



**TOWARDS
HIGH STANDARDS
FOR ENVIRONMENT
PROTECTION AND
RESOURCE MANAGEMENT**

CONSULTATION DOCUMENT

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MINISTRY FOR SUSTAINABLE DEVELOPMENT,
THE ENVIRONMENT AND CLIMATE CHANGE

FOREWORD



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The proposals paving the way for the establishment of THE ENVIRONMENT AND RESOURCES AUTHORITY (ERA) are at once pro-active and focused while offering strategic direction. The envisaged Authority will now have an autonomy and identity all of its own. In this manner it can focus with greater intensity on environmental protection and conservation while helping manage our resources more efficiently. You will no doubt agree that all these are pivotal pillars of our natural environment.

Unlike planning and development, the existing environment legislation is in the form of an enabling primary law such that legal notices are then issued to regulate specific matters. Consequently, the legislative changes do not need to be as extensive as those in the development and planning sector where the primary law is more detailed. Nevertheless it is essential that a strong legal framework should be in place to enable the environment and our resources to establish and exercise their remit authoritatively. This is what the proposed amendments set out to do.

As an autonomous authority the new ERA will, as of now, be in a position to take a formal and well informed stand on proposals and decisions that may be proposed or be taken by other entities. As things stand today the environment is just the arm of a much bigger entity with goals, objectives and functions that are often different from one another and which, on many an occasion can prove to be even divergent.

The role of the new ERA will be further strengthened when it comes to addressing the impacts of development, via its proposed representation on the board of the Development and Planning Authority. In addition, there shall also be a statutory obligation for ERA to be always consulted. Moreover ERA shall be given the right to appeal against any decisions that may be taken by the Development and Planning Authority. These are three new elements that will give environment a much stronger

position then hitherto. At present in our environmental and resources management fields such rights simply do not exist.

As a result of this re-engineering exercise the new ERA will have added clout to carry out its duties in an efficient, effective and independent manner. Compliance and enforcement will be pivotal for the success or failure of this new authority and we are committed to this.

A new initiative aimed at ensuring high standards of environment protection is that, for the first time ever, provision is being made in the law for the development of a NATIONAL STRATEGY FOR THE ENVIRONMENT that sets out a concrete framework for environment plans, policies and programmes. As things stand today the current national environment policy document has no legal framework and as a result the pursuit of its implementation remains purely a voluntary initiative.

Government is truly committed to strengthen the level of environment protection in the country and the proposed amendments are aimed to provide the underlying framework to do so. We count on your support, ideas and constructive criticism to make sure that we can see this process through all its stages to ensure that it will be of direct benefit to us all.

Through our commitment and collective efforts we can turn this into a win-win situation for the benefit of all.

“Nemmnu li Malta għandha tkun minn ta’ quddiem nett fl-istandards ambjentali. Mhux għax hemm obbligu mid-direttivi Ewropej, iżda għax hekk jixraq lil uliedna.”

“We believe that Malta should be at the forefront of environmental standards. Not because EU directives oblige us to do so but because this is what our children should get.”

INTRODUCTION

TOWARDS HIGH STANDARDS FOR ENVIRONMENT PROTECTION AND RESOURCE MANAGEMENT

It is Government's intention through its programme to give priority to the environment and strengthen its autonomy through the demerger of the Malta Environment and Planning Authority into two separate and autonomous authorities, one responsible for the environment and resources and another responsible for planning and development. The whole process is being subjected to stakeholder consultation to ensure that the final outcome achieves the desired result of having two entities that are efficient and effective in delivering their regulatory role in what are two very important sectors for society's well-being.

Keeping in mind that the main regulatory provisions for environment protection and management are found in subsidiary legislation, the changes to the parent Act do not need to be extensive. Whilst acknowledging that effective implementation will depend on strong operational processes and procedures (not the key focus of this consultation document), a strong legislative framework that provides clear direction and intent is fundamental. This is what the proposed amendments intend to achieve.

This document presents the main provisions for the proposed legislation based on Government's vision and objectives for environment protection and resource management.

A PROACTIVE AND STRATEGIC AUTHORITY

1.1 The new legislation caters for the effective separation of the two key functions currently vested in the Malta Environment and Planning Authority through the creation of a distinct Environment and Resources Authority to regulate environment protection.

By having a distinct and autonomous Authority responsible for environment protection that is separate from the one responsible for development planning and control will bring to the fore the much wider role and functions related to environment management. For the first time in the Maltese Islands there will be a regulatory Authority that will set out the framework, plans and regulations for all human activities, including construction and development, to safeguard the environment within the concept of sustainable development. This should lead to a shift in the present dichotomy between environment and development since environment regulations will have a horizontal cross-cutting impact across all economic sectors including, where relevant, the respective entities that regulate such sectors.

DUTY TO PROTECT THE ENVIRONMENT

2.1 The new ERA legislation extends the current duty for environment protection to public and private entities and, in such spirit, requires every Government entity to implement the objectives and provisions of the new environment protection Act and also to have regard to national environmental targets when preparing and carrying out their respective plans, programmes and projects. In addition a new provision of law has been introduced to promote research and development in the environment field.

The achievement of national environmental targets and objectives is not the sole responsibility of the Environment and Resources Authority. Environmental stewardship is a common goal for all. Natural processes, systems and resources are used by everyone whether for commercial purposes (e.g. beaches and dive sites for tourism; soils for crop production; limestone for construction), for our well-being (extraction of drinking water from the sea; air to breathe and open countryside for recreation) and they are also part of our national identity (e.g. landscapes; endemic species). We must be aware of the impacts that our actions may leave on the environment so that we avoid actions that cause irreversible damage with substantial social and economic costs to remediate. Such awareness is fundamental since it can lead to innovative techniques and measures to reduce such impacts. The challenges for improved environmental quality for our well-being can also provide opportunities for economic development.

ADMINISTRATION

3.1 The Board of the new ERA will have a majority of independent members with knowledge and experience in environment, environmental health, resource management, social and community affairs. The Boards is also expected to have representatives from Environmental Voluntary Organisations sector and/or civil society.

In order to reflect the responsibilities and functions of ERA the decision making bodies of the new authority are expected to be experienced and conversant on matters pertaining to environment protection and resources management. Environment protection aims to regulate and guide human activities towards sustainable resource use. It is therefore important to ensure that the ERA's board includes members that understand the complexities of our communities and how our behaviour affects the environment.

3.2 The new legislation allows the Authority to determine its administrative and organisational set-up but it also provides for the appointment of advisory boards and committees by the Minister responsible for the Environment, to assist it in performing its functions.

Environmental protection and management is a dynamic process which evolves as research provides new results to guide policy development. The new Environment and Resources Authority will have regulatory functions and in performing its duties it may require ad hoc expertise particularly on research, environmental monitoring and innovative practices, functions that are vested in other entities. This provision will enable stronger ties to continue to be built between key stakeholders towards the achievement of national objectives and targets.

FUNCTIONS

4.1 The provisions in the new law pertaining to the functions of ERA are similar to those of the Environment and Development Planning Act of 2010. These provisions are intended to enable the new Authority to perform its role effectively and also to enable Malta to achieve its national targets more particularly within the context of its EU membership and the multinational agreements to which it is a contracting party. One key provision in the new legislation will be to succeed the functions currently vested in MEPA in relation to environment protection to the new Environment and Resources Authority. The functions are listed as follows:

- *the formulation and implementation of policies relating to the protection and management of the environment and the sustainable management of natural resources;*
- *to grant any authorisation, for the carrying out of any operation or activity relating to or which may have an impact on the environment;*
- *to carry out studies, research or investigation on any matter relating to the environment;*
- *to provide information and issue guidelines to the public and to commercial and other entities on matters relating to the environment;*
- *to ensure that international obligations entered into by the Government relative to the matters regulated by or under this Act are complied with;*
- *to advise the Minister on the formulation of policy in relation to matters regulated by this Act, and in particular in relation to such international obligations;*
- *make or advise the Minister on the making of environmental standards, guidelines and the making of regulations under this Act as well as on the formulation and implementation of contingency and emergency plans to safeguard the environment;*
- *monitor the quality of the environment and for such purpose establish methodologies, maintain and disseminate information related to the environment;*
- *publish reports on the state of the environment;*
- *ensure that environmental audits and environmental assessments are properly carried out;*
- *provide support and advisory services relating to environment protection, to Government and local authorities in relation to the performance of their functions;*
- *provide, either alone or in collaboration with others, education, training and public awareness programmes relating to environmental protection, and the sustainable management of the environment and natural resources;*
- *In the pursuance of its functions under this Act, the Authority shall make reference to European best practices and emulate them.*
- *Administer the Environment Fund;*

- *Set up and administer the Register of Consultants eligible to carry out Environmental and other assessments.*

Within the context of a distinct authority with ad hoc human and financial resources dedicated solely for environment protection and resource management, these functions are expected to deliver more visible and tangible results. Having a separate and autonomous Environment and Resources Authority is expected to lead to an empowered situation whereby the Maltese Islands and their population shall enhance their understanding of environmental stewardship and the complexities of natural processes and systems and how these affect our day-to-day life.

PLANS AND POLICIES

5.1 A National Strategy for the Environment shall be statutorily mandated as the strategic governance document that sets the policy framework for plans, policies and programmes for effective management of the environment and resources.

The environment sector is heavily regulated by EU directives and regulations that are however framed within a regional context and therefore need to be transposed into national legislation. The national framework for environment protection needs to be developed at a Member State level. The existing Environment and Development Planning Act of 2010 provides for the preparation of different plans and programmes. The overarching policy framework was however set within the context of a spatial planning document where the primarily role is to identify the best location for urban development, taking the environment into consideration. The 2012 National Environment Policy provided the first attempt towards a national comprehensive direction for the environment but without a legal framework to support it remains weak as a directional document.

With the new statutory provisions the Government is translating into law its intent to deliver the promise of having a more proactive and strategic authority for the environment. The National Strategy for the Environment is expected to deliver the national vision for environment protection and resource management within the context of sustainability of the Maltese Islands. As a national document it is to be prepared by Government and approved by the House of Representatives and it should guide the preparation of thematic plans and programmes.

5.2 In the light of the ongoing evolution in the environment policy field, particularly at EU-level, the new legislation incorporates provisions to cater for the need of periodic formulation of Regulations, Orders as well as Guidance documents.

The new Environment Protection Act will have provisions to enable the formulation and adoption of Regulations and Orders in order to facilitate the regulation of different activities through specific provisions. As these change from time to time, such provisions are intended to ensure a dynamic and timely response to policy developments and ensure their effective implementation. The ERA will also be empowered to prepare Guidance documents aimed to clarify processes and procedures linked with environment protection and resource management such as environmental permitting, thereby facilitating implementation by government entities, private operators and the public in general, as necessary. This provision should also help reduce bureaucracy and remove conflicts that may otherwise arise through lack of information.

ACCESS TO JUSTICE AND INFORMATION

6.1 The proposed provisions for the new Environment Protection Act aim to ensure that Access to Justice proceedings are timely and not prohibitively expensive in line with the Access to Justice principles.

As the framework legislation for environment protection and resource management the proposed provisions ensure that any decision of the ERA is to be subject to appeal. Said right shall be vested in any person including a body or other association of persons whether granted legal personality or not and shall include non-governmental organisations (NGOs) that promote environmental protection that are registered under the Voluntary Organisations Act. The proposed provisions are such that they take cognisance of the voluntary nature of NGOs.

6.2 The legislation provides for access to all information, held by the Authority or otherwise, relative to the environment and requires that such information is disseminated. In addition the new authority must ensure that proper procedures relative to public participation are followed.

The empowerment of the Maltese population in the field of environment protection, whether as a government entity, private sector, Local Council, NGO or at an individual level, depends on access to environmental information and the ability to be involved in the plan formulation and decision making processes. The establishment of a separate and distinct Authority for environment protection and resource management, in fulfilling its functions is expected to build the national capacity to deliver these objectives.

AUTHORISATIONS AND CONSULTATIONS

7.1 The legislation provides for the Environment and Resources Authority to determine matters which require an authorisation in relation to environment protection and resource management.

The legislation will establish a new authority with its own functions and responsibilities that are distinct from those of any other entity established by Government. As a distinct organisation the new ERA will decide upon matters pertaining to its functions and responsibilities, including environmental permitting. In performing its duties the authority will both consult stakeholders and also be consulted by other entities. These roles are explained further below.

7.2 The legislation will provide for the Environment and Resources Authority to be empowered to consult any entity for advice as well as in the preparation of its plans and policies and decision-making processes.

Environment protection and resources management are horizontal processes that affect a broad spectrum of sectors and stakeholders. They ultimately aim to manage processes as well as procedures related to decision making and operations and other activities required for socio-economic performance with the intention of avoiding, reducing and/or mitigating negative environmental impacts. Through such provisions, the Government is ensuring that, whilst pursuing the overarching objective of environment protection and resource management, ERA performs its functions within the context of the socio-economic realities on the ground. It is in this manner that the principles of sustainable development can also be implemented.

Therefore in its operations, the new Environment and Resources Authority must develop standard operation procedures with relevant stakeholders to ensure that processes, procedures and respective responsibilities are clear. Such procedures will ensure clarity and effectiveness in decision-making and reduce bureaucracy where possible.

7.3 The establishment of a new Environment and Resources Authority will automatically ensure that it is a stakeholder in decision-making processes at Government level.

The enactment of a distinct authority for environment protection and resource management will put the environment at par with any other sector in decision making processes. Whilst such provisions may exist in subsidiary legislation (e.g. Strategic Environment Assessment Regulations) the new legislation will give environment an independent identity on Government's decision-making map.

Further to this significant change for the environment sector, specific reference will be made to the new ERA within the new Development and Planning Act. The provisions of the legislation for the new Development and Planning Authority will ensure that the ERA is to have a representative on the Planning Board as well as to be considered as a statutory external consultee. Therefore the Authority may make recommendations to the Development Planning Authority on matters referred to it as well as be directly involved in decision making.

COMPLIANCE MONITORING AND ENFORCEMENT

8.1 The provisions for the new legislation require the Environment and Resources Authority to ensure compliance with and enforce matters falling under the Environment Protection Act, whilst providing the necessary empowerment to take action.

One key issue for effective environment stewardship is to promote self-regulation where environmental permitting is concerned. This can only be achieved through the establishment of strong compliance procedures supported with the necessary resources. Compliance monitoring is that element of inspection that is part of the permit application, audit and renewal process, commencing with pre-application inspections, post- application inspections and auditing as to compliance with permit conditions as a pre-condition for permit renewal. Enforcement action is triggered after a significant infraction and/or repeated non-compliance require the use of other enforcement tools related to fines or legal action.

Whilst the provisions of the new act will ensure that all necessary action can be taken, the emphasis on compliance is envisaged to generate more stakeholder support for the implementation of environment regulations.

8.2 The legislation will ensure the proper implementation of the rules established under the Prevention and Remedying of Environmental Damage Regulations.

The new Environment and Resources Authority will be empowered to introduce measures related to the liability incurred by any individual who is responsible for environmental damage. With a distinct authority focused solely on environment protection and resource management processes and procedures pertaining to environment liability can develop to strengthen the national capacity to safeguard our environment and natural resources effectively.