

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

26th July, 2005

ACT No. XII of 2005

AN ACT to amend the Cultural Heritage Act, Cap. 445.

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

1. (1) The short title of this Act is the Cultural Heritage (Amendment) Act, 2005. This Act shall be read and construed as one with the Cultural Heritage Act, hereinafter referred to as “the principal Act”. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for cultural heritage may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes thereof.

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

(a) the definition “Centre” shall be deleted;

(b) in the definition “conservation” immediately after the words “any activity” there shall be added the words “and research”;

(c) in the definition “Entities” the words “the Centre,” shall be deleted;

(d) in the definition “exploration” for the words “and which may result in the discovery of” there shall be substituted the words “or in the pursuit of discovering new”; and

(e) in the definition “surveillance” immediately after the words “which includes” there shall be inserted the words “, saving the functions of the Agency.”;

Amendment of article 7 of the principal Act.

3. Subarticle (5) of article 7 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof, the words “to conduct and” shall be inserted immediately before the words “to promote”;

(b) in paragraph (f) thereof, immediately after the words “and sites” there shall be added the words “, and to maintain all necessary databases and information derived from or required to organise, plan, co-ordinate, and monitor restoration projects”;

(c) paragraph (k) shall be re-numbered as paragraph (m) and the following new paragraphs (k) and (l) shall be inserted immediately after paragraph (j):

“(k) to advise Government, following consultation with the Agency and other relevant bodies, on a policy of conservation and restoration and identify priority areas and special needs;

(l) to compile and regularly update a register of non-governmental organisations set up with the objective of promoting cultural heritage, including the conservation, restoration management, presentation or study of cultural property which they hold in ownership or in trust:

“Provided that any non-governmental organisation to be included in such a register is to obtain the prior approval of the Minister;”.

Amendment of article 8 of the principal Act.

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

(a) in subarticle (1) thereof, immediately after the words “as defined in the Act.” there shall be inserted the words “The Agency may also operate a division for conservation, restoration, research and the training of conservation scientists and conservators. In order for the Agency to fulfill its functions and objectives, it is to enter into such agreement with institutions of

education and higher learning, especially the University of Malta or other local or foreign entities as it may deem appropriate to ensure academic standards of excellence and to enable it to establish and run under such agreements academic and vocational courses in conservation, restoration and the management of cultural heritage, as well as for the general purpose of providing trained personnel for the proper scientific tutelage of the cultural heritage.”; and

(b) for subarticle (4) thereof, there shall be substituted the following:

“Functions
of the
Agency.

(4) It shall be the function of the Agency:

(a) to ensure that museums, collections, including reserve collections, sites, buildings and property, movable or immovable, forming part of the cultural heritage, owned or administered by it, are conserved, restored, administered, managed, operated, marketed, studied, researched and, where applicable, excavated and presented for exhibition, in the best way possible;

(b) to acquire in property or in trust objects, collections of objects, sites, buildings for the Museums’ collections, sites and buildings;

(c) to perform or commission, in each case under the surveillance of the Superintendent, the restoration or conservation of cultural property owned or otherwise held or administered by the Agency;

(d) to coordinate with the Malta Tourism Authority, the Planning Authority and other pertinent bodies, measures which are deemed necessary so that objects, sites and buildings, forming part of the cultural heritage are protected and made accessible through all necessary conservation, maintenance, restoration, exhibition and promotion;

(e) to promote public knowledge, education, appreciation and enjoyment of the cultural heritage;

(f) to consult, in coordination with the Superintendence, with Local Councils in the preservation of the cultural heritage in their locality;

(g) to promote and carry out research in the field of cultural heritage and, subject to the regulatory function of the Superintendent, to conduct excavations and other investigations which may be required so that objects or aspects of cultural heritage be discovered, cared for and appreciated;

(h) to provide the Superintendent with copies of documentation of works of restoration and conservation carried out at or by the Agency, and, where necessary, the principles, technology and methodology employed.

(i) to act as a national consulting agency for both the public and private sectors on matters related to conservation and restoration;

(j) to advise Government, following consultation with the Superintendence, on a policy of conservation and restoration which will cover Malta and identify priority areas and special needs;

(k) to advise on and arrange for the restoration outside Malta of such artefacts which cannot be restored locally:

Provided that in respect of objects in private ownership, the Agency shall only so advise or so make such arrangements where requested;

(l) to undertake conservation projects in Malta and abroad and to provide conservation and restoration project management services to public and private sector clients in Malta and abroad;

(m) to set up and maintain all necessary systems, especially conservation databases, required to organise, plan, co-ordinate, control, monitor and generally undertake restoration projects of the Agency;

(n) to research and develop restoration project management methodology;

(o) to set up and maintain diagnostic science and conservation laboratories;

(p) to set up and maintain a documentation department charged with the scientific documentation of conservation projects undertaken by the Agency;

(q) to promote, set up and maintain teaching facilities for training students to internationally recognised, professional standards in the arts and sciences of conservation and restoration;

(r) to promote and co-ordinate the pursuit of interdisciplinary training at professional, technical and craftsman levels in all aspects of conservation and restoration;

(s) to promote and organise teaching and certification activities within the parameters of the Malta Professional and Vocational Qualifications Regulations 2000, in such a way as to allow for progression from vocational to professional levels; L.N. 215 of 2000.

(t) to identify skills required throughout the cultural heritage sector and the means by which such skills can be developed while also encouraging and supporting continuing professional development for those persons working in all occupations in the sector;

(u) to perform such other functions under this or any other law as well as such other functions as the Minister may from time to time assign to it, and generally to advise the Minister on all matters relating to the cultural heritage and cultural property.”.

5. In subarticle (1) of article 9 of the principal Act, for the words “and a member nominated by the Minister responsible for Gozo” there shall be substituted the words “a member nominated by the Minister responsible for Gozo, and a member nominated by the Council of the University of Malta.” Amendment of article 9 of the principal Act.

6. Article 10 of the principal Act shall be deleted. Deletion of article 10 of the principal Act.

7. Article 11 of the principal Act shall be deleted. Deletion of article 11 of the principal Act.

Amendment of article 14 of the principal Act.

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

(a) paragraph (g) of sub-article (1) thereof shall be deleted and paragraphs (h), (i) and (j) shall be renumbered as paragraphs (g), (h) and (i) respectively; and

(b) in paragraph (a) of sub-article (6) thereof, for the words “articles 7, 8 and 10” there shall be substituted the words “articles 7 and 8”.

Amendment of article 34 of the principal Act.

9. Article 34 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof -

(i) in paragraph (b) thereof, for the word “two” there shall be substituted the word “three” and for the words “one from persons accredited” there shall be substituted the words “two from persons accredited”;

(ii) in paragraph (c) thereof, for the words “representative;” there shall be substituted the words “representative.”; and

(iii) paragraph (d) thereof shall be deleted; and

(b) in subarticle (4) thereof, the words “in the case of a member appointed by the Centre, request the Centre to appoint another person to fill the vacancy” shall be deleted.

Amendment of article 40 of the principal Act.

10. In subarticle (1) of article 40 of the principal Act, immediately after the proviso thereto there shall be added the following new proviso:

“Provided further that the right of preference may only be exercised in any of the following circumstances:

(a) when the cultural property in question is demonstrably of high cultural value; or

(b) in the case of a potential physical threat to the cultural property; or

(c) in the case of export or movement resulting in its removal from national territory; or

(d) to guarantee the accessibility of the cultural property.”.

11. Article 41 of the principal Act shall be amended as follows: Amendment of article 41 of the principal Act.

(a) in subarticle (1) thereof, for the words “or re-export” there shall be substituted the words “re-export or remove from Malta, including the territorial waters thereof,”;

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

“(3) The Superintendent may, in granting permission for export, re-export or removal from Malta, including the territorial waters thereof, for a limited period of time and for the purpose of exhibition, restoration and, or study, impose guarantees for the return of the cultural property concerned at such amount as shall be fixed by the Superintendent:

Provided that in the case of export and re-export for a limited period of time and for the purposes indicated, the Superintendent may grant such permission without the payment of duty referred to in sub-article (2) of this article:

Provided further that no guarantee will be required where the export, re-export and removal from Malta, including the territorial waters thereof, is by the Agency.”; and

(c) in subarticle (6) thereof, immediately after the words “proposed to be exported” there shall be inserted the words “or removed from Malta, including its territorial waters,”.

12. Article 45 of the principal Act shall be amended as follows: Amendment of article 45 of the principal Act.

(a) in subarticle (1) thereof, immediately after the words “may enter” there shall be inserted the words “or inspect” and immediately after the words “or building” there shall be inserted the words “or inspect any goods”; and

(b) in subarticle (2) thereof, immediately after the words “is taking place”, there shall be inserted the words “is being contemplated”.

13. In subarticle (2) of article 53 of the principal Act for the words “his heirs.” there shall be substituted the words “his heirs.”, and immediately thereafter there shall be added the following proviso: Amendment of article 53 of the principal Act.

“Provided that where the property damaged or destroyed had been entrusted to or is the property of the Agency, then any amounts

so recoverable shall be passed over by the Superintendent to the Agency.”.

Insertion of new articles 57 to 60 in the principal Act.

14. Immediately after article 56 of the principal Act, there shall be inserted the following new articles:

“Transitory provisions concerning the transfer of property of the Centre to the Agency.

57. (1) With effect from the coming into force of this article all property pertaining to the Centre shall by virtue of this Act, and without further assurance, be transferred to, and shall vest in, the Agency under the same title by which it was held by the Centre immediately before the coming into force of this article.

(2) Such transfer shall extend to the whole of the Centre and shall include all plant, lands, works and other property movable or immovable, assets, powers, rights, privileges and causes of action held or enjoyed in connection therewith or appertaining thereto.

Transitory provisions concerning the construction of existing laws, contracts, etc.

58. Subject to the provisions of this Act, all laws, rules, regulations, orders, judgements, documents, warrants and working arrangements, subsisting immediately before the coming into force of this article, affecting the Centre shall have full force and effect against or in favour of the Agency and shall be enforceable as fully and effectually as if, instead of the Centre, the Agency had been named therein or had been a party thereto, as the case may be.

Transitory provision concerning employees.

59. Notwithstanding the other provisions of this Act or of any other law this article shall regulate the passage of employees of the Centre to the Agency which passage shall be made under the following terms and conditions:

(a) all persons employed with the Centre on the day of the coming into force of this article shall be offered employment with the Agency upon such terms and conditions of employment as offered by the Agency to other employees of the Agency in the same or in similar grades or upon such terms and conditions as the Agency may consider to be fair and reasonable due account being taken of the work performed by such employees and of the employment conditions prevailing in Malta;

(b) all contracts of employment with the Centre shall by virtue of this Act and without the necessity of

any further procedure or formality be terminated upon the coming into force of this article;

(c) all employees whose contract of employment with the Centre is terminated by virtue of paragraph (b) above shall be deemed to have been fully compensated for the termination of their employment with the Centre by the granting to them of the offer to continue in employment with the Agency in accordance with paragraph (a) above and the proviso to this article below and the said termination of any contract of employment with the Centre shall not give rise to any further obligation or liability on the part of the Centre, the Agency or the Government:

Provided that employees of the Centre –

(i) who were in employment with the Centre on the day immediately preceding the day of the entry into force of this article and whose contract of employment with the Centre was terminated by virtue of paragraph (b) above; or

(ii) whose contract of employment with the Centre had been terminated for reasons other than summary dismissal by the Centre not earlier than three months prior to the entry into force of this article, shall not be obliged to undergo any period of probationary employment upon their employment with the Agency in accordance with paragraph (a) above and, for the purposes only of establishing the length of service of such employees, their employment with the Centre shall be deemed to be employment with the Agency.

Other
transitory
provisions.

60. (1) Where anything has been commenced by or under the authority of the Centre prior to the coming into force of this article and such thing is in relation to any property or other rights or obligations of the Centre transferred by or under this Act, such thing may be carried on and completed by or under the authority of the Agency.

(2) Where on the day of the coming into force of this article any legal proceeding is pending to which the Centre is a party or is entitled to be a party and such proceeding has reference to any property or other rights or obligations of the Centre transferred by or under this Act the Agency shall be

substituted in such proceeding for the Centre or shall be entitled to be so substituted.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of securing and giving full effect to the transfer of the Centre or any right or obligation to the Agency by or under this Act and may make such orders as may be necessary to make any powers and duties exercised by the Centre, in relation to any transferred property, rights or obligations, exercisable by and on behalf of the Agency.”.

Passed by the House of Representatives at Sitting No. 292 of 18th July, 2005.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives