

CHAPTER 441

TRADING LICENCES ACT

To make provision for the regulation of commercial activities; and to make provision for matters ancillary to or connected with such activities.

1st January, 2002;
2nd May, 2002

ACT XXVII of 2001, as amended by Act XXI of 2005; Legal Notice 426 of 2007; and Acts XXII and XXIII of 2009.

PART I - PRELIMINARY

1. The short title of this Act is the Trading Licences Act.

Short title.

2. In this Act, unless the context otherwise requires:

Interpretation.

"commercial activity" means the exercise of any trading or economic activity including the sale of goods, and the provision of any services as may be prescribed, irrespective of whether such commercial activity is exercised from commercial premises or otherwise but shall not include any commercial activity regulated under any other law;

Amended by:

XXI. 2005.2;

XXIII. 2009.107.

"commercial exhibition" means an event in one location in which one participant displays or promotes his goods or services with a view to sell such goods or services from such location or from elsewhere:

Provided that such event shall not comprise the display or promotion of goods or services for wholesale or retail from a premises licensed for such purposes;

"commercial fair" means an event in one location in which more than one participant display or promote their goods or services from different sites of such location with a view to sell such goods or services from such location or from elsewhere;

"commercial premises" includes any shop, showroom, stall, store, or any other premises from where any commercial activity is carried on; and includes any enclosed area within which commercial fairs are held and includes also any other premises as may be prescribed from which any service may be provided;

"exhibition" means an event in one location in which one or more participants display or promote their goods or services without the intention to sell such goods or services from such location or from elsewhere;

"Local Council" shall have the same meaning assigned to it by the Local Councils Act;

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"locality" in relation to a Local Council, shall have the same meaning assigned to it by the Local Councils Act and includes any arterial or distributor road or any other area within the boundaries of such locality, which, under the provisions of the said Act are excluded from the responsibility of a Local Council;

"Minister" means the Minister responsible for commerce;

"open air market" means an open air market established under article 23;

"prescribed" means prescribed by regulations made by the Minister for the purposes of this Act;

"regulatory authority" means the person or authority designated by the Minister as regulatory authority in terms of article 3 of this Act;

"sale" includes any exchange or transfer *in solidum*;

"street" means any street and includes any road, alley, square, fortification or other place of public passage;

"the Treaty" means the Treaty establishing the European Community.

PART II - ADMINISTRATION

Regulatory
authority.
Amended by:
XXI. 2005.3.

3. (1) The administration of this Act shall be vested in the Minister or such other person or authority designated by the Minister for any of the purposes of this Act.

(2) Where in this Act reference is made to the regulatory authority, such reference shall be construed as a reference to such person or authority.

(3) It shall be the duty of the regulatory authority to issue such licences and to keep such registers, records or databases as may, from time to time, be required for the purposes of this Act.

(4) For the better carrying out of its functions under this Act the regulatory authority may make arrangements or enter into any agreement with any other authority, entity or Local Council.

Applicability of the
Act.

4. Unless otherwise provided by or under this Act the provisions of this Act shall not apply in relation to any commercial premises licensed, or commercial activity regulated, under any other law; and in any such case no further licence or regulation shall be required under this Act.

Licensing Appeals
Board.
Renumbered and
Amended by:
XXIII. 2009.109.

5. (1) There shall be a Licensing Appeals Board, consisting of three members, of whom one, who shall be the chairperson, shall be a person who has practiced as an advocate for not less than seven years.

(2) The members of the Board shall be appointed by the Minister for a period of five years, and may only be removed from office by the Prime Minister on grounds of proved inability to perform the functions of their office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

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(3) A member of the Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with article 734 of the Code of Organization and Civil Procedure. In any such case the Minister shall appoint a person, having the qualifications of the member challenged or abstaining, to sit as a member of the Board in substitution of the

said member.

(4) A member of the House of Representatives or of a Local Council, a Judge or a Magistrate shall be disqualified from being appointed or continuing to be a member of the Board for so long as he holds that office.

(5) The Minister shall also designate a person to serve as secretary to the Board:

Provided that the Minister may appoint a substitute secretary in the following cases:

- (a) in cases of urgency if the designated secretary is in any way not available to perform his duties; and
- (b) in cases where the designate secretary abstains himself for the same reasons that a member of the board may abstain himself as mentioned above.

6. (1) An appeal shall lie to the Licensing Appeals Board on any decision taken in accordance with the provisions of this Act and any regulations made thereunder. The right of appeal shall be competent to the applicant and to any person showing such interest as may be prescribed who has duly filed an objection or made representations against the grant of the licence.

Appeals.
Amended by:
XXI. 2005.7.
Renumberd by:
XXIII. 2009.110.

(2) An appeal to the Board may be filed on any of the following grounds:

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that an error of law has been made;
- (d) that there was some material illegality, including unreasonableness or lack of proportionality.

(3) The Board shall, after hearing the appellant, the regulatory authority and the applicant, if he is not the appellant, decide the appeal giving reasons for its decisions in open session.

(4) In determining an appeal under this article the Board may:

- (a) dismiss the appeal;
- (b) annul the decision, and refer the matter to the relevant regulatory authority or the local council as the case may be.

7. (1) The Board shall be competent to hear and decide any appeal made to it in accordance with the provisions of this Act and any regulations made thereunder; and the decisions of the Board shall be final and conclusive.

Powers and
procedures of the
Board.
Renumberd by:
XXIII. 2009.110.

(2) For the exercise of its functions, the Board may summon any person to appear before it and give evidence and produce documents; and the chairperson shall have the power to administer the oath. The Board may also appoint experts to advise the Board on any technical issue that may be relevant to its decision.

(3) For the purposes aforesaid the Board shall have the same powers as are competent to the First Hall, Civil Court according to

law.

(4) The procedure to be followed before the Board, the time within which and the manner in which an appeal to the Board is to be made shall be such as may be prescribed; and subject thereto, and to any other applicable provision of this Act, the Board may establish its own procedure.

Appeals to the
Court of Appeal.
Renumberd by:
XXIII. 2009.110.

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Appeal not to
suspend decision.
Renumberd by:
XXIII. 2009.110.

Activities requiring
licence and
permits.
Added by:
XXIII. 2009.111.

8. Any party to an appeal to the Board who feels aggrieved by a decision of the Board, or the regulatory authority if it feels dissatisfied with any such decision, may on a question of law appeal to the Court of Appeal as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court, within thirty days from the date of the Board's decision.

9. The effect of a decision to which an appeal relates shall not, except where the Board or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal.

10. (1) No commercial activity shall be carried out in Malta without a licence from the regulatory authority:

Provided that any commercial activity, as may be prescribed, may:

- (a) be deemed to be licensed following a notification made to the regulatory authority prior to commencement of the commercial activity by the person who undertakes to carry out the intended activity;
- (b) be deemed to be licensed following a notification made to the regulatory authority, within a prescribed time, after commencement of the commercial activity:

Provided further that all persons carrying out any commercial activity shall still be required to comply with the relevant provisions of this Act and of any regulations subsidiary to it, irrespective of the type whether the commercial activity is licensed as a result of an application to the regulatory authority or is deemed to be licensed following a notification to the regulatory authority.

(2) Certain activities as may be prescribed may:

- (a) be designated as not requiring a licence but requiring other relevant permits from the local authority and, or the Commissioner of Police or be subject to conditions issued by the local authorities and, or the Commissioner of Police;
- (b) be designated as requiring other relevant permits, in addition to a licence from the regulatory authority, including:
 - (i) a permit from the local authority; and
 - (ii) a permit from the Commissioner of Police:

Provided that a person who holds on any special or special

day or days:

- (a) any procession or other activity in a public place held in the context of a feast, any band march, any disco, ball, dance or any other similar activity, irrespective of the name by which it is called; or
- (b) a sporting activity which is held across more than one locality or on a national basis; or
- (c) any activity organised by a political party

shall only require a permit from the Commissioner of Police issued under this Act.

(3) The issuing of a licence by a regulatory authority or a permit by the local authority or Commissioner of Police may be subject to:

- (a) the submission and evaluation of documents and other prescribed information as may be deemed necessary in order to ensure fulfillment of licence requirements;
- (b) authorizations, permits, approvals and clearances from other entities as may be prescribed and applicable by other relevant legislation current at the time;
- (c) compliance with terms and conditions as may be prescribed, including the possession of relevant qualifications in line with the Mutual Recognition of Qualifications Act and of any regulations made thereunder:

Cap. 451.

Provided that the regulatory authority may require the applicant to prove his competence to carry on the relevant commercial activity by means of other qualifications for reasons of overriding public interests, in terms of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market:

Provided further that where a person is legally established to carry on in another Member State a commercial activity falling under the implementing provisions of Directive 2006/123 of the European Parliament and of the Council of 12 December, 2006 on services in the internal market and is seeking a licence in Malta, the regulatory authority, in compliance with same Directive, shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which such person may already be subject to in another Member State.

(4) Notwithstanding any licence, permit or authorisation issued, the Commissioner of Police may:

- (a) where any affray or tumult happens or is expected to happen in any place, order every commercial premises in or near the place where the affray or tumult happens or is expected to happen, to be kept closed during such time as, in the opinion of the Commissioner of Police, is reasonably necessary;
- (b) for reasons of public order, public safety or public morality, stop any activity in respect of which any

permit or licence or authorization was issued or should have been issued under this Act.

Commercial activity on a non-permanent and occasional basis.
Added by:
XXIII. 2009.112.

11. Where a person is already licensed or otherwise legally established to carry on a commercial activity in another Member State, and that person wishes to carry out such commercial activity in Malta on a non-permanent and occasional basis, the regulatory authority shall not prevent that person from doing so by imposing any requirements which are discriminatory, unnecessary or disproportionate:

Provided that the regulatory authority may impose such requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment:

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Provided also that in establishing whether a service provider is exercising his freedom to provide services within the meaning of article 16 of the Services (Internal Market) Act, and Article 49 of the Treaty, or is an establishment case, or whether a service provider is abusively taking advantage of the freedom to provide services, the competent authority shall assess and decide each case on its individual merits and in conformity with Community law and rulings of the European Court of Justice.

PART III - ACTIVITIES REQUIRING PERMIT BY LOCAL COUNCILS

Establishment of open-air markets.
Renumbered by:
XXIII. 2009.115.

12. Without prejudice to the provisions of any other enactment, the Minister, after agreement with the Local Council may, by Order in the Gazette establish an open-air market.

Selling from open-air markets.
Added by:
XXIII. 2009.117.

13. When an open air market has been established in a locality, no person shall be allowed to carry on any commercial activity from a fixed place in such a market unless he complies with such conditions as may be prescribed.

Vending machines, etc.
Added by:
XXIII. 2009.118.

14. No person shall place any vending machine or any machine known as kiddie ride machine in any street without the necessary authorisation as may be prescribed.

Appeals from decisions of Local Councils.
Renumbered by:
XXIII. 2009.119.

15. Any decision of a Local Council in relation to a permit or authorisation required under this Part or in terms of any regulations made thereunder, shall be subject to appeal in accordance with the provisions of Part II of this Act, and for such purposes a Local Council shall be deemed to be the regulatory authority.

Power of Minister responsible for local government to make regulations.
Amended by:
L.N. 426 of 2007.
Renumbered by:
XXIII. 2009.119.

16. (1) The Minister responsible for local government after consultation with the Minister may make regulations on any matter relating to the issue of any permit or authorisation by Local Councils under this Part, and without prejudice to the generality of the foregoing, such regulations may provide for:

- (a) the criteria, conditions and procedures for the issue, renewal, transfer, suspension or cancellation of such permits or authorizations;
- (b) the conditions that may be attached to such permits or authorizations;

- (c) the fees that shall be paid for such permits or authorizations;
- (d) in relation to open-air markets:
 - (i) the conditions under which open-air markets shall be managed by Local Councils;
 - (ii) the areas to be marked and allocated to hawkers and the conditions for such allocations; and
 - (iii) the obligations of hawkers operating from open-air markets.

(2) Such regulation may provide that any person contravening the provisions of any such regulations or any condition attaching to any such permit or authorisation, shall be guilty of an offence under the regulations and shall, on conviction, be liable to a fine (*ammenda*) as may be established in such regulations, which fine (*ammenda*) shall not exceed four hundred and sixty-five euro and eighty-seven cents (465.87).

PART IV - GENERAL PROVISIONS

17. The Minister may make regulations for the purpose of regulating the grant, renewal, suspension, transfer or cancellation of licences or of any one or more categories or classes thereof and, in particular, but without prejudice to the generality of this provision, he may make regulations for all or any of the following purposes:

Power to make regulations.
Amended by:
L.N. 426 of 2007.
Renumbered and
Amended by:
XXIII. 2009.121.

- (a) for prescribing the conditions under which licences or any one or more categories or classes thereof may be granted, renewed, suspended, transferred or cancelled;
- (b) for providing the manner in which applications for the grant, renewal, suspension, transfer or cancellation of licences or of any one or more categories or classes thereof are to be made; for the contents of such application; for the manner in which such licences are to be granted, renewed, suspended, transferred or cancelled; the form in which such licences are to be issued, the contents thereof and the manner in which renewals or transfers thereof are to be indicated;
- (c) for providing the manner in which applications for such licences as may be prescribed are to be publicised and for providing the manner in which any person who may be prejudiced by such a licence may make an objection or representation thereon to the regulatory authority;
- (d) for establishing the duration of the validity of licences or of any one or more categories or classes thereof;
- (e) for establishing the fees leviable in respect of licences or of any one or more categories or classes thereof, either by direct determination or by reference to the manner in which such fees are to be reckoned; and to make provision for fees leviable in respect of broken periods:

Provided that regulations made under this paragraph may establish the minimum and the maximum of any fee leviable in respect of licences or of any one or more categories or classes thereof;

- (f) for establishing the penalties or administrative sanctions to which any offender against the provisions of this Act and regulations made thereunder shall be liable;
- (g) for establishing the qualifications that a person carrying out a commercial activity or serving customers from any commercial premises may be required to possess;
- (h) for the requirement of registration of, and for establishing the qualifications that shall be possessed by, any person carrying on a commercial activity other than from commercial premises, provided that this paragraph shall not apply with respect to a person who carries out a commercial activity which is regulated under any other enactment and who is required to hold a licence or warrant thereunder;
- (i) for any matter in relation to any activity carried on in any commercial premises licensed under this Act;
- (j) for establishing the days and hours during which any activity may or shall be carried on from any commercial premises, including open-air markets:

Provided that such regulations may also make provision in relation to any commercial premises which is licensed by another regulatory authority under the provisions of any other enactment;

- (k) for prescribing any matter considered necessary or expedient for the better carrying out of any of the provisions of this Act.

Offences and penalties.
Amended by:
L.N. 426 of 2007.
Renumbered by:
XXIII. 2009.122.

18. Where any person contravenes any of the provisions of this Act or of any regulations made thereunder, he shall be guilty of an offence under this Act and shall on conviction be liable, unless any other penalty is prescribed under any other provision of this Act:

- (a) on a first conviction, to a fine (*ammenda*) of not less than one hundred and sixteen euro and forty-seven cents (116.47) but not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69);
- (b) on a second or subsequent conviction to a fine (*ammenda*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37); and
- (c) in the case of a continuing offence to a fine (*ammenda*) of twenty-three euro and twenty-nine cents (23.29) for every day during which the offence continues.

19. (1) Notwithstanding any other law providing for the trial and punishment of offences, where the regulatory authority believes that a person has committed an offence against this Act or any regulations made thereunder, the regulatory authority may give notice in writing to such person describing the offence of which the person is accused and such penalty and, or administrative sanctions as may be prescribed in respect of that offence.

Special proceedings.
Amended by:
L.N. 426 of 2007.
Renumbered and
Amended by:
XXIII. 2009.123.

(2) The Minister shall prescribe the penalties and administrative sanctions that may be demanded by the regulatory authority in relation to any specified offence.

(3) 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 specified in the notice and within the same period pay the penalty and, or administrative sanctions indicated in the notice, and conform with the relative provision of this Act or of the regulations made thereunder and no further proceedings may be taken under this Act in respect of such offence.

20. In the case of any person carrying on any commercial activity from commercial premises without a licence or in the case of a second or subsequent offence for any contravention committed by any person exercising any commercial activity in virtue of a licence issued by the regulatory authority, in connection with the exercise of such commercial activity, it shall be lawful for the court to cancel the licence, or to suspend the same for any time, in its discretion.

Power of court to cancel or suspend licence of shopkeepers, etc.
Renumbered by:
XXIII. 2009.124.

21. Where any court or other tribunal has awarded a fine licence (*ammenda*) in connection with any offence in relation to any licence under this Act, and such fine has not been paid, the regulatory authority shall not renew the afore-mentioned licence on the expiry thereof until such time as the payment of the fine is effected.

Non-renewal of pending settlement of fine.
Renumbered by:
XXIII. 2009.124.

22. (1) The enactments in the First Column of the Schedule to this Act shall have effect subject to the amendments appearing in relation thereto in the Second Column of the said Schedule.

Amendment of other enactments and saving.
Renumbered by:
XXIII. 2009.124.

(2) Any regulations made under the provisions of any of the enactments being amended or repealed as aforesaid, and shown in the Schedule to this Act, shall, until other provision is made under or by virtue of this Act, or of the aforesaid enactments as amended, continue in force and have effect as if made under this Act or the relevant enactment as amended, as the case may require.

(3) Any licence, permit, permission or other authority granted under any enactment or any provision thereof, being amended by this Act as aforesaid, and still in force immediately before such amendment, shall continue in force thereafter as if it were a licence, permit, permission or authority granted under a corresponding provision of this Act, or under such enactments as amended, as the case may require; and any such licence, permit, permission or authority as aforesaid shall be treated and dealt with accordingly.

(4) Any condition attached to any such licence, permit,

permission or other authority shall remain unimpaired until other provision is made under or by virtue of this Act, or of the aforesaid enactments as amended and such provision may be made applicable from time to time in relation to such class or category of such licences, permits, permission or other authority as may be provided therein.

SCHEDULE

Enactment	Extent of Amendments
Code of Police Laws, Cap. 10.	<p>1. - 6. <i>Amendments came into force and inserted in Cap. 10.</i></p> <p>7. The words "PART X", the heading "OF SHOPKEEPERS AND OTHER TRADERS" and articles 181 to 193, both inclusive, appearing thereunder shall be deleted.</p> <p><i>Amendments relating to articles 181, 182, 184, 186, 187, 188, 189, 190, 191 and 192 came into force and inserted in Cap. 10.</i></p> <p>8. - 10. <i>Amendments came into force and inserted in Cap. 10.</i></p> <p>11. The words "PART XIV", the heading "OF THEATRES AND PUBLIC ENTERTAINMENTS" and articles 201, 203 and 204 shall be deleted.</p> <p><i>Amendment relating to article 201 came into force and inserted in Cap. 10.</i></p> <p><i>All other amendments in force and inserted accordingly in the respective Chapters and articles.</i></p>
