall be added after subarticle (5) thereof:

"(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."

Addition of new article 32A to the principal Act.

31. The following new article 32A shall be added after article 32 of the principal Act:

"Planning Mediator.

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.

(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) of this article, a Mediator may regulate his own proceedings.

(4) No appeal shall lie to the Appeals Board in terms of paragraph (a) of subarticle (1) of article 15 of the Act 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;

(e) prescribe the procedure to be followed in the formulation of an application report by the Director.”.

32. Article 33 of the principal Act shall be amended as follows:- Amendment of article 33 of the principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:-

“(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.”;

(b) the word “permit”, wherever it occurs, in subarticles (2), (3) and (4) thereof shall be substituted by the word “permission”;

(c) the proviso to subarticle (2) thereof shall be substituted by the following:—

“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.”;

(d) Subarticle (3) thereof shall be substituted by the following:—

“(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.”;

(e) the following subarticle (3A) shall be added after subarticle (3) thereof:

“(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.”;

(f) the words “simple letter” in subarticle (4) thereof shall be substituted by the words “registered letter”;

(g) the following new subarticles shall be added after subarticle (4) thereof:—

“(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.”.

33. Subarticle (5) of article 34 of the principal Act shall be substituted by the following:—

Amendment of
article 34 of the
principal 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.”.

Substitution of
article 35 of the
principal Act.

34. Article 35 of the principal Act shall be substituted by the following:

“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) of this subarticle.

(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).”.

35. Article 36 of the principal Act shall be substituted by articles 36 and 36A as follows:

Substitution of article 36 of the principal Act.

“Decisions to be taken without delay.

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

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) of this article, 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) of this article:

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) of this article 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) of this article, 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) of this subarticle, 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) of this article during the first sitting or, with the consent of the applicant, during another sitting and the provisions of subarticle (6) of article 13 shall not apply.

(d) If the Authority or the Commission, as the case may be, decide that the application conforms to subarticle (1) of this article, 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) of this article, 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) of this subarticle or if the Authority or the Commission, as the case may be, after taking a decision in terms of paragraph (d) of this subarticle 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) of this article, 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) of this article, and of subarticles (2), (3) and (4) of this article shall *mutatis mutandis* apply to the period of twenty-six weeks mentioned in paragraph (a) of this subarticle.

Applications
the decision
whereof
cannot be
delegated.

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

(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.”.

Substitution of
article 37 of the
principal Act.

36. Article 37 of the principal Act shall be substituted by the following:—

“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 of this Act. 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.

(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 subarticle (5) of article 32 of this Act.

(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 subarticle (5) of article 32 of this Act 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.”.

37. Subarticles (3) and (4) of article 38 of the principal Act shall be deleted.

Amendment of article 38 of the principal Act.

38. The following articles 39A and 40 shall be added after heading 2 after article 39 of the principal Act:

Addition of new articles 39A and 40 to the principal Act.

“Revocation and modification of development permission.

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) of this article:

“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) of this article 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) of this subarticle, 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.

Cap. 88

Planning obligations.

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 subparagraphs (i) and (ii) of this paragraph; 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) of this article.

(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) of this article.”.

Amendment of article 41 of the principal Act.

39. The words “Development Permit Fee.” in subarticle (2) of article 41 of the principal Act shall be substituted by the words “Development Permission Fee.”.

Amendment of article 45 of the principal Act.

40. The words “development plans” in subarticle (1) of article 45 of the principal Act shall be substituted by the words “development plans, planning policies”.

Amendment of article 46 of the principal Act.

41. Article 46 of the principal Act shall be amended as follows:–

(a) subarticles (1) and (2) thereof shall be substituted by the following:

“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.”;

(b) the following new subarticle shall be added after subarticle (2) thereof:

“(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) of this article 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) of this article, "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.";

(c) the following new subarticles shall be added after subarticle (8) thereof:

"(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 of this Act, 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.".

“(4) Notwithstanding the provisions of article 15 of this Act, an appeal to the Appeals Board from an emergency conservation order shall not stay the execution of such order.”.

43. Article 48 of the principal Act shall be amended as follows:- Amendment of article 48 of the principal Act.

(a) subarticle (2) thereof shall be deleted;

(b) subarticles (3) to (5) shall be respectively renumbered as subarticles (2) to (4); and

(c) subarticle (4) thereof as renumbered shall be substituted by the following:-

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

44. The heading “PART V - ENFORCEMENT OF CONTROL” Movement of heading in the principal Act. in the principal Act shall be placed immediately prior to article 50 of the principal Act.

45. Article 50 of the principal Act shall be substituted by the following:- Substitution of article 50 of the principal Act.

“Right of Entry.

“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.”.

46. Article 52 of the principal Act shall be substituted by the following:- Substitution of article 52 of the principal Act.

“Enforcement procedure.

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:

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) of this article 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) of this article 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 subarticle (2) of article 46 of this Act, 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) of this article.

(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 this article 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) of this article 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 paragraph (b) of subarticle (6) of this article:

(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 subarticle (1) of article 55A of this Act 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.”.

47. Article 53 of the principal Act shall be substituted by the following:—

Substitution of
article 53 of the
principal Act.

“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 of this Act 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 subarticle (3) of article 52 of this Act, 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 subarticle (3) of article 52 shall also apply to any notice under this article.”.

Amendment of article 54 of the principal Act.

48. The words "50 and 53" in article 54 of the principal Act shall be substituted by the words "53 and 55."

Substitution of article 55 of the principal Act.

49. Article 55 of the principal Act shall be substituted by the following:—

"Injury to amenity.

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 subarticle (3) of article 52 of this Act, requiring such steps to be taken for abating the injury as may be specified in the notice. The provisions of the proviso to subarticle (3) of article 52 shall also apply to any notice under this article."

Addition of new articles 55A and 55B to the principal Act.

50. The following new articles 55A and 55B shall be added after article 55 of the principal Act:—

"Supplementary provisions as to enforcement.

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.

(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 paragraph (g) of subarticle (6) of this article, 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 paragraph (g) of subarticle (6); 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 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) above, 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) of this article shall apply to and for establishing the relative penalty.

Cap. 9.
Cap.152.

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

Procedure
applying to
certain types
of illegal
development
carried out
prior to 1
January
1993.

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) of this article 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) of this article, 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 of this Act 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 of this Act.

(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) of this article 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 paragraphs (a) and (b) of subarticle (8) of article 31 of this Act, 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 subarticle (9) of article 52 of this Act 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.”.

51. Article 56 of the principal Act shall be amended as follows: Amendment of article 56 of the principal Act.

(a) the words “article 46 or 48 in respect of any scheduled building or tree,” in paragraph (b) of subarticle (1) of article 56 of the principal Act shall be substituted by the words “article 46, 47 or 48 in respect of a scheduled property or tree, an emergency conservation order,”;

(b) paragraphs (c) and (d) of subarticle (1) thereof shall be substituted by the following:

“(c) having been served with an enforcement notice or other notice under articles 45, 52, 53 or 55 of this Act, 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”;

(c) the words “subarticle (7) of article 46” in the proviso to subarticle (1) thereof shall be substituted by the words “subarticle (7) of article 46 and subarticles (3) and (4) of article 55A of this Act and without prejudice to the maximum fine above established”;

(d) the word “permit”, wherever it occurs in subarticle (2) thereof, shall be substituted by the word “permission”;

(e) the following subarticles shall be added after subarticle (3) thereof:

Cap. 9.
Cap. 152.

“(4) Article 21 of the Criminal Code and the provisions of the Probation of Offenders 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) hereof 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) of this article shall be

due in respect of the time after the development has been regularised.”.

52. Article 58 of the principal Act shall be substituted by the following:-

Substitution of article 58 of the principal Act.

“Special procedures.

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 paragraph (d) of subarticle (1) of article 56 of this Act, 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 a penalty which he is required to pay in respect of that offence:

Provided that such penalty may not be higher than ten thousand liri and shall be in accordance with a schedule of penalties, which the Minister after consulting the Authority, and with the concurrence of the Minister responsible for finance, may by regulations prescribe:

Provided further that any person who feels aggrieved by a decision of the Authority under this subarticle may appeal to the Appeals Board for a revocation or modification of such a penalty.

(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 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 penalty indicated in the notice or such other penalty 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 penalty paid, or agreed to be paid, shall be the penalty to which he became liable to pay;

(b) if the offence is remedied and the penalty 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 penalty is not paid within the period, or further period, aforesaid, it shall be treated as if it were a penalty ordered to be paid by a court and proceedings may be taken accordingly to recover the same as a civil debt due to the Authority.

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

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

Amendment of
article 60 of the
principal Act.

53. Article 60 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:-

(i) the words “on the recommendation of the Authority” shall be substituted by the words “after consultation with the Authority” and the words “other activities affecting land” shall be substituted by the words “other activities affecting land or sea”,

(ii) the words “established by this Act, and to amend,” in paragraph (d) thereof shall be substituted by the words “established by this Act and to amend, substitute,”,

(iii) paragraph (f) shall be substituted by the following:-

“(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;”,

(iv) the following paragraph shall be added after paragraph (f) thereof:

“(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.”,

(v) immediately at the end of the subarticle there shall be added the following provisos:

“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.”, and

(b) the words “one thousand liri” in subarticle (2) thereof shall be substituted by the words “ten thousand liri”.

54. Subarticles (2) to (8) of article 61 of the principal Act shall be substituted by the following:—

Amendment of article 61 of the principal Act.

“(2) No service consisting in the supply of water and electricity to any new development shall be provided by any government agency unless there is in respect of such development a compliance or completion certificate as may be provided for in regulations made by the Minister under this subarticle. The said regulations may also provide for the discontinuation of the supply of water or electricity where such services have been provided in contravention of this subarticle or where the compliance or completion certificate has been issued in contravention of such regulations.

(3) (a) In any of the circumstances in which the Authority may serve an enforcement notice in terms of article 52 of this Act, or if the Authority has served such an enforcement notice as aforesaid, 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 prohibiting the transfer or creation of any real right thereon, by any title *inter vivos* whatsoever.

(b) The Authority shall enter all orders mentioned in paragraph (a) of this subarticle in the index mentioned in subarticle (2) of article 46 of this Act and the provisions of that subarticle regulating indexing of conservation orders shall *mutatis mutandis*

apply to the indexing of the orders mentioned in paragraph (a) of this subarticle.

Cap. 9.
Cap. 152.

(c) A person who transfers *inter vivos* property which is subject to an order as aforesaid in paragraph (a) of this subarticle shall be guilty of an offence against this article and shall be liable on conviction to imprisonment not exceeding six months and to a fine (*multa*) equivalent to the market value of the property on the date of transfer and the provisions of article 21, of articles 28A to 28I of the Criminal Code and of the Probation of Offenders Act shall not apply.

(d) Notwithstanding the provisions of article 688 of the Criminal Code, criminal action with respect to an offence against this article shall be barred by the lapse of five years.

(4) The said order shall be accompanied by a site plan indicating which development is the subject of such an order together with the floor or part of a floor in case of a building and a description of the land to which it applies.

(5) An order made under subarticle (3) of 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. Any revocation of an order shall be without prejudice to the making of a new order.

(6) The provisions of article 15 of this Act 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 paragraph (a) of subarticle (1).

(7) The Minister after consultation with the Authority may prescribe which categories of development may be the subject of an order as is provided for in subarticles (3) to (6) of this article.”.

Addition of new article 61A to the principal Act.

55. The following new article 61A shall be added after article 61 of the principal Act:

“Site plans to accompany notices and orders.

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

Amendment of article 62 of the principal Act.

56. (1) Any development permission in force immediately before the coming into force of this Act shall be automatically operative

for a period of five years from the date when the development permission was issued and the provisions of subarticle (3) of article 33 of the principal Act as amended by paragraph (d) of article 30 of this Act shall apply upon the lapse of the said period.

(2) The Authority shall issue the official manual referred to in paragraph (c) of article 5 of the principal law as amended by this Act within six months from the date of entry into force of this subarticle and the planning polices approved prior to the entry into force of this subarticle in terms of the procedure in force prior to the entry into force of this subarticle shall be included in the said manual.

(3) On the entry into force of the amendment to article 38 of the principal Act made by article 35 of this Act, the Interdepartmental Planning Committee shall continue to take cognizance of any development control application pending before it in terms of article 38 of the principal Act prior to its amendment by article 35 of this Act; and the procedure set out in article 38 of the principal Act made prior to its amendment by this Act shall continue to be followed with regard to pending applications before the entry into force of the said amendment.

(4) The provisions of subarticles (5) to (7) of article 36 of the principal Act as introduced by article 33 of this Act shall apply only to new development permission applications which are filed with the Planning Authority on and after the date of entry into force of the said subarticles (5) to (7) of article 36 of the principal Act as introduced by this Act; and the said subarticles shall not apply to development permission applications pending prior to the date of entry into force of the said article 33 of this Act.

Passed by the House of Representatives at Sitting No. 597 of the 17th September, 2001.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives