

Award in Maltese Education Law and Data Privacy Implications in the Education Sector

Lecture Title: The Acts Regulating Education in Malta
Part II

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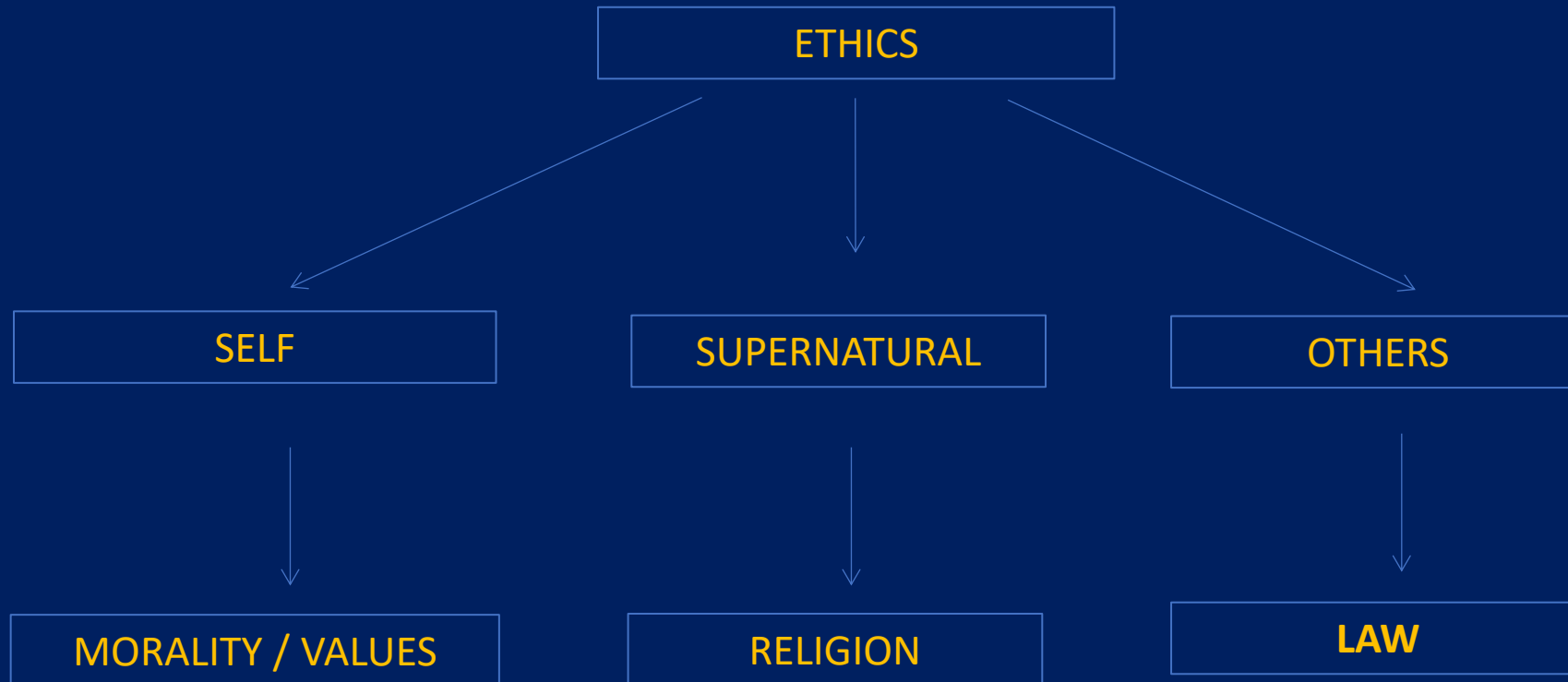
Diploma in Law (Malta)

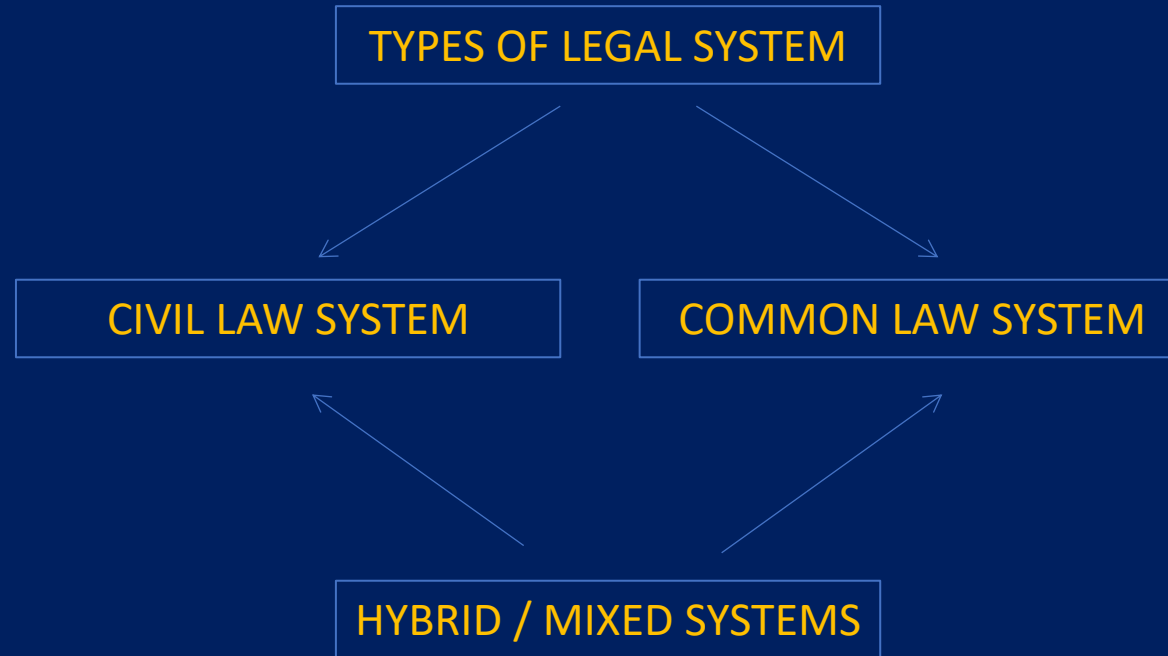


CAMILLERI PREZIOSI
ADVOCATES

Why Legislate?

Fundamental ethical principle – all human behaviour has to be regulated





HISTORY OF MALTESE LAW

9 ERAS OF INFLUENCES ON MALTESE LAW

- Roman Malta 218BC – 370AD : Roman Law & Edict of Caracalla 212AD
- Arab Malta 870 AD – 1090 AD : Maltese language in law, not much else
- Norman Malta 1090 AD – 1530 AD : Roman law and Sicilian maritime usages
- Order of St. John 1530 AD – 1798 AD : Roman Law & Code De Rohan
- French Malta 1798 – 1800 : Little time to legislate but Code Napoleon
- British Malta 1800 – 1964 : 5 Codes on Civil Law but the rest is Common Law
- Independent Malta 1964 – 2004 : The influence of British legal system continues
- European Unionised Malta 2004 – : Uk became member in 1972 (indirect influence)
- Revival of codification 2009 AD – : Exercise continuing

Major Influences on our Law:

- Private law – continental codification
- Public Law – British customary laws & numerous statutes from other commonwealth
- Canon Law – Marriage, abortion, teaching, euthanasia, IVF, tribunal systems
- Public International Law – Conventions, Treaties, Customary IL, Ius Cogens, Decisions, Authors
- EU Law



- Civil Law and Criminal Law
- Public Law and Private Law
- Substantive Law and Procedural Law
- Primary and Secondary Law.

Civil Law:	rights / obligations, remedies, damages, specific performances
Criminal Law:	rules concerned with acts / omissions contrary to public order / society - punishment (imprisonment / fine).
Public Law:	Constitutional Law, Administrative Law, Criminal Law. (Inc. Education)
Private Law:	Civil Law and Commercial Law (private interests).
Substantive Law:	the legal relationship between people / the people and the state
Procedural Law:	rules to enforce substantive laws
Primary Legislation:	Constitution and Acts of Parliament (630 chapters)
Secondary Legislation:	rules and regulations by Ministers / other local authorities under delegated powers from Parliament



PRIMARY AND SUBSIDIARY LAWS

PRIMARY

- Acts – all post independence primary laws (Education Act)
- Ordinances – under British rule (Medical and Kindred, Port Workers, Burial, Housing (Decontrol), Rent Restriction (Dwelling Houses).
- Codes – Civil, Commercial, Criminal, Organisation and Procedure, Police.

SUBSIDIARY

- Regulations – (Mandatory Use of Medical or Cloth Masks Regulations L.N. 326/2020)
- Administrative – (eg Dir. 5 - Political Participation / Communications with Media)
- Rules – Common in Procurement and EU legislation
- Orders (Freezing Order, Attachment Order, Investigation Order)
- By laws – University, Local Government, Stock Exchange, Institute of Accountants
- Schemes – Common under Companies Act.
- Warrants - Financial, Administration and Audit Act – Minister may issue warrants



THE MALTESE COURTS SYSEM



- Constitutional Court:** 3 judges. Appeals violations of human rights, the interpretation of the Constitution and invalidity of laws. H.O.R. and elections
- Court of Appeal:** 3 judges in appeals from Civil Court. 1 Judge from C.o.M. Also appeals from administrative tribunals / other authorities' decisions
- Court of Criminal Appeal:** 3 judges from Criminal court. 1 Judge from C.o.M.
- Civil Court:** 1 Judge. 4 Sections : Family, Voluntary, Commercial, General (1st Hall).
- Criminal:** Offences exceeding C.o.M competence. Judge or Judge & Jury
- Magistrates:** Civil (€5K to €15K) and Criminal (<2 years punishment / 2-12yrs extended competence)

- Juvenile Court:** Offences by < 16 yrs. Also Care orders. Restricted attendance.

- Gozo Court:** Civil and Criminal.
 For Criminal it is the same as Maltese.
 For Civil it includes inferior jurisdiction (C.o.M.) as Malta but also superior (those exercised in Malta by Civil Court – Civil / Commercial / Voluntary Jurisdictions).



COMPONENTS OF ACTS OF PARLIAMENT

Primary legislation consists of Acts of Parliament (Revised Edition of the Laws of Malta).

The structure of each Act of Parliament follows a common pattern:

- 1) Long title
- 2) The enacting formula (which lists inter alia the legislative history of the Act)
- 3) Short title (which is usually the first article in the Act)
- 4) Commencement date, if any
- 5) The 'interpretation' clause, defining key terms which appear throughout the Act
- 6) Main provisions
- 7) Administrative provisions
- 8) Transitional provisions - cover certain issues from the old legal regime to the new one
- 9) Repealing provisions
- 10) Schedule/s



SUBSIDIARY / DELEGATED LEGISLATION

- The legislative supremacy of Parliament allows it to grant to some other person or body the authority to make subsidiary legislation such as regulations or orders
- Subsidiary to the 'primary' or 'parent' Act under which this authority is created.
- The need to enact many laws - difficulty of limited parliamentary broad issues of principle and policy in the sense of providing a framework law.
- Laws contain provisions empowering regulations under the authority of the parent Act.
- Parliament not always in session. Legislative procedures necessarily slow. Delegated legislation more flexible, speedily created and may be easily revoked.
- Some legislation is better handled by a specialised minister with experts.
- Useful for further regulation which might not be foreseen by Parliament.

Criticism of delegated legislation:

- Even though power is delegated / authorised, it amounts to legislating by the executive which goes against the strict interpretation of the doctrine of separation of powers.
- Laws are in skeleton form, details through delegated legislation. The devil is in detail.
- Not always satisfactory drafting.
- Limited parliamentary time does not allow full control of what its delegates.

BUT precautions are taken against abuse of power in the form of judicial review.





The very first article of Civil Code

1A. (1) Persons may either be natural persons or legal persons.

(2) When used in any law the term "person" shall include both natural persons as well as legal persons, unless the context otherwise requires.

(3) Natural persons are regulated by Title I to Title VIII of Book First of this Code.

(4) Legal persons are regulated by the Second Schedule to this Code.

(5) Legal persons enjoy all rights and powers pertaining to natural persons except those excluded by their very nature, by their constitutive act or by an express provision of law.

V. IMP CASES : Dr Jose Herrera noe et vs Tancred Tabone et noe [1989]
 Supermarkets Ltd. vs Le Cram Dev. Co. ltd [2002] – good faith
 Dr. Borg Cardona v. Victor Zammit et. – Lifting of Corporate Veil.



CHAPTER 327 – OLD EDUCATION LAW – STILL PARTLY IN FORCE

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CHAPTER 605 – NEW EDUCATION LAW – IN FORCE

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CHAPTER 605

Article 2:

"childcare centre" means an institution providing education and care services to children aged one (1) day to three (3) years;

"compulsory school age" means any age from five (5) years to fifteen (15) years, both inclusive, and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five (5) years and has not attained the age of sixteen (16) years or has not yet completed the last year of secondary school;

"educator" means, for the purposes of this Act, heads of departments, heads of schools, assistant heads of schools, education officers, teachers, kindergarten educators and learning support educators;

"entity" includes a division, a college and any directorate, agency or other organisation as may be established by virtue of this Act or regulations made thereunder, or under any other law, and "entities" shall be construed accordingly;



"entity" includes a division, a college and any directorate, agency or other organisation as may be established by virtue of this Act or regulations made thereunder, or under any other law, and "entities" shall be construed accordingly;

"home educator" means any person, including the parent of a child, in possession of a teachers' warrant issued under article 11 of the Teaching and Allied Professions Act who is duly authorised to provide home education to a child in accordance with the provisions of Part III;

"home education" means the progressive education of a minor provided or organised by his parent whereby a home educator provides tuition to the minor, at the expense of the parent, in substitution to state or non-state education in accordance with the provisions of Part III and any regulations made under this Act, and "home education programme" shall be construed accordingly;

"licensed school" means a school which has been granted a licence to operate in accordance with the relevant provisions of this Act and, or any regulations made thereunder;

"national minimum conditions" means the national minimum conditions for all schools referred to in article 5;



"national minimum conditions" means the national minimum conditions for all schools referred to in article 5;

"parent" means the father or the mother and includes any person who has the care and custody, whether legal or actual, of a child;

"public officer" has the same meaning as is given to it by article 124 of the Constitution;

Article 3

Every person of a compulsory school age residing in Malta has the right of access to education without any distinction of age, sex, religion or belief, economic means, race or ethnic origin, political opinion, disability, colour, sexual orientation or gender identity.



Article 4 - Obligations of the State

"It is the duty of the State –

1. (a) to promote education in Malta.....; and
(b) to ensure the existence of a system of schools and other educational institutions in Malta

2. In particular, it shall be the duty of the State -
 - (a) to develop and implement an education policy
 - (b) to establish such educational facilities as are necessary
 - (c) to ensure the teaching of the core curricular entitlement
 - (d) to ensure that there exist early childhood education and care centres;
 - (e) to provide for education of children of compulsory school age;
 - (f) to ensure the provision of post-compulsory and tertiary education
 - (g) to promote the teaching of the liberal and expressive arts, science, languages, technology, vocational education, personal development, life skills and sports among all students.



Article 6 - Obligations of the Parents

It shall be the duty of every parent of a minor –

- (a) to ensure that the minor receives all the necessary education
- (b) to ensure the motivation of the minor for education;
- (c) to ensure his disposition for good behaviour and discipline;
- (d) to cause the minor to be registered in a school
- (e) to ensure that the minor attends school on each scholastic day
- (f) to cooperate fully and with due respect with the Head of School and all the staff ...; and
- (g) to adhere to policies issued by the Division, the College and the school.

Article 7 - Rights of the Parents

Subject to the provisions of this Act, it is the right of every parent of a minor to give his decision with regard to any matter concerning the education of the minor, provided that such decision is in the best interests of the minor in accordance with article 8(1).

8.(1) Decisions with regard to matters concerning the education of a minor shall be based primarily on the best educational interests of the minor



Article 9 - Duties of schools.

It shall be the duty of schools –

- (a) to accomplish the education strategy for Malta and the National Curriculum Framework ..;
- (b) to secure and ensure compliance with the national minimum conditions
- (c) to establish a culture of lifelong learning and conducive conditions for effective quality teaching and learning.....;
- (d) to promote high standards of learning and teaching
- (e) to encourage student involvement and active participation;
- (f) to establish a safe and inclusive learning environment;
- (g) to ensure good conduct from any person within the school premises;
- (h) to ensure the use of positive discipline;
- (i) to self evaluate, consult and engage in dialogue to identify the needs of educators, learners and parents through student-centred approaches
- (j) to establish good leadership and management and to promote a team culture
- (k) to promote the continuous professional development of educators;
- (l) to establish a culture conducive to an effective home-school partnership; and
- (m) to develop an active role within the community, and encourage community involvement and participation.



Article 14 - Right to information.

- (1) Without prejudice to the generality, the Division of Education may request, collect and verify any information, data and statistics, as may be required for the performance of its functions.
- (2) The Division of Education shall have access to all information which schools, State and non-State, may possess, and shall be entitled to request and obtain all data, and this data shall be given to the Division within a reasonable time from the date of request.
- (3) Without prejudice to the generality, the Division shall have access to other statistics and data of personal, economic and social nature as required in order that it may perform its functions according to this Act.

Article 17 - Power of entry and of inspection.

- 1) Duly authorised officers of the Division shall have the power to enter at any time, without prior notice, in any school, childcare centre, class or place of instruction, and inspect and report
- (2) Schools, childcare centres and home educators shall provide any information and access requested by these officers



Article 21 & 22 - Licences to establish schools, childcare centres / home education.

21 It shall not be lawful to establish and, or run a school, a childcare centre or to provide home education without a valid licence issued by the Division.....

22. (1) Any person shall have the right to apply to the Division for the grant of a licence to establish and run a school, a childcare centre or to provide home education.

(2) The Division,, **MAY** grant the licence mentioned in sub-article (1) where the school, childcare centre and home education conforms with the prescribed conditions and the Division deems the grant of the licence to be **in the public interest**:

Provided that a licence **SHALL** be granted if the Government is bound to do so by an international agreement and the school conforms with the national minimum conditions:

23. The granting of a licence is **a concession and a revocable privilege**, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder.

24. Where it deems it to be **in the public interest**, the Division may grant a **temporary licence** to a school or a childcare centre for a period of up to one year. (**Up to 3 years**)



Article 26

- (1) In the case of a school or a childcare centre, any licence granted under the provisions of this Part shall be in the name of the **designated person** in his personal capacity or in representation of a body corporate, institution or religious order, as the case may be.
- (2) The designated person in whose name a licence is granted shall be **personally responsible** to ensure that all the obligations attached to that licence are observed at all times whether that licence has been granted in his name personally or in representation of a body corporate, institution or religious order.

Article 28

Where the designated person in whose name a licence is issued

- (a) where the licence is in the name of that designated person in his personal capacity, a fresh application for a licence shall be made;
- (b) where the licence is in the name of that designated person in representation of a body of persons,give notice in writing to the Division of the change



Article 30 - APPEALS

- (1) When an application for a school licence has been refused suspended or cancelled, the applicant or licence holder may appeal to the Administrative Review Tribunal in accordance with the provisions of the Administrative Justice Act
- (2) An appeal under sub-article (1) shall be made in writing within two (2) months from the date on which the decision refusing the application or the decision suspending or withdrawing the licence was notified to the applicant.....
- (3) Notwithstanding that an appeal would have been lodged in accordance with this article, a licence shall be considered as having been suspended or cancelled, as the case may be, pending the final decision of any appeal

Article 41 - Use of school premises for learning, cultural or other activities.

The Head of School may enter into agreements of a limited duration with third parties, for such consideration as he deems appropriate, for the use of the premises and facilities of State Schools, or part thereof,

Provided that (a) such activities shall not cause interference with teaching and (b)for such activities as the Government considers appropriate.



Article 43 - Good behaviour and discipline in schools.

- (1) Head of School and the teaching and non-teaching staff of a school, ..., shall be responsible to ensure the maintenance of good behaviour by the students and for the keeping of positive discipline in the school.
- (2) The Minister may, ... make such regulations or policies or directives ..., including a code of discipline, to ensure that good behaviour and discipline is maintained in State Schools. Such regulations, policies or directives may also make provision for the suspension and the exclusion of students from the class and the school
- (3) ... the regulations and the code of discipline mentioned in sub-article (2) shall include provisions about the conduct and the discipline required from educators, other school staff, parents and visitors to a school.
- (4) In line with applicable policies and codes of behaviour a student may be kept in detention.
- (5) Where a student's behaviour is violent or aggressive ... school may take such measures which are reasonable, proportionate and necessary in the circumstances to avert such danger.



Article 45 - Teaching of the catholic religion and of philosophy of life and ethics in State schools.

1. The State shall make provision for the education and teaching of the catholic religion in State schools for those students whose parents have chosen to instruct the children in such religion and to establish the curriculum for the education and teaching of this religion in those schools according to the dispositions in this regard of the Bishops in Ordinary of these Islands.
2. The State shall make provision for the education and teaching of philosophy of life and ethics for those students whose parents have chosen not to instruct their children in the catholic religion.

Article 46 - Home education.

It shall be lawful for a parent of a minor of compulsory school age to apply to the Division of Education to provide home education to the minor:

Provided that the application for home education is not made on racist or similar grounds, or for reasons which the Division does not consider to be proper taking into account the circumstances; and in any of the above cases, home education is considered to be in the best interest of the minor taking into account the circumstances and situation of the minor and his family.



Article 47- Authorisation for home education.

- (1) Where the Division is of the opinion that the necessary conditions for the provision of home education to a minor have been satisfied, it shall authorise the parent of the minor to provide home education to the minor at the parent's expense and subject to the following conditions -
- (a) the minor must have a social experience equivalent to that provided in schools;
 - (b) the minor is afforded the same experience and facilities as those in schools;
 - (c) minors must follow an accredited programme as approved by the Division and such conditions set by the Division as it may deem appropriate in the best interests of the minor.
- (2) A parent who causes his minor child to follow a home education programme in accordance with all the conditions imposed by the Division shall be deemed to have satisfied his obligations under article 6.



Criminal Code - CAP 9

95. Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less than eight hundred euro (€800) and not more than five thousand euro (€5,000).
214. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.
222. The punishments shall be increased by one degree when the harm is committed ... on the person of whosoever was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions



Teaching and Allied Professions Act - CAP 606

Art. 2 "allied professions", means kindergarten educators and learning support educators in possession of a warrant, or a licence or a temporary licence;

"educator", for the purposes of this Act, means a person in possession of a teachers' or a kindergarten educator or a learning support educator warrant; license or temporary warrant or temporary licence;

Art. 3 Composition of the Council for the Teaching and Allied Professions

Art. 4 Functions of the Council – advise Minister, examine applications for warrants / licenses, inquiries.

Art. 5 Proceedings of the Council – Meet at least every 1 month, quorum half the members, regulate its own procedure

Art 6 onwards – Decisions, Inquiries, Appeals and Offences



Further and Higher Education Act - CAP 607

Art. 2 "further education" means all non-compulsory formal learning which serves to obtain a national qualification classified up to and including level 4 of the Malta Qualifications Framework, or a foreign qualification at a comparable level;

"higher education" means all non-compulsory formal learning or research which serves to obtain a national qualification classified at level 5 or higher of the Malta Qualifications Framework, or a foreign qualification at a comparable level;

"public officer" has the same meaning as is given to it by article 124 of the Constitution;

Art. 3 (1) The National Commission for Further and Higher Education established by means of the Education Act is being re-established and incorporated in this Act as the Malta Further and Higher Education Authority, hereinafter referred to as "the Authority"

(3) The Authority shall generally regulate, guide, evaluate, verify, research and report, accredit education providers, and their programmes, granting of a licence to further and higher educational entities accredited, renew, refuse, suspend or revoke licences, validate any learning, prescribe fees, appoint its officers, review qualifications, request information and establish and impose tariffs, fees and administrative penalties.



Art. 4 Power to enter and search any educational premises, to have access to any relevant document in any form, to require any person to supply any relevant information, to carry an on-site inspection, to issue an order to any person to cease from doing anything which constitutes an infringement.

Art. 5 access to all pertinent information available to educational institutions and it shall have the right to request all data it may require to perform its functions both from public and private providers.

Art. 8 Composition of the Board (Term of Office 3 years)

Art 12 Procedure – at least once a month, quorum half the members, regulate its own procedures, treat information on commercially sensitive matters in a highly confidential manner

Art 19 In addition to the punishment established in the Criminal Code, ... power to revoke any licence, or statement or any other document and shall make public such revocation.

A fine (multa) not exceeding fifty thousand euro (€50,000) for each offence and, or one hundred euro (€100) for each day of non-compliance from



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