

I assent.

(L.S.) **GEORGE VELLA**
President

20th July, 2021

ACT No. XLI of 2021

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. The short title of this Act is the Cultural Heritage (Amendment) Act, 2021 and this Act shall be read and construed as one with the Cultural Heritage Act hereinafter referred to as "the principal Act".

2. The Arrangement of Act shall be substituted by the following new Arrangement of Act:

"Arrangement of Act		Articles	Substitution of the Arrangement of Act of the principal Act.
PART I	Preliminary	1-3	
PART II	Principles and General Duties	4-6	
PART III	Constitution, Composition and Functions of Entities	7-14	
PART IV	Administrative and Personnel Provisions	15-17	

PART V	Financial Provisions	18-28
PART VI	Conservation Professionals	29-43
PART VII	Underwater Cultural Heritage	44-48
PART VIII	Protection of Cultural Heritage	49-52
PART IX	Special Powers of the State	53-68
PART X	Religious Cultural Heritage	69
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PART XII	Regulations	72
PART XIII	Miscellaneous	73
SCHEDULE	Rate of Administration Fees".	

Amendment of
article 2, of the
principal Act.

3. Article 2 of the principal Act shall be amended as follows:
- (a) in the definition "cultural property", immediately after the words "immovable property" there shall be added the words ", to whomsoever they may belong";
 - (b) the definition "Committee" shall be deleted;
 - (c) immediately after the definition "contiguous zone" there shall be added the following new definition:
" "Council" means the National Council for Cultural Heritage established by article 12;";
 - (d) the definition "Department of Government" shall be repositioned immediately after the definition of "cultural property";
 - (e) in the definition "Entities" the word "Committee" shall be substituted by the word "Council";
 - (f) immediately after the definition "entrustment agreement" there shall be added the following new definition:
" "excavation" means archaeological scientific, stratigraphic investigation and documentation to inform research, building construction projects, conservation, protection and management of archaeological contexts, taking note of provenience, matrix, association, artefacts, ecofacts, features and structures on land and in the territorial waters, and may include non-intrusive or intrusive techniques;";
 - (g) in the definition "integrated conservation", the words

"man-made" shall be substituted by the words "human-made";

(h) immediately after the definition "public officer" there shall be added the following new definition:

" "Regulator" means the Superintendence of Cultural Heritage;"; and

(i) in the definition "restoration", the words "critical and historical process" shall be substituted by the words "critical, historical and scientific process".

4. Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) There shall be a regulator for cultural heritage hereinafter in this Act referred to as the Superintendence of Cultural Heritage, under the responsibility and management of the Superintendent of Cultural Heritage. The mission of the Superintendence is to fulfil the duties of the State to ensure the protection and accessibility of cultural heritage as defined in this Act."; and

(b) in paragraph (g) of sub-article (5) thereof, immediately after the words "part of the cultural heritage" there shall be added the words ", as well as to advise other pertinent bodies on all matters of cultural heritage".

5. Article 8 of the principal Act shall be amended as follows: Amendment of article 8 of the principal Act.

(a) sub-article (4) thereof shall be amended as follows:

(i) in paragraph (m) thereof, the words "of cultural property; and" shall be substituted by the words "of cultural property;"; and

(ii) in paragraph (n) thereof, the words "to the cultural heritage and cultural property." shall be substituted by the words "to the cultural heritage and cultural property; and" and immediately thereafter there shall be added the following new paragraph:

"(o) to set up and manage the Office of the Chief Herald of Arms of Malta."; and

(b) in paragraph (a) of sub-article (5) thereof the

	words "there shall be followed the provisions of article 48." shall be substituted by the words "there shall be followed the provisions of article 64.",
Amendment of article 10 of the principal Act.	<p>6. Sub-article (2) of article 10 of the principal Act shall be substituted by the following new sub-article:</p> <p>"(2) The Minister shall review the said strategy as often as may be necessary, and in any case not less than once every ten (10) years.",</p>
Addition of new article to principal Act.	<p>7. Immediately after article 10 of the principal Act there shall be added the following new article:</p>
"National World Heritage Technical Committee.	<p>10A. (1) There shall be a National World Heritage Technical Committee which shall be composed as follows:</p> <p>(a) a Chairperson appointed by the Minister;</p> <p>(b) the Superintendent <i>ex officio</i>, or representative;</p> <p>(c) the Chief Executive Officer of the Agency <i>ex officio</i>, or representative;</p> <p>(d) the Director of the Restoration Directorate <i>ex officio</i>, or representative;</p> <p>(e) a representative of the Planning Authority;</p> <p>(f) a representative of the Environment and Resources Authority;</p> <p>(g) three (3) other persons appointed by the Minister from amongst entities working in the field of World Heritage Sites.</p> <p>(2) The Chairperson of the Technical Committee and the members referred to in sub-article (1) shall be appointed for a period of three (3) years and may be reappointed for further periods of three (3) years each.</p> <p>(3) Subject to the provisions of this Act and to such procedures as may be prescribed, the Technical Committee shall regulate its own proceedings or as provided in paragraph (j) of article 72.</p>
Functions of the Technical Committee.	<p>(4) The Technical Committee shall:</p>

(a) ensure and facilitate the collaboration between the different entities with direct or indirect responsibility for the protection and management of the World Heritage Sites of the Maltese Islands;

(b) advise the Minister and Government on any matter affecting World Heritage Sites and on any other matter referred to it by the Minister, and subsequently ensure the implementation of the necessary measures as adopted by Government and as directed by the Minister;

(c) draw the attention of the Government or of any entity, organisation or person to any urgent action that may be required with regard to World Heritage Sites; and

(d) without prejudice to the provisions of this Act, co-ordinate response to UNESCO on matters affecting World Heritage Sites."

8. In article 11 of the principal Act, the words ", or tax on income or duty on documents" shall be deleted.

Amendment of article 11 of the principal Act.

9. Article 12 of the principal Act shall be substituted by the following new article:

Substitution of article 12 of the principal Act.

"National Council for Cultural Heritage

12. (1) There shall be a National Council for Cultural Heritage, which shall be composed as follows:

(a) a Chairperson appointed by the Minister;

(b) a person appointed by the Minister responsible for tourism;

(c) a person appointed by the Minister responsible for Gozo;

(d) a person appointed by the Minister responsible for government property;

(e) the Superintendent *ex officio*;

(f) the Chairperson of the Agency *ex officio*;

(g) the Chairperson of the Planning Authority *ex officio*;

(h) the Chairperson of the Environment and Resources Authority *ex officio*;

(i) the Director of the Restoration Directorate;

(j) a member of the Catholic Cultural Heritage Commission referred to in article 69 appointed by the competent local ecclesiastical authority; and

(k) four (4) other persons appointed by the Minister, three (3) from amongst persons working in the field of cultural heritage and in non-Governmental organisations dedicated to cultural heritage, and another person active in the commercial sector.

(2) The Chairperson of the Council and the members referred to in sub-article (1) shall be appointed for a period of three (3) years and may be reappointed for further periods of three (3) years each.

(3) The Council shall meet at least once every two months. Its meetings shall be called by the Chairperson either on his own initiative or at the request of any three (3) of the other members.

(4) Five (5) members shall form a quorum and decisions shall be adopted by a simple majority of all the members of the Council. The Chairperson shall have an initial vote and, in the event of an equality of votes, a casting vote.

(5) Subject to the provisions of this Act and to such procedures as may be prescribed, the Council shall regulate its own proceedings.

Functions of
the Council.

(6) The Council shall:

(a) without prejudice to the provisions of this Act, co-ordinate the entities established under articles 7 and 8;

(b) ensure and facilitate the collaboration between the different agencies with direct or indirect responsibility for the protection and management of the cultural heritage sector;

(c) advise the Government on the National Strategy for Cultural Heritage and subsequently oversee and monitor the implementation of the strategy as adopted by Government and as directed by the Minister;

(d) draw the attention of the Government or of any organisation or person to any urgent action that may be required in the field of cultural heritage;

(e) meet regularly and consult, at least, every four (4) months, with non-governmental organisations working in the field of cultural heritage and with persons operating in the commercial sector; and

(f) advise the Minister on any matter arising from the provisions of this Act and on any other matter referred to it by the Minister.

(7) Any member who has a direct or indirect interest in any contract or other action made or proposed to be made by the Council shall disclose the nature of his interest at the first meeting of the Council after the relevant facts have come to his knowledge. Such disclosure shall be recorded in the minutes of the meeting, and such member shall withdraw from any meeting while such matter is discussed or decided by the Council."

10. In the Maltese version, in sub-article (2) of article 19 of the principal Act, the words "mija u sittax-il elf u erba" shall be deleted.

Amendment of article 19 of the principal Act.

11. Article 32 of the principal Act shall be substituted by the following new article:

Substitution of article 32 of the principal Act.

"Other persons working with Conservator-Restorers.

32. (1) The Board shall recognise the registers, lists and directories kept by other warranting boards which grant warrants to persons that work with Conservator-Restorers. Persons listed in such registers, lists and directories shall be referred to as "listed persons".

(2) The Board may register a person as having one or more Heritage Skills:

Provided that the Board is satisfied that the person who applies to be so registered is suitably trained or experienced and is eligible to qualify and be registered as having a Heritage Skill in accordance with the provisions of this Act.

(3) Persons registered as having a Heritage Skill shall not carry out conservation-restoration work on cultural heritage outside their field of expertise:

Provided that persons registered as having a Heritage Skill must only practise under the supervision of a warranted Conservator-Restorer when working on cultural heritage.

Provided further that listed persons and persons registered as having a Heritage Skill but not holding a warrant of a Conservator- Restorer shall not be deemed to practise the profession of Conservator-Restorer and shall not be considered a warranted Conservator-Restorer.

(4) The provisions of this article shall not affect contracts, projects and works that have commenced before the coming into force of the Cultural Heritage (Amendment) Act, 2021."

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Substitution of article 43 of the principal Act. **12.** Article 43 of the principal Act shall be substituted by the following new article:

"Regulation of restoration services and performance.

43. It shall be the power of the Minister to prescribe such rules and regulations as may be necessary to further regulate performance of such work, services, acts or functions as referred to in this Part."

Amendment of article 44 of the principal Act.

13. Article 44 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, immediately after the words "historic shipwreck" there shall be added the words ", aircraft"; and

(b) in sub-article (3) thereof, immediately after the words "with a ship" there shall be added the words ", aircraft or archaeological site".

Amendment of article 46 of the principal Act.

14. Paragraph (d) of sub-article (2) of article 46 of the principal Act shall be substituted by the following new paragraph:

"(d) delivering the object to the Superintendence or as delegated by the Superintendent within a particular time."

Substitution of the marginal note of article 48 of the principal Act.

15. The marginal note of article 48 of the principal Act shall be substituted by the following new marginal note:

"Duty to report the discovery of underwater cultural heritage."

Substitution of article 51 of the principal Act.

16. Article 51 of the principal Act shall be substituted by the

following new article:

"51. (1) The Superintendent may enter, by public deed, into an entrustment agreement with the Agency for the custody, administration, care and accessibility of immovable property in accordance with the provisions of this Act, and in accordance with such conditions as may be contained in the said agreement.

(2) The Superintendence shall inform in writing the competent Authority responsible for Government property of any such authorisation given under sub-article (1).".

17. In the first proviso to sub-article (2) of article 52 of the principal Act, the words "within thirty days of" shall be substituted by the words "up to thirty days prior to". *Amendment of article 52 of the principal Act.*

18. Sub-article (1) of article 53 of the principal Act shall be amended as follows: *Amendment of article 53 of the principal Act.*

(a) in paragraph (c) thereof, immediately after the word "foundations" there shall be added the words "and non-governmental organisations as"; and

(b) paragraph (d) thereof shall be substituted by the following new paragraph:

"(d) physical and juridical persons. In the case of privately owned movable cultural property, when such cultural property has been made accessible to the public and when such persons have given their consent for such purposes; and".

19. Article 54 of the principal Act shall be amended as follows: *Amendment of article 54 of the principal Act.*

(a) in sub-article (5) thereof, immediately after the words "shall be" there shall be added the words "the amount declared by the exporter on proof of documents of acquisition, or if the Superintendence deems fit, the amount shall be"; and

(b) in sub-article (9) thereof, the words "and shall inform the Committee and the Minister regarding the issue of such certificates and guarantees" shall be substituted by the words "provided that the register is kept accessible to the Minister and the Council".

20. Article 55 of the principal Act shall be amended as follows: *Amendment of article 55 of the principal Act.*

(a) in sub-article (1) thereof, the words "in consultation

with the Committee" shall be deleted; and

(b) in sub-article (3) thereof, the words "there shall be followed the provisions of article 59." shall be substituted by the words "there shall be followed the provisions of article 54.".

Substitution of
article 56 of the
principal Act.

21. Article 56 of the principal Act shall be substituted by the following new article:

"Conservation
and
restoration. 56. (1) The conservation and restoration of cultural property may only be carried out with the prior authorisation and conditions established by the Superintendent;

Provided that the owners or persons responsible for the proposed conservation and restoration shall notify the Superintendent beforehand;

Provided further that the Agency shall only give sufficient notice and information to the Superintendent prior to the commencement of the conservation and restoration works on public cultural property entrusted to it.

(2) Proponents shall engage warranted conservator-restorers to prepare documents, carry out and or oversee the works.

(3) Conservation and restoration work may be subject to the submission of condition reports and method statements prepared by warranted conservators-restorers or other experts approved by the Superintendence for the prior approval by the Superintendent.

(4) Such work may be subject to monitoring or periodic inspections and reporting by the Superintendent:

Provided that, following the inspection or monitoring, the Superintendent may require amended plans and method statements and may modify the conditions established in the original authorisation.

(5) The conservation and restoration of cultural property shall be subject the provisions of this Act."

Amendment of
article 57 of the
principal Act.

22. In article 57 of the principal Act, the words "at the expenses of such person." shall be substituted by the words "at the expenses of such person:" and immediately thereafter there shall be added the following new proviso:

"Provided that the Superintendent may register a special privilege on the property for the amount of expenses

due,".

23. Article 59 of the principal Act shall be amended as follows: Amendment of article 59 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) No person shall make any development or other interventions on immovable cultural property, property listed in the national inventory or scheduled property without first having obtained a permit therefor from the Superintendent and as may be prescribed in regulations issued under this Act.";

(b) in sub-article (3) thereof, immediately after the words "such conditions" there shall be added the words ", heritage obligations";

(c) in sub-article (5) thereof, the words "as shall be stated in the permit, by such warrant holder, professional or monitor." shall be deleted; and

(d) in sub-article (6) thereof, immediately after the words "amended plans" there shall be added the words "or method statements".

24. Article 61 of the principal Act shall be amended as follows: Amendment of article 61 of the principal Act.

(a) sub-article (2) thereof shall be amended as follows:

(i) the words "with the provisions of this Act:" shall be substituted by the words "with the provisions of this Act."; and

(ii) the proviso thereof shall be deleted;

(b) in sub-article (3) thereof, the words "article 70" shall be substituted by the words "article 7";

(c) sub-article (5) thereof shall be amended as follows:

(i) the words "shall belong to Government:" shall be substituted by the words "shall belong to Government and administered by the Superintendence in accordance with article 50."; and

(ii) the proviso thereof shall be deleted;

(d) sub-article (6) thereof, shall be deleted; and

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(e) sub-article (7) thereof shall be renumbered as sub-article (6).

25. Article 62 of the principal Act shall be substituted by the following new article:

"62. (1) Where any development or other work, including restoration, is being carried out in respect of any cultural property in contravention of any of the provisions of this Act, or any person holding a licence to carry out archaeological excavations, or a warranted conservator-restorer or listed persons, or accredited monitors, experts or organisations mentioned under this Act does not conform to any condition attached to such licence, or any person holding a development permit in the case of an accidental discovery of a cultural property, or holds a permit for restoration and fails to conform to the said permit, or in the event of a contravention of any condition contained in any permit in contravention of this Act, the Superintendent may serve a suspension notice on the person carrying out such development, work, restoration or excavation, or on the owner of the property where such development or works are being carried out, on the owner, possessor or holder of the cultural property and thereupon the person served with the order shall suspend all activity in connection with the development work, restoration or excavation.

(2) The Superintendent may revoke any such suspension notice either absolutely or subject to such conditions as the Superintendent deems appropriate."

26. In sub-article (2) of article 63 of the principal Act, the words "or the occupier or the possessor;" shall be substituted by the words "or the occupier or the possessor;" and immediately thereafter there shall be added the following new proviso:

"Provided that the Superintendent may register a special privilege on the property for the amount of expenses due."

27. Immediately after article 64 of the principal Act there shall be

added the following new article:

"Right of first refusal to Agency of vacant Government property. 64A. In the event that an immovable property belonging to the Government of Malta which is of cultural or historic importance becomes vacant or is available to the Superintendent or the Council, the Agency shall have the right of first refusal when it comes to the allocation of the immovable cultural property."

28. In sub-article (4) of article 69 of the principal Act, the words "mentioned in sub-articles (1) and (2)." shall be substituted by the words "mentioned in sub-articles (1) and (2);" and immediately thereafter there shall be added the following new proviso: Amendment of article 69 of the principal Act.

"Provided that religious authorities and, or their respective superintendencies may delegate any function to the Superintendence established under article 7."

29. Sub-article (1) of article 70 of the principal Act shall be amended as follows: Amendment of article 70 of the principal Act.

(a) in paragraph (g) thereof, the words "material respect," shall be substituted by the words "material respect; or" and immediately thereafter there shall be added the following new paragraph:

"(h) any person who knowingly is in possession of any form of cultural property which was acquired illegally and retained by such person,";

(b) the paragraph following paragraph (h) thereof shall be substituted by the following new paragraph:

"shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of not less than two thousand euro (€2,000) and not exceeding two hundred and fifty thousand euro (€250,000), or to imprisonment for a term not exceeding six (6) years, or to both such fine and imprisonment;"

30. Article 72 of the principal Act shall be amended as follows: Amendment of article 72 of the principal Act.

(a) paragraph (r) thereof there shall be substituted by the following new paragraph:

"(r) to provide for administrative infringements and fines including out of court settlements;" and

(b) immediately after paragraph (r) thereof there shall be

added the following new paragraph:

"(s) to prescribe anything else which may or is to be prescribed under this Act."

Substitution of
the Schedule to
the principal
Act:

31. The Schedule to the principal Act shall be substituted by the following new Schedule:

"SCHEDULE
(article 54)
Rates of Administration Fees

Certificate for movement within the EU - applies for both "import" and "export" from any EU State	Administration Fee: €65 including VAT Express Fee: €200 including VAT
Certificate for export/re-export (to outside the EU) of cultural heritage items over fifty (50) years old	15% <i>ad valorem</i> fee of the declared value or as established in the Act, plus: Administration Fee: €65 including VAT Express Fee: €200 including VAT

"

Passed by the House of Representatives at Sitting No. 488 of the
13th July, 2021.

ANGLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

