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CONSULTATION
DOCUMENT

A PROPOSAL FOR THE INTRODUCTION OF THE
JOBSPLUS ACT



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CONSULTATION QUESTIONS

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DEFINITIONS

“Authority” means the National Employment Authority as established by the Employment and Training Services Act (CAP.343).

“Corporation” refers to the Employment and Training Corporation (ETC).

“Current Act” or “Current Legislation” refers to the Employment and Training Services Act (CAP.343).

“Education Institutions” refers to any licensed educational institution in accordance with the Education Act (Cap. 327 of the Laws of Malta) and any educational institution set up by law;

“Jobsplus” is the new name which will replace the Corporation’s current nomenclature.

In this document words importing the masculine gender shall include females.

2

RATIONALE

1990, marked the establishment of the Employment and Training Corporation (ETC), through dedicated legislation better known as the Employment and Training Services Act (CAP.343).¹ The founding aims of the Corporation were towards helping jobseekers in finding employment through job schemes and training.

2015, set the pace for a shift in focus and renewal of this long standing Corporation. A new vision, mission, brand name and identity are earmarked for the Corporation. This shift aims to provide an enhanced and easier access to the labour market and jobs, designed to focus on being people centric and labour market driven, for the success of employers, jobseekers and employees. The recently introduced brand name and identity - Jobsplus - reflects an innovative, dynamic, sustainable and fresh perspective.

¹ Employment and Training Services Act (CAP.343) available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

PURPOSE OF THIS CONSULTATION

- 2.1** In October 2015 during the Employment and Training Corporation's Annual General meeting, whereby its 25th anniversary was also celebrated, the new vision, mission and re-branding were announced. The Employment and Training Corporation will be re-branded to Jobsplus and will retain the status of a public entity.
- 2.2** Furthermore, in the Budget 2016 Speech,² the Government emphasised its commitment to enhance the labour market in order to sustain a healthy economy through strengthening this pivotal public entity.
- 2.3** The Employment and Training Services Act (CAP.343) entered into force in August 1990. Although minor amendments were made along the years, its main parts remained unchanged. A quarter of a century later, the government along with the Entity see the need to update the contents of this Act in view of the developments that have occurred since it was first published.
- 2.4** This consultation document presents the proposed amendments to the current legislation - The Employment and Training Services Act (CAP.343). A brief overview of the proposed amendments are outlined below:
- » The Employment and Training Services Act (CAP.343) will be repealed and substituted by the Jobsplus Act.
 - » The Jobsplus Act will in its most part be based on the current legislation.
 - » Part II of the current legislation regulates the establishment and functions of the National Employment Authority. It is being proposed that the functions set by Article 4(1)(c), namely the provisions of monitoring local employment trends, will become the responsibility of Jobsplus.

² Budget 2016 Speech, p.26 available at: https://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2016/Diskors_Bagit_2016.pdf

- » Part III regulates the foremost functions of this public entity.
 - » Article 11 establishes the powers to maintain a Register of persons seeking employment, which is currently divided into three parts. It is being proposed that this practice is streamlined through the amalgamation of Part One and Part Two into one holistic Register, whilst Part Three will be substituted by the Jobsplus web portal.
 - » Article 13 and 15 set the provisions for the referral of persons for employment, whereby preference is given to those who have been registering for employment the longest. In order to address the ever changing dynamics of the labour market, preference will henceforth be given to those matching the required employment criteria.
- » Part V regulates Employment Agencies, however their licensing and supervision are vested in the Director responsible for Industrial and Employment Relations (DIER), which is regulated by the provisions set out in the Employment and Industrial Relations Act (CAP.452). It is being proposed that Part V of the Employment and Training Services Act (CAP.343) is deleted and its provisions are to be incorporated within the Employment and Industrial Relations Act (CAP.452).
- » Part VI entitled Manpower Records, establishes the provisions for the registration and recording of the gainfully occupied population as well as the imposition of fines. It is being proposed that the current procedure for the filing of engagement and termination of employment forms is simplified accordingly from time to time at the entity's discretion.
- » Part VII sets the provisions for the engagement of apprentices and trainees. It is being proposed that

Jobsplus will retain its legal vires to provide training courses, traineeships and schemes as well as to maintain a register of apprentices and trainees, however the organisation of apprenticeships and traineeships by education institutions will fall under the respective institution's responsibility.

- » Part VIII, Enforcement, Offences and Penalties regulates the provisions of the inspectorate department. An amendment to the fines enforced is being proposed.

STRUCTURE OF THIS DOCUMENT

2.5 A brief summary of the matters covered by each chapter is provided below:

- » Chapter 3 explores several Parts and Articles of the current legislation and lists the amendments being proposed to be incorporated in the Jobsplus Act.
- » Chapter 4 sets out the way forward.
- » Chapter 5 sets the questions pertaining to this consultation.

2.6 This consultation document invites interested parties from amongst the general public to submit their views through the online feedback form available through the following link <https://education.gov.mt/jobsplus-act>, over a 6-week period, until Wednesday 25th May 2016.

2.7 The government welcomes views on the questions, set out in Chapter 5, which cover concerns and proposals related to the introduction of the Jobsplus Act.

3

THE CURRENT ACT & PROPOSED AMENDMENTS

This chapter lists the Parts and Articles of the current Act whereby amendments are being proposed. The Jobsplus Act will, in its most part, be based on the current legislation. Furthermore, as a general amendment to the current Act, the word 'Corporation' shall be replaced by 'Jobsplus' throughout. It is being proposed that the Employment and Training Services Act (CAP.343) is repealed and replaced by the new Act, entitled Jobsplus Act.

PART II. THE NATIONAL EMPLOYMENT AUTHORITY

- 3.1** The National Employment Authority (NEA) was set up by virtue of the Employment and Training Services Act (CAP.343) of 1990. Article 4³ establishes the functions of the Authority as cited below:

The functions of the Authority shall be:

To monitor employment and 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 the Corporation;

to hear appeals as provided for in this Act;

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 option of the Minister or of the Authority it is necessary or expedient to make provision by regulation;

to make rules subject to the provisions of this Act: regarding the circumstances under which a person registered for employment may lose his priority for referral for employment; and providing for special consideration to be given to determinate classes of applicants being applicants with dependants, applicants who are disabled, infirm or incapacitated or applicants requiring physical or social rehabilitation;

such other functions as are or may be assigned to it by

³ Employment and Training Services Act (CAP.343), Part II. The National Employment Authority, Article 4, p.4, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

this Act or any other law.

The National Employment Authority has since its inception functioned as the instrument for the hearing of appeals in relation to decisions concluded by ETC. These appeals, in the most part relate to persons who have been struck-off from the unemployment register or denied the right to register on Part One of the official jobseekers Register which ETC maintains in line with the provisions set out by the Act.

Throughout the years, the Corporation has, in practice, been vested with the functions of monitoring employment trends in Malta and providing advice to the Minister on any matter relating to the employment and/or training of workers. It is therefore being proposed that this function presently relegated to the NEA shall be formally and legally transferred to the responsibilities of Jobsplus in order to reflect current practice.

Hence, it is being proposed that one of the responsibilities of Jobsplus shall be as follows:

Jobsplus shall consider any matter relating to the formulation of an overall national policy for employment and training, 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 may also tender advice to the Minister or any department of 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.

PART III. THE EMPLOYMENT AND TRAINING CORPORATION

3.2 Part III, Article 11,⁴ empowers the Corporation to maintain a Register of persons seeking employment, as cited below:

The Corporation shall maintain a Register of persons

⁴ Employment and Training Services Act (CAP.343), Part III. The Employment and Training Corporation, Article 11, p.8, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

seeking employment.

The Register shall consist of such separate parts: Part One, for the registration of persons who are unemployed; Part Two for the registration of persons who without a good and sufficient cause, terminate employment or reject an opportunity of employment or training, or who otherwise refuse or fail to participate in any employment or training measure or scheme of the Corporation; Part Three, for persons in gainful occupation who are seeking alternative employment; such other Part for any category of persons or purposes as may be prescribed after consultation with the Corporation.

Subject to such provisions as may from time to time be otherwise prescribed, for the purpose of determining the length of registration in one part of the Register, no account shall be taken of the period of registration in any other part.

Any person who qualifies to be registered may seek to be registered under the appropriate part of the Register.

Part One and Part Two of the Register are both made up of persons who are currently unemployed and in search of employment opportunities, whilst Part Three of the Register maintains a list of persons who are in gainful employment but are seeking part-time employment, persons who are seeking part-time employment as their primary occupation or an alternative full-time occupation. Given the way the labour market dynamics have changed throughout the years it has become evident that the retention of three separate Registers is no longer considered necessary as they only contribute to added administrative bureaucracy.

In view of these developments, it is being proposed that the Register of persons seeking employment will consist solely of one Part and be composed of persons who are not in employment

and seeking full time employment. This will incorporate the current Parts One and Two of the Register. Part Three of the Register will cease to exist in the format known to date, and will be replaced by other services including the innovative digital job matching system which will be available online, through the Jobsplus web portal.

Hence, it is being proposed that the Article establishing the register of persons seeking employment will read as follows:

Jobsplus shall maintain a Register of persons seeking employment.

Any person who qualifies to be registered may seek to be registered in accordance with regulations that may be published 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

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.⁵

Part III, subarticle 1 of Article 13,⁶ determines the course of actions to be adopted by the Corporation in relation to the referral of persons for employment, as cited below:

Without prejudice to the other provisions of this Act, and subject to any regulations made thereunder, in selecting persons for referral to employers, the Corporation shall be guided by the following principles, namely:

Where employees with no special skill, knowledge or

5 Education Act (CAP.327), Article 2, p.2, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8801>

6 Employment and Training Services Act (CAP.343), Part III. The Employment and Training Corporation, Article 13, p.9, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

experience are required, regards shall be had to -

The employer's requirements as to former employment and other factors relevant to the type of employment offered;

the length of registration for employment;

where employees with special skill, knowledge, experience or qualifications are required, regard shall be had to the persons who best satisfy the requirements of the employer;

as between persons who are equally considered to be the best available, length of registration for employment:

Provided that, in referring any person for employment, the Corporation shall, unless otherwise prescribed, give preference to persons registered in Part One over those registered in any other Part of the Register.

At present, when referring persons for employment, the Corporation gives preference to persons registered on Part One over those registered in any other Part of the Register. Along the years the Corporation has experienced that employers in both the private and public sectors are demanding that the Corporation refers jobseekers who match the vacancy requirements and who frequently need to be qualified, and/or competent and/or experienced to do the job. The criteria of duration of registration and reason for termination of previous employment are not the determinant factors for employers any longer, when deciding whom to employ.

Additionally, employers in both the private and public sector need to fill their vacancies expeditiously and are complaining about the Corporation's archaic practice of referring registered jobseekers for employment in the sequence established by the current Act, that is, giving preference to those on Part One over those on Part Two and Part Three.

In light of the above, it is being proposed that when Jobsplus is requested to refer persons for employment, it will be guided by the principles that preference is given to registered jobseekers who best satisfy the requirements of the employer on grounds of qualifications, skills, competences and work experience.

Furthermore, Jobsplus will furnish employers with a list of eligible registered jobseekers from the new Register of persons seeking employment (the proposed Register made up of the current Part One and Part Two), and should the employer find no suitable candidate from this list, then the employer is free to issue the call to the general public or carry out a search through the online job matching system on their own initiative. It is pertinent to note that the employer is not obliged to use the said job matching system.

Hence, it is being proposed that:

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 be guided by the following principles, namely:

the persons who best satisfy the requirements of the employer on the grounds of qualifications, skills/competences and/or work experience as the case may be.

Furthermore, subarticles 2, 3, 4 and 5 of Article 13 of the present Act determine the principles by which the Corporation will be guided by, in terms of offering employment and training opportunities to persons registering for employment, as cited below:

When a person who is registered for employment 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 the Corporation, he shall lose his priority

for referral for employment and shall be notified accordingly in writing.

Any person who, whilst registered in Part One or Part Two of the Register, is engaged in a gainful occupation or who, without the prior permission of the Corporation, 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.

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

Any person aggrieved by a decision of the Corporation under this article may, within fifteen days from the notification of such decision, appeal to the Authority.

In order to ensure that a level playing field is maintained amongst persons registering for employment to successfully access the labour market, it is being proposed that subarticles 2,3,4 and 5 of article 13 are amended as follows:

In maintaining the Register of persons seeking employment, Jobsplus shall be guided by the following principles:

Any person who is registering for employment refuses to avail himself of any suitable opportunity for employment or training or of any other assistance or service offered

to him by Jobsplus, will retain his right to continue registering for employment, for a maximum period of three (3) months from date of Registration.

Any person who has been registering for employment for a period exceeding 3 months from 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 will be struck off the register with immediate effect for a period of six (6) months.

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 will be struck off the register with immediate effect for a period of six (6) months.

When Jobsplus is not in a position to offer any suitable opportunity for employment, due to the prevailing labour market conditions, the person registering for employment may engage in a work activity, consisting of a few hours a week or a month for a short period of time, such hours not to exceed the amount of 240 hours per annum or an average of 20 hours per month, whilst retaining his right to remain on the Register, so long as he informs Jobsplus of such engagement. Should the registrant fail to inform Jobsplus, he will be struck off the Register with immediate effect for a period of six (6) months.

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.

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 months and has ceased to be gainfully occupied for reasons that are deemed to be good and sufficient.

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

PART V. EMPLOYMENT AGENCIES

3.3 Part V, through Articles 23, 24 and 25,⁷ sets the provisions for the regulation of employment agencies; however, their licensing and supervision are vested in the Director responsible for Industrial and Employment Relations (DIER).⁸

This Part of the Act (Part V) is completely extraneous to the Corporation. Furthermore, given these provision, the Corporation may currently be entitled to regulating private employment agencies, which may lead to claims of conflict of interest.

It is being proposed that the Employment and Industrial Relations Act (CAP. 452)⁹ becomes the parent Act of the Employment Agencies Regulations (SL 343.24) by virtue of the enabling provision in Article 48 of the parent Act itself, which gives the power to the Minister responsible for Employment and Industrial Relations to make regulations for the purpose of carrying out and giving effect to any of the provisions of the Act on any matter related to employment relations and industrial relations.

⁷ Employment and Training Services Act (CAP.343), Part V. Employment Agencies, Article 23,24 and 25, p.16, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

⁸ Department for Industrial ad Employment Relations available at: <https://dier.gov.mt/en/Pages/home.aspx>

⁹ Employment and Industrial Relations Act (CAP.452) available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918>

Hence, it is being proposed that Part V of Chapter 343 will be deleted and transposed in the Employment and Industrial Relations Act.

PART VI. MANPOWER RECORDS

3.4 Part VI, Article 26, sets the provisions for the Corporation to maintain a register of the gainfully occupied population, as cited below:

The Minister may make regulations under this article prescribing the registration and recording of gainfully occupied persons or persons seeking employment whether by means of work books, identity cards, by means of electronic-related data recording and recovery systems or other documents. Such regulations may in particular provide:

for the use of work or identity cards or other documents for all or any one or more classes of such persons;
the method of issue and control of such documents;
for the fees to be paid for the issue of replacement thereof;
for the conditions under which such documents may be issued;
who the persons responsible for the custody of such documents may be; and
the particulars to be shown or entered in such documents or records.

Any such regulations may also provide for such documentation as may be prescribed for purposes of registrations for employment or employment training.

The Minister may also make regulations providing for restriction of the disclosure of any particulars furnished in accordance with regulations under this article, or in accordance with article 27, 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.

The Minister may delegate any power vested by him by this article to the Corporation.

The Article depicted above is highly prescriptive and requires the Minister to make regulations prescribing the registration and recording of the gainfully occupied population. In 1993, L.N. 110 was issued and it established the new means by which the Corporation was to keep the register of the gainfully occupied updated. It is felt that legislation should lay the basic principles and then provides for the establishment of means as administratively determined from time to time while at the same time not being too onerous on employers.

Hence, it is being proposed that Article 26 will be amended as follows:

Jobsplus may make administrative provisions under this article prescribing the registration and recording of employed persons or persons seeking employment in Malta by any means whatsoever.

Without prejudice to the provisions of any other applicable law, Jobsplus may also make administrative provisions providing for the disclosure of any particulars furnished in accordance with this article, or in accordance with article 27, 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.

Any employer, who employs another person, shall notify Jobsplus of such employment by means established from time to time.

Any person, who takes up self-employment, shall notify Jobsplus of such occupation by means established from time to time.

Any person who, whilst registering with Jobsplus as a person seeking employment is employed by another person, such person shall inform Jobsplus of such employment.

For the purposes of this Act, a person performing work in a factory, office, shop or other place of work shall be deemed to be employed or self-employed.

No person shall employ a minor of compulsory school age except:

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

under an apprenticeship indenture or training scheme approved by the Minister responsible for Education in terms of the Education Act:

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

Article 27 and 28 set the provisions endowed to the Corporation with regards to the gathering of particulars concerning persons leaving school and information as to employment and other occupations, respectively as cited below:

27. The Corporation may from time to time require any person in charge of a school to furnish in such manner as may be requested and within a reasonable time such particulars as the Corporation may require with respect to pupils leaving school or who, while attending school, attained a stated age.

Without prejudice to the generality of the power conferred in subarticle (1), the particulars which may be required

shall include such particulars, relating to age, sex, ability, educational attainments and other particulars of the persons to whom they relate as appear to the Corporation to be necessary or expedient to enable adequate advice to be given on employment prospects and to prepare plans for their training pursuant to the provisions of this Act.

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

28. The Corporation may, from time to time, request any employer or any gainfully occupied person to furnish, within a reasonable time such information as the Corporation may require in connection with employment and other occupations.

Any such request may be either general or with respect to a class or classes of employers, or to a particular employer or employers, or to a class or classes of gainfully occupied persons, it shall be made by notice published in the Gazette.

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

Due to the restrictions imposed by the current legislation, when in 2015 the Corporation needed to enforce legislation concerning the adherence to the 2% quota by employers in the employment of persons with disability, several difficulties were encountered when it was required to divulge information to employers regarding the number of persons with disability they already employ and who they were. Therefore, employers could not determine whether they were already adhering to the quota or not.

Moreover, the Corporation was faced with several obstacles

due to the current legal provisions when it came to undertake studies to trace the labour market activity or inactivity of individuals, and to determine the link between the qualifications/skills persons obtained and their career progression. The Corporation undertakes such studies with a view to contributing to employment policy development and to provide feedback to educational and training institutions, an activity which is set to be further enforced by Jobsplus.

Hence, it is being proposed that Article 27 of the current Act will be amended as follows:

Jobsplus may, from time to time require any person in charge of a school or other educational or training institution to furnish in such manner as may be requested and within a reasonable time such particulars as Jobsplus may require with respect to pupils or students leaving school or other educational or training institution or who, while attending school or other educational or training institution, attain a stated age.

Jobsplus may, from time to time, request any employer and any person to furnish, within a reasonable time such information as Jobsplus may require in connection with employment and related matters.

Jobsplus may, from time to time, request any Recruitment Agency to furnish, within a reasonable time such information as Jobsplus may require in connection with work placements.

Without prejudice to the generality of the powers conferred in subarticles (1) and (2), and the data protection provisions established by virtue of the Data Protection Act (CAP.440), the particulars which may be required shall include such particulars, relating to age, gender, ability, educational attainments, skills/competences 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 about employment policies, employment and training prospects and to design active labour market policies which meet labour market needs.

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

Furthermore, it is being proposed that Article 28 of the current Act will be amended as follows:

For the purposes of implementing legislation regulating quotas for the employment of persons with disability and support measures, Jobsplus may inform employers about the number of persons with disability they employ, including such particulars as the employer may require with respect to adhering to the employment quotas determined by law. Prior to such communication, Jobsplus will be vested with the responsibility to obtain the necessary consent from the respective employees.

Jobsplus shall be granted access to any Register of persons with disability that may be maintained by any given entity, organisation or department, both public or private, in connection with regulating quotas for the employment of persons with disability and support measures.

The Jobsplus Act will include and adhere to the definition of ‘persons with disability’ as applied in the Equal Opportunities (Persons with Disability) Act (CAP. 413),¹⁰ which reads as follows:

“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.

¹⁰ Equal Opportunities (Persons with Disability) Act (CAP.413) available at: <http://www.justiceservices.gov.mt/downloadaddocument.aspx?app=lom&itemid=8879>

PART VII. APPRENTICES AND TRAINEES

3.5 Part VII specifies that no person may employ an apprentice or trainee without a written permit from the Corporation. It empowers the Minister responsible for labour to make and regulate schemes governing the conditions of employment and training of apprentices and trainees; a list of the contents of schemes is provided in detail in the Act. The Act mentions the responsibilities of the Corporation in respect of apprentices and trainees, and also the responsibilities of the latter and their employers. The Act also provides for the appointment of Trade Testing Boards by the Minister tasked with determining the acquisition of proficiency by candidates. The Minister responsible for education was given the *vires* to make regulations for the setting up of standards of proficiency or competence in any calling or occupation.

Article 29 of Part VII defines, amongst others, the terms ‘apprentice’ and ‘trainee’ as follows:

“Apprentice” means a person over the age of fifteen years who is bound by a written agreement to serve an employer for a determined period with a view to acquiring knowledge, including theory and practice, of a calling in which the employer is reciprocally bound to instruct that person and “apprenticeship” shall be construed accordingly.”

The above interpretation of the term “apprentice” will be deleted, thus Jobsplus will no longer issue Journeyman’s Certificates or certificate of competences.

“Trainee” means a person other than an apprentice, who is not of compulsory school age and who is receiving training under an agreement in writing in a calling or part of a calling otherwise than at a recognized educational establishment, provided that a trainee may be required to attend a recognized educational establishment as

part of such training and “traineeship” shall be construed accordingly.”

The interpretation of the term “trainee” will be retained in the Jobsplus Act.

Jobsplus intends to retain the legal vires currently endowed to the Corporation, through the Employment and Training Services Act (CAP.343), to provide and/or secure the provision of its own training courses, traineeships and schemes with the aim of assisting persons desiring to fit themselves for gainful employment. It shall also retain the authority to maintain a Register of Apprentices and a Register of Trainees in accordance with subarticle 3 of Article 32, whereby any employer who engages a trainee is bound to register such engagement and termination with Jobsplus.

PART VIII. ENFORCEMENT, OFFENCES AND PENALTIES

3.6 Part VIII, Articles 48, 50 and 51¹¹ regulate the provisions of the fines imposed by this Act as cited below:

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

(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

¹¹ Employment and Training Services Act (CAP.343), Part V. Enforcement, Offences and Penalties, Articles 48, 50 and 51, p.27-28, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8814>

116.47 euros but not exceeding 1,164.69 euros, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

50. Any person guilty of an offence against this Act under article 15 or article 47 thereof shall be liable, on conviction, to a fine (multa) of not less than 1,164.69 euros but not exceeding 11,646.87 euros.

51. (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 46.59 euros and not more than 931.75 euros.

(2) No proceedings shall be taken against any person for any offence against this Act other than an offence against articles 15 and 47 thereof, where such person, having received an intimation by the Corporation for the payment of a penalty of 34.94 euro 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 the Corporation in either case within such time as the Corporation shall notify to such person.

The fines established at law are not of enough deterrent to prevent the illegal employment of persons. The Corporation identifies between 2,500 and 3,000 cases of persons employed illegally per year.

It is being proposed that the following amendments are made to the current Act:

The fines applicable under Article 48 are to be of not less than 500 euros and not more than 2,500 euros.

The fines applicable under Article 50 are to be of not less than 2,500 euros and not more than 15,000 euros.

The fines applicable under Article 51(1) are to be of not less than 100 euros and not more than 2,000 euros.

The fine applicable under Article 51(2) is to be of 100 euros.

penalty not exceeding three hundred fifty euros (€350).

The fines established through Articles 48, 50 and 51 and the proposed amendments are being illustrated in the following comparative table for ease of reference.

	Current Min.	Current Max.	Proposed Min.	Proposed Max.
Article 48	€116.47	€1,164.69	€500	€2,500
Article 50	€1,164.69	€11,646.87	€2,500	€15,000
Article 51 (1)	€46.59	€931.75	€100	€2,000
Article 51 (2)	n/a	€34.94	n/a	€100

Further to the fines referred to above, Subsidiary Legislation 343.23, MANPOWER RECORDS (COMMENCEMENT OR TERMINATION OF EMPLOYMENT) REGULATIONS,¹² through Regulations 6, 7 and 10 establishes the fines payable by employers if found guilty of breaching the provisions relating to notification of employment to the Corporation as cited hereunder:

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

(i) where the Minister responsible for education grants written permission to employ such minor in terms of article 43(1) and (2) of the Education Act; or

(ii) under an apprenticeship indenture or training scheme

¹² Subsidiary Legislation 343.23, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10138&l=1>

approved by the Minister responsible for education in virtue of article 43(3) of the Education Act: Provided that the employer shall be bound to ensure that the conditions, if any, laid down in the mentioned written permission or apprenticeship indenture or training scheme are complied with.

(2) Any employer who fails to comply with any of the provisions of this regulation shall be guilty of an offence and shall on conviction be liable to a fine (multa) of not less than two hundred and thirty-two euros and ninety-four cents (232.94) and not exceeding two thousand and three hundred and twenty-nine euros and thirty-seven cents (2,329.37), and the Court may, at the request of the prosecution and in addition to such punishment, order the suspension or cancellation of any licence held by the offender and relating to trade or business, or relating to any business premises where the persons are employed. The provisions of the Probation Act shall not be applicable in respect of such offence.

7. Any employer who employs any person who is not a citizen of Malta, other than such person as may be in possession of a work permit, shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) of not less than one thousand and one hundred and sixty-four euros and sixty-nine cents (1,164.69) and not exceeding two thousand and three hundred and twenty-nine euros and thirty-seven cents (2,329.37), and the Court shall, at the request of the prosecution and in addition to such punishment, order the suspension or cancellation of any licence held by the offender and relating to trade or business, or relating to any business premises where such person is employed. The provisions of the Probation Act shall not be applicable in respect of such offence.

10. Any person who contravenes or fails to comply with any of the provisions of regulations 3, 4, 8 and 9 shall be

guilty of an offence and shall be liable on conviction to a fine (multa) of not less than one hundred and sixteen euros and forty-seven cents (116.47) and not exceeding one thousand and one hundred and sixty-four euros and sixty-nine cents (1,164.69), and the Court may, in addition to such punishment, order the suspension or cancellation of any licence held by the offender and relating to trade or business, or relating to any business premises where the persons are employed. The provisions of the Probation Act shall not be applicable in respect of such offence:

Provided that no proceedings shall be taken against any person who, after receiving an intimation by the Corporation for the payment of a penalty not exceeding fifty-eight euros and twenty-three cents (58.23) for having contravened the provisions of these regulations, complies with the provisions of these regulations and pays such penalty to the Corporation in either case within fifteen days from the date of the receipt by him of such intimation.

In order to act as a better deterrent to undeclared work, it is being proposed that the fines payable by employers found guilty of breaching the Regulations set by Subsidiary Legislation 343.23 as cited above, shall be incorporated in the Jobsplus Act and amended as indicated below. Once these Regulations are incorporated in the Jobsplus Act, Subsidiary legislation 343.23 will be repealed.

The fines applicable under Regulation 6 are to be of not less than one thousand euros (€1000) and not more than five thousand euros (€5,000).

The fines applicable under Regulation 7 are to be of not less than two thousand five hundred euros (€2,500) and not more than five thousand euros (€5,000), as well as possible suspension of trade/business licence.

The fines applicable under Regulation 10 are to be of not less than five hundred euros (€500) and not more than two thousand five hundred euros (€2,500). Furthermore, employers may comply with the provisions and pay a penalty of five hundred euros (€500).

The fines applicable under Regulations 6, 7 and 10 of S.L 343.23 and the proposed amendments are being illustrated in the comparative table below for ease of reference.

	Current Min.	Current Max.	Proposed Min.	Proposed Max.	Current compliance penalty	Proposed compliance penalty
Regulation 6	€232.94	€2,329.37	€1000	€5,000	N/A	N/A
Regulation 7	€1,164.69	€2,329.37	€2,500	€5,000	N/A	N/A
Regulation 10	€116.47	€1,164.69	€500	€2,500	€58.23	€500

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WAY FORWARD

The following chapter sets out the consultation process including details on how feedback may be submitted, as well as information related to the Data Protection Act (CAP.440) and the Freedom of Information Act (CAP.496).

- 4.1** This consultation document invites interested parties from amongst the general public to submit their views, over a 6-week period. Responses to this consultation should be received by Wednesday 25th May 2016. Kindly ensure that responses are sent in before the closing date. Responses received after this date will not be considered.
- 4.2** The government welcomes views on the questions set out in Chapter 5. Furthermore, respondents are encouraged to include any additional information they feel is relevant to this consultation, in their responses.
- 4.3** Responses to this consultation are to be submitted via the dedicated electronic feedback form, which may be accessed here <https://education.gov.mt/jobsplus-act>
- 4.4** It is pertinent to note that all the feedback received will become publicly available in a document summarising responses to this consultation.
- The Ministry for Education and Employment would like to take the opportunity to thank all contributors for their participation in the consultation process.

DATA PROTECTION ACT (CAP.440)

- 4.6** The Data Protection Act, 2001 regulates the processing of personal data whether held electronically or in manual form. The Ministry for Education and Employment collects only information which is necessary for it to perform its intended functions and is set to fully comply with the Data Protection Principles as set out in the Act. Verification of the ID number provided will take place as deemed necessary. All personal data provided will be processed according to the Data Protection Act (Cap 440).

FREEDOM OF INFORMATION ACT (CAP.496)

- 4.7** As we are a public authority all documents we hold, including documents related to this public consultation process, may be released following a request to us under the Freedom of

Information Act (Cap. 496), unless such request may be subject of an exemption arising from the same Act.

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CONSULTATION QUESTIONS

The following chapter lists the questions pertaining to this consultation. Feedback may be submitted through the online feedback form available through the following link <https://education.gov.mt/jobsplus-act>

- Q1** To what extent do you agree with the changes proposed in section 3.1 with regards to the functions set by Article 4(1)(c), namely the provisions of monitoring local employment trends, to officially become the responsibility of Jobsplus?
- Q2** To what extent do you agree with the changes proposed in Section 3.2, with regards to the provisions established by Article 11, namely that Part One and Part Two of the Register of persons seeking employment will be amalgamated into one holistic register and for the current Part Three to be substituted by the Jobsplus web portal.
- Q3** Section 3.2, establishes the preference by which persons are to be referred for employment through Article 13 and Article 15. In this regard it is being proposed that when referring persons for employment, preference will be given to those persons who best match the criteria as required by the employer. To what extent do you agree with this proposal?
- Q4** To what extent do you agree with the changes proposed in Section 3.4 with regards to the gathering of data as established by Article 27 and 28?
- Q5** To what extent do you agree with the changes proposed in Section 3.5 with regards to the organisation and management of its own traineeships and schemes, whilst maintaining a national Register of Apprentices, Register of Trainees?
- Q6** To what extent do you agree with the proposed amendments in Section 3.6 with regards to the fines established by Articles 48, 50, 51(1) and 51(2)?
- Q7** To what extent do you agree with the proposed amendments in Section 3.6 with regards to the fines established by Subsidiary Legislation 343.23?
- Q8** Do you have any options or suggestions other than those proposed in this Consultation Document?

