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I assent.

(L.S.)

DOLORES CRISTINA
Acting President

20th November, 2018

ACT No. XXXIX of 2018

AN ACT to provide for the establishment of Jobsplus and for the regulation of employment and training services, and for matters connected therewith or ancillary to, and for a National Employment Authority.

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:-

PART I

Preliminary

Short title and commencement.

1. (1) The short title of this Act is the Employment and Training Services Act, 2018.

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

Interpretation.

2. In this Act unless the context otherwise requires -

"Authority" means the National Employment Authority established by article 3;

"Board" means the Board of Jobsplus;

"candidate" means a person applying for the Trade Test;

"dependants" means individuals wholly or mainly dependant for their maintenance on an individual and being in relation to such individual -

(a) the spouse, the children or stepchildren, or grandchildren if the parents are dead;

(b) if unmarried - the children, the parents, or the unmarried siblings;

(c) if a widower - the children or stepchildren and grandchildren if parents are dead;

"disability" means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others;

"educational or training institutions" means any licensed school or other institution or entity offering educational services, secondary, post-secondary or tertiary level and also includes further and higher educational institutions, institutions offering formal and non-formal learning, and vocational education;

"financial year" means the period of twelve months ending on the 31st December of any year;

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

"Jobsplus" means the Jobsplus Corporation established by article 5 and, to the extent of the authority given, includes any officer of Jobsplus duly authorised to act on its behalf;

"Minister" means the Minister responsible for employment and includes, to the extent of the authority given, any person authorised by the said Minister in that behalf for any purpose of this Act;

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

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"person" includes a body of persons and any body corporate established by law;

"prescribe" means prescribe by regulations made under this Act;

"Register" means the Register referred to in article 11;

"scheme" means a work placement scheme under this Act;

"Trade Testing Board" means a board constituted as in article 26;

"trainee" means a person, who is not of compulsory school age and who is attending formal training at Jobsplus or other courses delivered by another person approved by Jobsplus or a person attending a scheme.

PART II

The National Employment Authority

National
Employment
Authority.

3. (1) The President of Malta shall appoint a National Employment Authority composed of three independent persons, two other persons appearing to the President to represent the interests of employers and two other persons appearing to the President to represent the interests of employees. In this article "independent persons" means persons who are neither Government employees nor officials of any organization representing employers or employees.

(2) One of the independent members of the Authority shall be appointed by the President to be chairperson and another to be deputy chairperson.

(3) The President shall also appoint a secretary to the Authority.

(4) Every member of the Authority shall, before entering upon his duties, take an oath of office before the Attorney General in the form set out in the Schedule.

(5) Every member of the Authority shall hold office for a term of two years and if otherwise qualified may be re-appointed at the end of his term of office.

(6) The President may determine the remuneration payable to the members of the Authority.

(7) No member of the Authority may be removed from office

before the expiration of his appointment except by the President upon a resolution of the House praying for such removal on the ground of proven misbehaviour or inability to perform the functions of his office:

Provided that if the House stands dissolved or prorogued or adjourned for more than fourteen days, it shall be lawful for the President to suspend any member from his office on the ground of misbehaviour or inability to perform the functions of his office, so however, that such suspensions shall not extend beyond the first three sittings of the House immediately following the date of such suspensions.

(8) The quorum of the Authority shall be of three members, one of whom shall be the chairperson or the deputy chairperson.

(9) Subject to the provisions of sub-article (8), the Authority shall not be disqualified from the transaction of business on account of any vacancy among its members.

(10) The Director and, or any person deputed by him shall have the right to be present at all meetings of the Authority and to be heard on any matter.

(11) The proceedings of the Authority may, if the Authority so considers expedient, be conducted *in camera*.

(12) Decisions of the Authority shall be taken by majority of the votes of the members present. The chairperson or, in his absence, the deputy chairperson, shall have only a casting vote.

(13) Subject to the provisions of this Act and of any regulations made thereunder, the Authority may regulate its own proceedings.

(14) For the purposes of the following articles of the Criminal Code, that is to say, article 91, articles 115, 119 and 120, articles 124 and 125, article 133 and article 138, the members of the Authority shall be deemed to be public officers. Cap. 9.

4. (1) The functions of the Authority shall be:

Functions of the
Authority.

(a) to investigate and adjudicate, in such manner as it may determine, any complaints which any interested party may bring before it regarding employment and training services provided by Jobsplus;

(b) to hear appeals as provided for in this Act;

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(c) such other functions as are or may be assigned to it by this Act or any other law.

(2) Where the Authority acts as a tribunal to hear appeals as provided in sub-article (1)(b), the following provisions shall, without prejudice to the provisions of any regulations made under article 47, apply:

(a) the Authority shall reject any appeal which is not made in writing within the time specified in the provisions of this Act allowing such appeal;

(b) the chairperson of the Authority or, in his absence, the deputy chairperson shall have the powers to summon witnesses and to administer an oath to any witness and to require him to give evidence or to produce books or other documents before it;

(c) summons for attendance of witnesses shall be signed by the chairperson or, in his absence, the deputy chairperson, and may be served either personally or by registered post, and in the latter case, in proving service, it shall be sufficient to prove that the summons was properly addressed and posted;

(d) all persons summoned to attend and give evidence at any sitting of the Authority shall be bound to obey the summons served on them; and any person refusing or omitting without sufficient cause to attend at the day, time and place mentioned in the summons served on him or to answer, to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Authority, or to produce books or other documents required by the Authority to be produced before it, shall be guilty of an offence against this Act:

Provided that no person giving evidence before the Authority shall be compelled to incriminate himself and every such person shall, in respect of any evidence given by him before the Authority, be entitled to all the privileges to which a person giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(3) The Authority shall, in January of each year, submit a report of its activities to the Minister who shall lay the same on the Table of the House not later than the sitting first occurring after thirty days from its receipt.

PART III

Jobsplus

5. There shall be a body, to be known as Jobsplus, which shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of acquiring, holding and disposing of any property for the purpose of its functions under this Act, of suing and of being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

6. (1) The affairs and business of Jobsplus shall be the responsibility of and shall be conducted by a board of directors, which shall be known as "the Board". The legal representation of Jobsplus shall be vested in the chairperson or in any other director as the Board may by resolution designate. Any such resolution shall be published in the Gazette as soon as may be after its approval and shall not have effect until it is so published.

Jobsplus.

Conduct of
affairs and
business of
Jobsplus.

(2) The Board shall consist of such number of directors, being not less than eight, as the Minister may from time to time appoint. Three of the members of the Board shall be appointed, after due consultation with the ministers concerned, from amongst such persons as best represent the ministries responsible for labour, for education and for industry. One of the members of the Board shall be a person with disability.

(3) The chairperson of the Board and a deputy chairperson shall be appointed by the Minister from amongst members of the Board.

(4) Where the chairperson is absent from Malta or is otherwise temporarily unable to perform the functions of his office, or where the post of chairperson is temporarily vacant, the deputy chairperson shall act as chairperson.

(5) The chairperson and the other directors shall be appointed yearly and shall hold office under such terms and conditions as the Minister may deem proper; and they shall be eligible for reappointment.

(6) Subject to the provisions of this Act and to any directions of the Board, the executive conduct of Jobsplus, its administration and organisation, and the administrative control of its officers and servants shall be the responsibility of the chief executive of Jobsplus

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who shall also have such other powers as may from time to time be delegated to him by the Board. The chief executive shall have the right to attend and be heard at all meetings of the Board. He shall not, however, have a vote or be counted for the purpose of constituting a quorum.

(7) The provisions of article 3(14) shall *mutatis mutandis* apply to Jobsplus, the chief executive and other employees of Jobsplus.

Disqualification for appointment, removal and resignation of directors.

7. (1) A person shall not be qualified to be appointed, or to hold office as a member of the Board if he:

(a) is a member of the House; or

(b) is legally incapacitated; or

(c) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(d) has been convicted of a crime affecting public trust or theft or fraud or of knowingly receiving property obtained by theft or fraud.

(2) A member of the Board may be relieved of office by the Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or on the ground of misbehaviour.

(3) A member of the Board may resign his office by means of a letter to the Minister.

Meetings of the Board.

8. (1) The Board shall meet as often as may be necessary or expedient, but in no case less frequently than once every three months. Meetings shall be called by the chairperson either on his own initiative or at the request of any two of the other members.

(2) The Board shall not act unless a quorum consisting of not less than half the number of members is present.

(3) The meetings of the Board shall be chaired by the chairperson or, in his absence, by the deputy chairperson.

(4) The decisions of the Board shall be taken by a majority of the votes of the members present and voting; and in the case of an equality of votes the chairperson, or in his absence the deputy chairperson, shall have and exercise a second or casting vote.

(5) Any vacancy among the members of the Board, and any participation therein by a person not entitled so to do, shall not invalidate the proceedings of the said Board.

(6) Subject to the provisions of this Act, the Board may regulate its own proceedings.

9. (1) Jobsplus shall have such functions as are set out in this Act and such other functions as may devolve upon it under any other law, or as may be assigned to it by the Minister. Status of Jobsplus.

(2) Jobsplus shall consider any matter relating to the formulation of an overall national policy for employment and training falling within its remit, and all matters relating to any of its functions under this Act, or such other functions as are or may be assigned to it by any other law. Jobsplus shall also tender advice to the Minister or any department of the Government on any matter relating to employment or training of workers or to the labour market in general, either at the request of the Minister or on its own initiative.

(3) Jobsplus shall afford the Minister the necessary facilities for obtaining information with respect to the property and activities of Jobsplus, and furnish him with returns, accounts and other information with respect thereto, and afford him the necessary facilities for the verification of the information furnished in such manner and at such time as he may require.

(4) The Minister may, after consultation with Jobsplus, give to Jobsplus such directives in writing as he may deem appropriate, being directives of a general character not inconsistent with the provisions of this Act and Jobsplus shall comply with such directives.

(5) In carrying out any of its functions under this Act, or in any other thing or activity, Jobsplus shall conform its policies and activities with the aims and objectives of national economic planning from time to time in force.

(6) Jobsplus may, with the approval of the Minister, exercise its functions under this Act through the agency of other persons, and may act as agent or otherwise on behalf of other persons.

10. In relation to employment, Jobsplus shall have the following functions: Functions of Jobsplus in relation to the employment service.

(a) in general to provide and maintain an employment service to assist persons to find suitable employment and to assist employers to find suitable employees;

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(b) in particular -

(i) to register persons seeking employment in the Register;

(ii) to interview such persons and evaluate, if necessary, their physical and vocational capacity;

(iii) to assist persons seeking employment by guidance and advice on the choice of employment, and the training and retraining which may be necessary;

(iv) to obtain from employers information on vacancies and on requirements to be met by the employees they require;

(v) to refer to available employment persons with suitable skills, aptitudes and physical capacity;

(vi) to collect and analyse information about the situation of the labour market and probable changes; and

(c) to tender advice to the Minister on any matter relating to the employment or training of workers, either at the request of the Minister or on its own initiative, including proposals for regulations for such purposes or in such circumstances as in the opinion of the Minister it is necessary or expedient to make provision by regulation.

Register of persons seeking employment.

11. (1) Jobsplus shall maintain a Register of persons seeking employment.

(2) Any person who qualifies to be registered may seek to be registered in accordance with regulations that may be prescribed from time to time. Such regulations shall include definitions of who qualifies for registration and any Parts of the Register that may be established and the course of action to be adopted by Jobsplus in relation to the referral of persons for employment.

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(3) No person of compulsory school age shall qualify to be registered unless that person has completed his compulsory education in terms of the Education Act.

Registration for employment.

12. (1) Subject to the provisions of this Act and to any regulation made thereunder, the registration of persons seeking employment shall be made in such manner and shall be subject to

such formalities and conditions as Jobsplus may deem fit.

(2) At the time of first registration for employment and at any time during the period of validity of registration, Jobsplus may require the person seeking employment to furnish information or produce documents in his possession or control relating to his date of birth, previous employment, dependants, work experience, skills, competences, qualifications and other matters relevant to his registration.

(3) If any person fails to provide any information requested from him under sub-article (2), such person shall forfeit his right to registration under this article or to referral for employment under article 13, and shall be notified accordingly in writing.

(4) Any person aggrieved by a decision of the Jobsplus under this article may, within fifteen working days from the notification of such decision, appeal to the Authority.

13. (1) Without prejudice to the other provisions of this Act, and subject to any regulations made thereunder, in selecting persons for referral to employers, Jobsplus shall consider the persons who best satisfy the requirements of the employer on the grounds of qualifications, skills and, or competences and, or work experience as the case may be.

Referral of
persons for
employment.

(2) (a) In the event that any person who is registering for employment refuses to avail himself of any suitable opportunity for employment, such person shall retain his right to continue registering for employment, during the first (3) months from date of registration. However, this does not apply where the registrant refuses, without a good and sufficient reason, any training or any other assistance or service offered to him by Jobsplus.

(b) In the event that any person who has been registering for employment for a period exceeding three (3) months from the date of registration refuses, without a good and sufficient cause, to avail himself of any suitable opportunity for employment or training or of any other assistance or service offered to him by Jobsplus such person shall be struck off the register with immediate effect for a period of six (6) months.

(c) Any person who fails to acknowledge any communication by any means as may be determined by Jobsplus from time to time, with respect to any suitable opportunity for employment or training or any other assistance or service offered to him by Jobsplus shall be struck off the register with immediate effect for a

period of six (6) months.

(d) The person registering for employment may engage in a one-off work activity, consisting of a few hours and in any case not more than five (5) hours in any one week and not to exceed the amount of two hundred and forty (240) hours per annum, whilst retaining his right to remain on the Register, so long as he obtains approval beforehand, from Jobsplus, of such engagement. Under normal circumstances, this approval should be sought at least one week in advance. Should the registrant fail to inform Jobsplus and is caught working while registering, he shall be struck off the Register with immediate effect for a period of six (6) months.

(3) Any person who, whilst registering for employment, is engaged in a gainful occupation or who, without the prior permission of Jobsplus, is engaged in any occupation consisting in the provision to any person of services that are normally remunerated, shall forfeit his right to registration under article 12 or to referral for employment under this article.

(4) Any person who forfeits his right to registration or to referral under article 12 or this article shall not be entitled to be registered for employment or to referral for employment unless such person proves to the satisfaction of Jobsplus that after having forfeited such rights as aforesaid he had been gainfully occupied for a continuous period of six (6) months and has ceased to be gainfully occupied for reasons that are deemed to be good and sufficient.

(5) Any person aggrieved by a decision of Jobsplus under this article may, within fifteen working days from the notification of such decision, appeal to the Authority.

Notification of
filling of
vacancies.

14. (1) In making a request to Jobsplus for the referral of employees, an employer shall specify the qualifications, skills and competences and, or work experience of the employees he requires, the conditions of employment he offers and the number of persons to be referred to him for possible employment, so however that the employer shall have no right to indicate individual persons when making his request to Jobsplus.

(2) In referring persons for employment, Jobsplus shall seek to satisfy the needs of the employer as expeditiously as possible. The employer shall be entitled to reject any person submitted by Jobsplus.

15. (1) All employees required by the Government of Malta from outside its service or by any body corporate or company referred to in article 110(6) of the Constitution whether these are, in each case, employed on a contract for a specified time or for an indefinite period, shall, save as provided in the Constitution and in sub-articles (2) and (3), be recruited through the employment service provided by Jobsplus.

Engagement of employees by Government and Government owned or controlled bodies and companies.

(2) Where the recruitment of employees by the Government or any other employer to which sub-article (1) refers is in connection with the employment of -

(a) persons required to fill posts, on the basis of a contract for a definite time requiring a special trust or posts for which academic or professional qualifications are necessary; or

(b) persons engaged from outside Malta,

Jobsplus may cause or authorise recruitment, whether through referral by it or otherwise, under such conditions or in such manner as Jobsplus may deem appropriate:

Provided that any employee who is employed by the Government of Malta or by any body corporate or company referred to in article 110(6) of the Constitution from amongst persons who already are public officers or are employees of any other body corporate or company referred to in article 110(6) of the Constitution, then such employee shall be deemed to have been employed through the recruitment service provided by Jobsplus.

(3) Under such circumstances, and in respect of such vacancies, as may be prescribed, Jobsplus shall refer for employment with any employer as is referred to in sub-article (1), in preference to any other person, persons who, within the three (3) months immediately preceding such referral, have been discharged as redundant from such employment as may be prescribed.

(4) If upon a request for employees made to Jobsplus by a Government department or any other employer as is referred to in sub-article (1), Jobsplus is unable to submit suitable applicants, the department or other employer may recruit the employees required in virtue of such other arrangements as Jobsplus may authorise in any case or class of cases.

(5) A Government department or other employer as is referred to in sub-article (1), rejecting an applicant submitted by Jobsplus shall specify in writing the reasons for rejection. Where in any case Jobsplus, after due investigation, is satisfied that the department or

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employer has rejected an applicant without just cause, it may order the department or employer concerned to give employment to the applicant concerned in the occupation for which he was originally submitted by Jobsplus.

(6) Any person who -

(a) contravenes any of the foregoing provisions of this article; or

(b) shows favour to, or uses discrimination against, any person for employment with any employer referred to in sub-article (1) on the grounds of sex, religion or belief, economic means, race or ethnic origin, political opinion, disability, colour, sexual orientation or gender identity,

shall be guilty of an offence against this Act.

Redeployment
of employees
within the
public sector.

16. (1) Where the Prime Minister considers that an employee, of a body or partnership referred to in article 110(6) of the Constitution who by reason of the reorganisation or restructuring of any said body or partnership may lose his employment or who has otherwise become redundant, may be redeployed in the public sector in another employment with another body or partnership as above mentioned, he may issue an order which shall order such redeployment and such order shall have effect and for the purpose of the said redeployment any employment made by the employment service provided by Jobsplus shall be made in accordance with the said order.

(2) An order issued under sub-article (1) may include such terms, conditions, provisions and time limits as the Prime Minister may consider it appropriate to include for the purpose of regulating the said redeployment or for the purpose of avoiding any undue burden, anomaly and hardship upon the employer or upon the employee or upon other employees of the body or partnership where the said employee shall have been or shall be about to be redeployed.

Functions of
Jobsplus in
relation to
training.

17. (1) In relation to training, Jobsplus shall have the following functions:

(a) to provide training courses or other schemes for the purpose of assisting persons desiring to fit themselves for gainful occupation, or desiring to improve or update the quality of their knowledge and skills for the same purpose;

(b) to obtain information from employers regarding the number, educational level, skills and aptitudes of persons they

may require for employment both in the short term and in the long term;

(c) to enter into arrangements with the said employers, or any other person, for the provision of training courses or other schemes contemplated by this article;

(d) to provide support to Trade Testing Boards in designing and conducting assessments to ascertain a person's proficiency or competences in a particular occupation.

(2) The reference in this article to the provision of training courses or other schemes shall be construed as including a reference to the making of payments to persons who attend any such course or scheme, locally or abroad in respect of their travelling expenses, the provision of residential accommodation and to the provision of any other facility or service incidental thereto.

18. (1) For the purpose of encouraging adequate training through courses or other schemes contemplated in article 17, Jobsplus may -

Powers of Jobsplus in relation to training.

(a) provide or secure the provision of such courses and other schemes as it may consider adequate, having regard to any courses or schemes otherwise available;

(b) approve such courses and schemes provided by other persons;

(c) make arrangements for the application of selection assessments and of assessments or other methods for ascertaining the attainment of any standards recommended by it and may award certificates of the attainment of those standards;

(d) assist any person in finding facilities for being trained where it cannot provide such training;

(e) carry on or assist other persons in carrying on research into any matter relating to training services offered by Jobsplus.

(2) Jobsplus may enter into contracts of service with any person who intends to attend courses or avail himself of any other scheme it has provided.

(3) Jobsplus may -

(a) at the request of any employer provide advice about

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training connected with his activities;

(b) enter into agreements with employers relative to payments by them to Jobsplus in respect of the exercise by Jobsplus of any of its functions.

(4) Jobsplus may -

(a) make grants or loans to persons providing courses or other schemes approved by Jobsplus;

(b) pay allowances to persons providing further and higher education in respect of persons who receive such education in association with their training in courses or other schemes provided or approved by Jobsplus;

(c) make payments to persons in connection with arrangements under which they or their employees make use of courses or other schemes provided or approved by Jobsplus.

Schemes.

19. (1) No person may enrol a trainee without a written permit from Jobsplus which shall specify the maximum number of trainees that may be employed:

Provided that no such permit shall be given under this article for the enrolment of trainees unless a draft scheme or agreement which includes provisions respecting the training and conditions of employment of a trainee has been previously drawn up by the person applying therefor and approved by Jobsplus and unless such a person shows to the satisfaction of Jobsplus that his establishment offers reasonable opportunities for the proper training of the number of trainees proposed to be employed therein.

(2) Any person who contravenes any of the provisions of sub-article (1) shall be guilty of an offence against this Act.

Written agreement.

20. (1) An employer on engaging a trainee shall enter into a written agreement with him.

(2) If such trainee is a minor he shall not so bind himself except with the consent of his parent, or if there is no parent, with the consent of his legal guardian.

(3) A minor who binds himself as a trainee as provided in sub-article (2), shall be bound by the agreement throughout its currency notwithstanding that he may have in the meantime attained the age of eighteen years.

21. (1) No traineeship or other scheme agreement shall be binding unless and until it has been registered with Jobsplus in accordance with the provisions of this Act. Traineeship.

(2) When registering such agreement, Jobsplus shall ensure that:

(a) such agreement complies with the provisions of the traineeship scheme or other scheme applicable at the time;

(b) the employer and the trainee are fit and proper persons to enter into such agreement.

(3) The agreement is to contain the following information as well as other information determined by Jobsplus from time to time:

(a) details of employer, trainee and placement;

(b) agreement duration;

(c) trainees' and employers' rights and obligations during the scheme;

(d) Jobsplus' rights and obligations during the scheme;

(e) the working conditions offered to trainees; and

(f) the calculation of trainees' training allowance.

(4) Jobsplus shall keep a Register of Trainees and all agreements shall be registered therein.

(5) The date of registration shall not affect the date of commencement of the agreement, but a refusal to register the agreement shall cause the agreement to be null and void from the date of refusal. The date of commencement of an agreement shall be the date of signing by all the parties or such date as may be stipulated therein.

(6) Any party aggrieved by a decision of Jobsplus under this article may within fifteen working days from the date of notification in writing of such decision appeal to the Authority.

22. (1) The rights and obligations of any employer under an agreement may, with the consent of Jobsplus, be transferred to another employer. Transfer of agreement.

(2) Subject to the provisions of sub-article (4) no such transfer shall be complete until it has been registered with Jobsplus.

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(3) Jobsplus may refuse to register any transfer which, in its opinion, is not in the interest of the trainee.

(4) If any person is engaged as a trainee by a partnership, his agreement shall not be terminated by reason of the death or retirement of any partner, if the business of the partnership is continued by another person or partnership; and the rights and obligations of the employer under the agreement shall be deemed to be transferred to the person or partnership continuing the business.

Dispute between an employer and a trainee.

23. During the period of any dispute between an employer and a trainee, the employer shall be entitled, as from the date of reporting the circumstances to Jobsplus, to suspend the trainee from work.

Rights of employer and of trainee.

24. Nothing contained in this Act shall affect -

(a) any right which a trainee may have to institute civil proceedings against his employer in respect of any contravention of or failure to comply with any provision of an agreement or any condition thereof;

(b) any right which an employer may have to institute civil proceedings against a trainee in respect of any contravention of or failure to comply with the provisions of the agreement or any condition thereof.

Power of Jobsplus to ascertain adequate training.

25. (1) Jobsplus shall have power to make inspection and enquiry as may be necessary for the purpose of ascertaining that trainees are receiving adequate training.

(2) If in the opinion of Jobsplus any trainee is not receiving adequate training, Jobsplus may order the employer of the trainee to take such action, specified in the order, as Jobsplus deems necessary to ensure that the trainee will receive adequate training, and may withdraw or vary any such order.

(3) In any such order Jobsplus may, subject to the provisions of any scheme applicable in the case, specify the areas of work on which the trainee is to be trained, the periods during which, the intervals at which or the dates between which he shall be so trained, the conditions relating to supervision, the method or place of work, and any other matters or conditions relating to the training.

Trade Testing.

26. The Minister may, in consultation with Jobsplus, appoint such Trade Testing Boards as he may deem necessary for the purpose of conducting the examination of candidates designed to ascertain their competence in a given occupation acquired through non-formal and informal learning.

27. In the absence of National Occupational Standards, the Minister responsible for education may, in consultation with Jobsplus, make regulations for the setting up of standards of competence in various occupations and the certification of persons who shall have obtained such standards.

National Occupational Standards.

28. (1) To be awarded a Certificate of Competence, a candidate must successfully pass from all components.

Certificate of Competence.

(2) Candidates who fail the assessment in part or in full shall be granted the possibility to apply for a resit.

29. (1) Candidates who apply for the assessment must pay an administration fee, which can be revised from time to time by Jobsplus.

Administration fee.

(2) Candidates who apply for the Trade Test must have at least one year work experience in the occupation applied for.

(3) When Trade Testing takes places under the regulations that validate non-formal and informal learning, the eligibility criterion applicable for candidates applying for the assessment must be in line with the Validation of Non-Formal and Informal Learning Regulations.

S.L. 327.432

(4) Unemployed candidates shall be exempt from paying the administrative fee.

PART IV

Administrative and Financial Provisions relating to Jobsplus

30. (1) Subject to the provisions of the Constitution of Malta and of any other enactment applicable thereto, including this Act, Jobsplus, acting with the concurrence of the Minister, may appoint such officials and other employees on such terms and conditions of employment as Jobsplus may, from time to time, determine.

Personnel of Jobsplus.

(2) Public officers seconded for duty with Jobsplus shall be under the administrative authority and control of Jobsplus, but shall for all other intents and purposes remain and be considered and treated as public officers.

31. (1) Jobsplus shall be paid out of the Consolidated Fund such sums as the House may approve in accordance with the following provisions:

Capital revenue of Jobsplus.

Provided that, in relation to its functions, other than those

in connection with its function as an employment service for the purposes of article 110 of the Constitution, nothing in this Act shall prevent Jobsplus from entering into arrangements for securing part of its funds from sources other than the public revenue.

(2) Jobsplus shall cause to be prepared in every financial year, and shall not later than six weeks before the end of each financial year adopt, estimates of the income and expenditure of Jobsplus for the next following financial year.

(3) The estimates shall be made in such form and shall contain such information and such comparisons with previous estimates as the Minister may direct.

(4) Jobsplus shall, within the first three months of the financial year, make a report of its activities during the previous financial year containing such information relating to the functions and activities of Jobsplus as the Minister may from time to time require.

(5) A copy of the estimates of Jobsplus, together with a copy of the report, shall, upon their adoption by the Board, be sent forthwith to the Minister.

(6) The Minister shall, at the earliest opportunity and not later than four weeks after he has received a copy of the estimates and of the report of Jobsplus, or, if at any time the House is not in session, within four weeks from the beginning of the next following session, cause such estimates and such report to be laid before the House together with a motion that the House approve the said estimates. Not less than one sitting shall be allotted for the debate in the House on such motion; and both the motion and the approval of the estimates by the House may be with or without amendment to the estimates.

(7) No expenditure shall be incurred by Jobsplus that has not been approved by the House:

Provided that -

(a) until the expiration of six months from the beginning of a financial year or until the approval of the estimates for that year, Jobsplus may make or incur expenditure for carrying out its functions under this Act not exceeding in the aggregate one half of the amount approved for the preceding financial year;

(b) expenditure approved in respect of a head or sub-

head of the estimates may, with the approval of the Minister, be incurred in respect of another head or sub-head of the estimates;

(c) if in respect of any financial year it is found that the amount approved by the House is not sufficient, or if a need has arisen for expenditure for a purpose not provided for in the estimates, Jobsplus may adopt supplementary estimates for approval by the House and, pending such approval, but subject to it being given, Jobsplus may in special circumstances and with the approval of the Minister, incur the relative expenditure; and the provisions of this Act applicable to the estimates shall, as near as practicable, apply to the supplementary estimates.

(8) All estimates and supplementary estimates approved by the House shall, as soon as practicable, be published in the Gazette.

32. (1) Jobsplus shall cause to be kept proper books of accounts and other records in respect of its operations and shall cause to be prepared a statement of accounts in respect of each financial year. Accounts and audit.

(2) The accounts of Jobsplus shall be audited by an auditor or auditors to be appointed by it and approved by the Minister:

Provided that the Minister responsible for finance may require the books and other records of Jobsplus to be audited or examined by the Auditor General who shall for this purpose have power to carry out such physical checking and other verifications, and may require such information, as he may deem necessary.

(3) After the end of each financial year, at the same time as a copy of the estimates of Jobsplus is forwarded to the Minister under article 31, Jobsplus shall cause a copy of the statement of accounts duly audited to be transmitted to the Minister together with a copy of any report made by the auditor or auditors on that statement or on the accounts of Jobsplus.

(4) The Minister shall cause a copy of every such statement and report to be laid before the House together with the motion laid before the House under article 31.

33. (1) Jobsplus may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, under such terms and conditions and against such security as it may deem appropriate, for any one or more of the following purposes: Power to borrow capital.

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(a) the carrying out of functions of Jobsplus under this Act;

(b) any other expenditure properly chargeable to capital account.

(2) Jobsplus may also from time to time borrow, by way of overdraft or otherwise, for periods not exceeding twelve months, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of four hundred and fifty thousand euro (€450,000), there shall be required the approval of the Minister in writing.

(3) Whenever it may be necessary for Jobsplus to borrow by way of advances from the Government any sums required by it to carry out any of its functions under this Act, the Minister responsible for finance may, after consultation with the Minister, by warrant under his hand and without further appropriation other than this Act, authorise the Accountant General to make advances to Jobsplus either out of the proceeds of any loan contracted or raised for the purpose or out of the Consolidated Fund; and such advances shall be made on such terms and conditions as the Minister responsible for finance may direct.

(4) The Minister responsible for finance may, for any requirements of Jobsplus of a capital nature, contract or raise money, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(5) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given by the Minister to the House as soon as practicable.

Exemption from certain taxes and duties.

34. Jobsplus shall be exempt from any liability for the payment of income tax and duty on documents under any law for the time being in force.

PART V

Employment Records

Registration of employed persons or of persons seeking employment.

35. (1) Jobsplus may make administrative provisions as approved by the Board under this article prescribing the registration and recording of employed persons or persons seeking employment in Malta.

(2) Without prejudice to the provisions of any other applicable law, Jobsplus may also make provisions providing for the disclosure of any particulars furnished in accordance with this article, or in accordance with article 46, for prescribing the conditions under which records of any such particulars may be kept and for requiring such records to be destroyed after such period as may be prescribed.

36. Any employer, who employs another person whole-time, part-time or otherwise under a definite or indefinite contract or on probation shall notify Jobsplus of such employment by any means which may be established by Jobsplus from time to time.

Notification by employers.

37. Any person, hereinafter referred to as "a self-employed person", who takes up a gainful occupation whole-time, part-time or otherwise, other than in a contract of employment with an employer, shall notify Jobsplus of such occupation by any means established by Jobsplus from time to time.

Self-employed persons.

38. Any person who, whilst registering with Jobsplus as a person seeking employment is employed by another person, whether whole-time, part-time or otherwise, and whether under a definite or under an indefinite contract or on probation, shall inform Jobsplus of such employment by any means established by Jobsplus from time to time.

Notification of employment while registering for work.

39. For the purposes of this Act, a person performing work in any place of work shall be deemed to be employed or self-employed.

Interpretation of "performing work".

40. (1) When a contract of employment is terminated the employer shall, within four days from the date of termination, notify Jobsplus by any means as may be established from time to time, of the date of termination. Jobsplus shall then issue an acknowledgement therefor as soon as possible.

Termination of contract of employment.

(2) The provisions of sub-article (1) shall apply *mutatis mutandis* to a self-employed person, when such person ceases to be engaged in a gainful occupation.

41. (1) Every employer upon whom an agreement of traineeship as defined by law is binding, shall at all times keep in respect of every trainee such records as may be determined by Jobsplus.

Records regarding traineeship.

(2) Every person who is or has been an employer referred to above shall retain any record made in terms of the preceding sub-article for a period of three years subsequent to the date of the record, and shall on demand by Jobsplus made at any time during the said period of three years produce the said records for inspection.

A 2080

(3) Any person acting in contravention of any of the foregoing provisions of this article, or failing to comply with any demand made thereunder, shall be guilty of an offence against this Act.

Minors.

42. (1) No person shall employ a minor of compulsory school age except:

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(a) where the Minister responsible for education grants written permission to employ such minor in terms of the Education Act; or

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(b) under any training scheme approved by the Minister responsible for education in terms of the Education Act or as provided for in any other law:

Provided that the employer shall be bound to ensure that the conditions, if any, laid down in the mentioned written permission or training scheme are complied with.

(2) Any person who fails to comply with any provision of this article shall be guilty of an offence against this Act.

Employment of persons who are not citizens of Malta.

43. Any employer who employs any person who is not a citizen of Malta, other than such person as may be in possession of a single permit or employment licence, shall be guilty of an offence.

List of employees and trainees.

44. Every employer shall submit to Jobsplus a list of employees and, or trainees, who were in his employ at any time as required by Jobsplus.

Offences against the provisions of this Part.

45. Any person who fails to comply with any provision of this Part shall be guilty of an offence against this Act.

PART VI

Enforcement, Offences and Penalties

Enforcement.

46. (1) The Minister may designate in writing specified officers of Jobsplus or any other person to be inspectors for the purposes of this Act.

(2) Inspectors under this Act shall have such functions and duties as may be prescribed.

(3) Inspectors designated as aforesaid shall be empowered -

(a) to enter freely and without previous notice at all reasonable times any premises or place liable to inspection under this Act;

(b) to carry out in any such premises or place any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the provisions of this Act or of any regulations or orders thereunder as well as any recognised conditions of employment are being observed, and in particular -

(i) to interrogate, alone or in the presence of witnesses, the employer or the employees or the trainees on any of the said matters;

(ii) to require the production of any books, registers or other documents the keeping of which is prescribed by this Act or by any order issued under this Act and to copy such documents or make extracts therefrom;

(iii) to call in employers and, or self-employed persons and employees at Jobsplus Head Office, to attend before an inspector at a reasonable time to answer such questions, or to supply such information, related to employment.

(4) On the occasion of an inspection visit, an inspector shall notify the employer or his representative of his presence, unless he considers that such a notification may be prejudicial to the performance of his duties.

(5) The premises and places liable to inspection under this Act are any premises or places in respect of which any provisions of this Act or of any regulation or order thereunder or any recognised conditions of employment apply or any premises or places in respect of which an inspector has reasonable cause to believe that this Act or any regulations or orders thereunder or any recognised conditions of employment apply.

47. (1) No person shall improperly influence or attempt to influence directly or indirectly on behalf of himself or on behalf of any other person, the Authority, Jobsplus or their members or directors, or persons employed by them, in the exercise of their functions under this Act. Improper influence.

(2) Any person who contravenes any of the foregoing provisions of this article shall be guilty of an offence against this Act.

48. Any person who, in connection with any matter under this Act - False information, etc.

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(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular; or

(b) with intent to deceive produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or

(c) wilfully refuses or without lawful excuse (the proof whereof shall lie on him) withholds any material information,

shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not less than five hundred euro (€500) but not exceeding two thousand and five hundred euro (€2,500), or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Offences in respect of traineeship.

49. Any person who -

(a) contravenes or fails to comply with the provisions of article 41; or

(b) knowingly or recklessly makes any incorrect statement or entry in any record or return kept or furnished under Part V or any regulations made thereunder; or

(c) refuses or fails to answer to the best of his knowledge any question which an officer of Jobsplus or an inspector has put to him in the exercise of his functions under Part V; or

(d) refuses or fails to comply with any requirements duly provided for under this Act; or

(e) hinders Jobsplus or its representatives or an inspector in the performance of their functions under this Act,

shall be guilty of an offence against this Act.

Offences against articles 15 or 40.

50. Any person guilty of an offence against this Act under articles 15 or 40 shall be liable, on conviction, to a fine (*multa*) of not less than two thousand and five hundred euro (€2,500) but not exceeding fifteen thousand euro (€15,000).

Offences against article 42.

51. Any person who contravenes the provisions of article 42 shall be liable, on conviction, to a fine (*multa*) of not less than one thousand euro (€1,000) and not more than five thousand euro (€5,000).

52. Any person who contravenes the provisions of article 43 shall, on conviction, be liable to a fine of not less than two thousand five hundred euro (€2,500) and not more than five thousand euro (€5,000) as well as a suspension of the applicable business or trade licence.

Offences against article 43.

53. (a) No proceedings shall be taken against any person for any offence in contravention of articles 36, 37, 38 and 40 where such person, having received an intimation by Jobsplus for the payment of a penalty of five hundred euro (€500) for having contravened these articles, complies with such provisions and pays such penalty to Jobsplus in all cases within fifteen days from the receipt by him of such intimation.

Administrative penalty.

(b) In the event that such penalty is not paid in accordance with paragraph (a), such person shall be liable to a fine (*multa*) of not less than five hundred euro (€500) and not more than two thousand five hundred euro (€2,500).

54. (1) Any person guilty of an offence against this Act or who fails to comply with any of the provisions of any regulations or orders made thereunder, shall, unless a particular penalty is provided therefor in this Act or in any such regulation or order, be liable, on conviction, to a fine (*multa*) of not less than one hundred euro (€100) and not more than two thousand euro (€2,000).

General penalty.

(2) No proceedings shall be taken against any person for any offence against this Act other than an offence against articles 15 and 40 thereof, where such person, having received an intimation by Jobsplus for the payment of a penalty of one hundred euro (€100) for having contravened the provisions aforesaid of this Act or of any regulations or orders made thereunder, complies with such provisions and pays such penalty to Jobsplus in either case within fifteen days from the receipt by him of such intimation.

55. The punishments provided in this Act shall apply unless the fact constitutes a more serious offence under the Criminal Code or any other law, in which case such Code or other law shall apply.

Saving for Criminal Code. Cap. 9.

56. Notwithstanding any other law, proceedings for an offence under this Act or of any regulations or orders made thereunder may be commenced at any time within six years from the commission of the offence.

Prescription.

PART VII

Miscellaneous

Applicability of
the Data
Protection Act.
Cap. 440.

57. (1) Without prejudice to the Data Protection Act, Jobsplus may from time to time require:

S.L. 440.09

(a) any person in charge of a school or other educational or training institutions, as the terms are defined in the Processing of Personal Data (Education Sector) Regulations, to furnish in such manner as may be requested and within a reasonable time, such particulars as Jobsplus may require with respect to students who are not of compulsory school age in accordance with the relevant provisions of the Education Act;

Cap. 327.

(b) any person responsible for the implementation of labour market policies to furnish in such manner as may be requested and within a reasonable time such particulars as Jobsplus may require with respect to persons who are not of compulsory school age in accordance with the relevant provisions of the Education Act;

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(c) any employer and any person to furnish, within a reasonable time such information as it may require in connection with employment and related matters;

Cap. 413.

(d) the Commission for the Rights of Persons with Disability, set up by virtue of the Equal Opportunities (Persons with Disability) Act, to furnish in any manner as may be requested and within a reasonable time such particulars as Jobsplus may require with respect to persons between the ages of sixteen and sixty-five years registered on any such register established and maintained by the Commission, to satisfy the legal obligations of Jobsplus to carry out its functions under the Persons with Disability (Employment) Act.

Cap. 210.

(2) Any person who fails to comply with any request made under this article shall be guilty of an offence under this Act.

Particulars
which may be
required.

58. (1) Without prejudice to the generality of the powers conferred in article 57, the particulars which may be required shall include such particulars relating to age, gender, ability, educational attainments and other particulars of the persons to whom they relate as appear to Jobsplus to be necessary or expedient to enable adequate

advice to be given on employment prospects, to design employment and training policies, to design active labour market policies which meet labour market needs and to analyse the impact of labour market policies and initiatives:

Provided that when processing of data is required for research and statistics purposes, all identifiable data shall be rendered anonymous, unless in the case of research, the identification of the data subject is required to fulfil the purposes of such research.

(2) Where, for the purposes of designing employment, training and labour market policies, the research being conducted would require the identification details of persons, Jobsplus shall process such data by replacing personal identification data with pseudonymous data, and eventually limiting the re-identification of persons only to those cases which specifically fall within the parameters of the policy.

(3) When, for the purposes of the preceding sub-articles, pseudonymous data are processed, Jobsplus shall ensure that:

(a) personal data is not processed for any other purpose that is incompatible with the specific purpose of the policy;

(b) data enabling the attribution of information to an identified or identifiable data subject is kept separately from the other data;

(c) personal data shall not be retained for a period which is longer than necessary and all identifiable details shall be rendered anonymous, deleted, or destroyed, following the completion of the policy and, or initiative implementation.

59. (1) The Minister may make regulations generally for giving effect to the provisions of this Act, and the enforcement thereof, and in particular, but without prejudice to the generality of the foregoing - Regulations.

(a) for providing for any matter which is required or authorised by this Act to be prescribed;

(b) for prescribing the powers and procedures of the Authority in the hearing and disposal of appeals under this Act.

(2) The powers of the Minister to make regulations under any of the provisions of this Act shall include the power to establish the punishments in respect of any violation or contravention thereof, or failure to comply therewith:

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Provided that such punishments shall not exceed a fine (*multa*) of fifteen thousand euro (€15,000) or imprisonment exceeding three months.

Conflict of interest.

60. (1) A director, officer, employee, agent or consultant of Jobsplus who is in any way directly or indirectly interested in any contract made or proposed to be made by Jobsplus or in any activity or service to be provided for or by Jobsplus, shall as soon as possible after the relevant circumstances shall have come to his knowledge, disclose the nature of his interest to the Board of Jobsplus.

(2) Any disclosure made under sub-article (1) by a director shall be recorded in the minutes of the meeting at which it is made, and the director -

(a) shall, after the disclosure, withdraw from the meeting while that matter is being discussed or decided by the Board; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such discussion or decision.

(3) Jobsplus shall without delay inform the Minister of any disclosure made under this article.

Repeal and Saving. Cap. 343.

61. (1) Subject to the provisions of the following sub-articles, the Employment and Training Services Act, 1990, hereinafter referred to as "the repealed Act", is hereby repealed.

(2) Until such time as they are revoked, repealed or replaced, any scheme made, permit or exemption granted, any agreement entered into and any regulation or order made or kept in force, under and in virtue of the repealed Act shall, notwithstanding the repeal of the said Act, continue in force and shall be deemed to have been made under and in virtue of this Act.

(3) Any person registered for employment under the repealed Act shall continue to enjoy the same priority for referral for employment under this Act, to which he was entitled immediately before the coming into force of this Act.

(4) Any reference in any other law to the repealed Act shall be deemed to be a reference to the relative provisions of this Act.

SCHEDULE

[Article 3]

FORM OF OATH TO BE TAKEN BY MEMBERS
OF THE AUTHORITY

I, having been appointed to be Member of the National Employment Authority constituted under the Employment and Training Services Act, do hereby swear that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said appointment.

So help me God.

Passed by the House of Representatives at Sitting No. 168 of the 14th November, 2018.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERZJONI ELEKTRONIKA