

REGULATIONS ON THE AVOIDANCE OF DAMAGE TO THIRD PARTY PROPERTY



Minister for Resources and Rural Affairs

L.N. Xxx of 2009

Regulations on the Avoidance of Damage to Third Party Property

IN the exercise of the powers conferred by the **Building Regulations Act 2009**, the Minister for Resources and Rural Affairs, has made the following regulations: -

(NOTE: A draft of the Building Regulations Act is being issued for public consultation together with these draft regulations.)

Citation and
Commencement

1. (1) The title of these regulations is the Avoidance of Damage to Third Party Property during Construction Regulations,

(2) These regulations shall come into force on such date or dates as the Minister responsible for Resources and Rural Affairs may by notice in the Gazette appoint, and different dates may be so appointed for different provisions of these regulations.

Scope

2. These regulations have the scope to ensure that before any demolition, excavation and construction works are taken in hand, methodologies that are technically sound are prepared by an architect in collaboration with the site supervisor and the contractor to ensure that no damage to third party property or injury to persons will result through the proposed works.

The provisions of these Regulations shall in no way be construed as having any bearing on the responsibilities related to the design of buildings and construction activity emanating from other legislative instruments.

Interpretation

3. In these regulations, unless the context otherwise requires: -

“the Act” means Building Regulations Act;

“applicant” means the person on whose behalf the development application in terms of regulation 3(1) of the Development Permission (method of application) Regulations, 1992, for the works on site is submitted.

“architect” means a perit duly warranted according to the Periti Act;

“Building Regulations Office” has the meaning as defined in the Act.

“construction work” includes all construction or demolition activities taking place on a development site, streets, open spaces and shall also include tunnelling works;

“demolition “ means the pulling down or removal of any of the structural elements which form the building, such as the roof,

internal and external load bearing walls.

“project architect” means the architect who applies for the development application in terms of regulation 3(1) of the Development Permission (method of application) Regulations, 1992, for the works being undertaken.

“Director” means the Director responsible for the Building Regulations Office or any public officer duly appointed to assume the responsibilities of Director

“enforcement notice” shall have the same meaning assigned to it in Article 2 of the Development Planning Act (Chap. 356)

“excavation” means the cutting of rock and removal of any consolidated material, except that the removal of topsoil up to 600mm in depth is not considered excavation

“immediately adjacent” with reference to building means any building which shares a party wall with the site whether on the side or back of the site.

“method statement” shall mean a report prepared by an architect and shall have the meaning assigned to it in these regulations.

“Malta Environment and Planning Authority” means the Authority as established under Article 3 of the Development Planning Act (Chap. 356).

“Minister” means the Minister who is assigned the responsibility for building regulations in the ministerial portfolio;

“particulars of a person” shall include name and surname, Identity Card number, address and contact number;

“registered contractors” means contractors who are duly registered in accordance with the Building (Price Control) Act (Chap. 288).

“Site manager” means a person carrying out the duty or duties derived from the provisions of these regulations. Such person shall be nominated by, and responsible on behalf of, the owner for ensuring the correct implementation of these Regulations.

Applicability

4. (1) These regulations shall be applicable to any construction work which involve

- (a) excavation which is underlying, or abutting with or within a distance of 2.5 metres to any existing building, earth retaining or water retaining structure belonging to or occupied by third parties; or
- (b) the demolition or removal of any existing wall, or roof or structure abutting with, or immediately adjacent to, or underlying or overlying any property belonging to or occupied by third parties; or
- (c) the building of additional storeys or load bearing walls or structures over any property belonging to or occupied by third parties

Insurance

5. (1) All contractors and developers executing demolition, excavation and construction works which fall under the provisions of these regulations are to be appropriately and adequately insured to cover any single or recurring third party damages sustained by third party property, disability to persons or death as a result of the construction works or activity being undertaken by the contractor or developer.

Provided that the insurance cover shall not be less than 500,000 euros

Provided also that this does not exempt the insurer from carrying out an appropriate and adequate assessment of the risks involved in each of the requests made and issue an appropriately valued insurance cover.

(2) A copy of the insurance in accordance with subparagraph (1) is to be submitted to the Director with the method statement indicated in regulations 6 and 7.

Submission of a
Method Statement

6. (1) No later than three weeks before the commencement of any works that fall under these regulations, the contractor shall submit a method statement in the form of two hard and one digital copy to the Director.

(2) The Director shall place the digital copy of the method statement on the Services Division website and also make available for scrutiny by interested parties the hard copy of such method statement. The Director shall also forward a hard copy of each method statement it receives to MEPA so that it could be made available for scrutiny by interested third parties at the MEPA offices.

(3) Any interested third party can request the Director to review any method statement that is submitted provided he submits a detailed report drawn up by an architect indicating the technical reasons which may be of concern to the safety of such third party or his property.

(4) Following a written request by an owner or occupier of any property abutting, underlying or overlying any site on which construction works are to be undertaken, the Director may request the owner, developer and/or the applicant the submission of a partial method statement at any stage during the processing of the application by MEPA. Such method statement shall be submitted within three weeks from the date when the applicant receives the request. In his request the Director shall indicate the details that are to be included in the partial method statement.

(5) The owner of a property adjoining a construction site may submit a condition report prepared by his architect to the Director. If, in the opinion of the Director, there is a substantive discrepancy between the condition report of the developer and the condition report submitted by the property owner, the Director may, at his discretion, ask the two architects to review together their respective reports and resubmit a new report signed by both.

(6) Where a neighbour refuses entry to the developer's architect for the purpose of preparing the condition report, the architect is to make a statement under oath giving details of his attempts to be allowed access to the neighbour's property for the purpose of preparing the condition report and include this in the method statement.

Exemptions from
submission

7. (1) Notwithstanding the provision of sections 4, 5, 6 the following construction works are exempt from the submission of the method statement and a copy of third-party insurance:

(i) excavations, including trenching works, which are less than 1.5 metres deep.

(ii) internal and external structural alterations of a building, including removal of walls, building of walls or replacement of roofs where the total

cost of the structural alteration works does not exceed 30,000 euros.

Provided also that the contractor shall submit the method statement and a copy of a third party insurance to the Director if requested to do so by the Director in accordance to sections 5, 6 and 7.

Further provided that for the purpose of (ii), the Director may request the submission of a detailed costings of the works.

(2) For the types of developments referred to in 7 (1), the requirement to prepare a method statement and for the contractor to be duly covered by third party insurance shall become applicable as from 1st January 2010.

Form and Content
of the Method
Statement

8. (1) The method statement is to be prepared by an architect in collaboration with the site manager and the contractor.

(2) The method statement shall indicate :

- (a) the commencement date of the works
- (b) the particulars of the person who is commissioning the works
- (c) the particulars of the Site Manager
- (d) the particulars of the contractor and any subcontractors
- (e) the development permit number or any other authorisations by public authorities where necessary
- (f) a site location plan and photograph of the site
- (g) a condition report incorporating photographs of the properties which are immediately adjoining, underlying or overlying the construction works.
- (h) excavation, demolition or construction procedures being adopted including information which is relevant to safeguarding the stability of the works being undertaken, and the stability of adjoining, underlying and overlying structures or terrain as the case may be.
- (i) plans and sections of the envisaged works and any other information which the Director may from time to time request.

Responsibility of
the Site
Supervisor and
the Contractor

(3) In the case of demolition works, the method statement shall take account of the structural condition of the construction itself and of adjacent overlying or underlying structures, the sequence of work, the type of tools, equipment and plant to be used, and the precautions to be taken at each stage to guard against instability of the structure or parts thereof being demolished and any adjacent structures and to safeguard the safety of workers and of third parties.

Professional
responsibility for
the Method
Statement

9. Professional responsibility for the method statement remains with the architect who prepares it, whilst ultimate responsibility for adhering to the method statement rests with the site manager and the contractor.

Precautionary
Measures for
Demolition Works

10 (1) The site manager and the contractor and any subcontractors shall ensure that the works are carried out in accordance to provisions indicated in the method statement.

(2) Upon being served with an Enforcement Notice, the site manager and the contractor shall immediately comply with the Notice and, if requested to do so in the Notice, cease construction activity.

11. These regulations do not exempt the developer, architect, site manager and contractor from observing other obligations and provisions of the law that are regulated by the Code of Police Laws and the Civil Code, relating to excavation, demolition or construction works.

Responsibilities of
the Director

12. The Director shall, for construction jobs which qualify under section 4 (1) of the regulation;

(a) verify that the method statement has been submitted in accordance to these regulations

(b) review the method statement, if a submission is received from a third party claiming that the method statement does not provide for adequate safety and/or is not in accordance to the regulations.

(c) verify that contractors are covered by a third party insurance policy, as per regulation 5.

(d) monitor methodologies being carried out on site and see that they are in line with the method statement submitted and in accordance to the regulations.

Provided that the Director , delegated architect, or other official of the Buildings Regulations Office so authorised may at any reasonable time and if so required by the Director with the assistance of the police force enter upon any development site in order to execute his responsibilities as specified in this section.

Powers of the
Director

13. (1) The Director shall have the power to issue an Enforcement Notice in any of the following circumstances:

(a) If the method statement has not been submitted in accordance with these regulations or

(b) If no third party insurance is submitted for the construction works in accordance with these regulations or

(c) If the demolition, excavation or construction works are not being carried out in accordance to the method statement or in accordance to the regulations or

(d) If, irrespective of the adherence or otherwise to the method statement and relevant regulations, the Director is of the opinion that the demolition, excavation or construction works are likely to cause material damage to third party property or will result in danger to workers or to third parties.

(2) The Director may delegate to Officers of the Building Regulations Office and any Architect duly appointed by him the power to issue on his behalf an Enforcement Notice.

(3) Should any person who is served with an enforcement notice fail to abide by the provisions of that notice or cease operations as requested in the Notice, the Director or his delegated representative shall call for the presence of the Police Force who shall for such purpose exercise such powers as are vested in them at law to assist the server of the Enforcement Notice in ensuring that the said Notice is complied with.

Provided that should the Director or his delegated representative decide not to issue an Enforcement Notice, this is not to be construed as a form of endorsement of the method statement nor is it to be construed as an endorsement of the work methodology being carried out on site.

(4) All expenses reasonably incurred by the Director in exercise of its powers under this article shall be recoverable as a civil debt by the

Director from the person or persons to whom the enforcement notice is issued subject to such right of recovery such person or persons may have against any other person.

(5) The Director or any delegated official or Architect shall not be liable for any damages as a result of the exercise of his or her power under this article unless it is proved that such damage resulted from gross negligence on the part of the Director, his delegated Officials or Architect.

14. (1) Notwithstanding the provisions of article 20, where the Director holds that the infringement represents a serious threat to the safety of third parties or to the safety of third party property, the Director may take urgent interim measures to remedy the situation in advance of reaching a final decision, including the imposition of administrative fines;

(2) If any steps or other action, including discontinuance or stoppage required by an enforcement notice issued to stop any construction activity from being started or to cease all or part of a construction activity, have not been taken within the time specified therein, the Director may enter the development site and take such steps or other action, including the disabling or removal of any equipment, machinery, tools, belongings, vehicles or other objects that may be on the site and the carrying out of any works that may be necessary to comply with what is requested in the enforcement notice and may for such purpose request the assistance of the Police Force, and the Police Force shall for such purpose exercise such powers as are vested in them at law.

(3) All expenses reasonably incurred by the Director in the exercise of his powers under this article shall be recoverable as a civil debt by the Director from the owner of the land subject to such right of recovery which the owner may have against any other person.

(4) The Director shall not be liable for any damages as a result of the exercise of his powers under this article unless it is proved that such damage resulted from gross negligence on the part of the Director, his delegate or other official of the Building Regulation

Responsibility of a
delegated
Architect

14 (1) The Director may delegate to an Official of the Building Regulations Office or to any Architect in private practice any or all of the responsibilities pertaining to the Director in regulation 11, and the person thus delegated shall be responsible for such delegated matters.

(2) The Director or any delegated official or architect shall only issue an enforcement notice to stop the construction works after verifying and taking into consideration the provisions of regulation 13.

(3) Where an Enforcement Notice is issued by the delegated official or architect, a copy of the Enforcement Notice is to be submitted to the Director as soon as possible after the serving of the Notice but no later than close of business of the first full working day after the serving of the Notice .

Form and Content
of Enforcement
Notices

15 (1) Enforcement Notices are to include;

(a) An instruction to the contractor not to initiate any construction activity or to cease all or part of a construction activity;

(b) The reasons as to why the Notice is being issued, including where necessary for technical reasons, a technical report supported by photos of the construction activity which is deemed to be unsafe or not in accordance to the method statement or to the regulations and which is to be signed by an architect;

(c) Instructions as to what preventive action (if any) is to be taken to prevent further damage or danger to the public or third parties

(2) Where the Director or his delegated representative deems that the cessation of construction activity is to be immediate because of imminent severe damage to adjacent, underlying or overlying properties or danger to the public, or third parties, the Enforcement Notice and the required preventive measures can be issued on site in a verbal manner and later confirmed in writing within twenty four hours of the issuance of the said Notice.

16 An Enforcement Notice can only be withdrawn by the Director, provided that a new method statement indicating all necessary remedial works and precautionary measures is submitted to replace the original method statement.

17 Members of the public or their appointed architect or lawyer may submit to the Director contestations on any method statement, or complaints relating to lack of safety of a construction activity.

Provided that the Director may decide not to consider complaints or contestations which do not provide justification for the contestation or concern.

18 The Director may request the guidance of the Building Regulations Control Board on any matter relating to these regulations including evaluation of method statements, construction site methodologies, enforcement notices, contestations made by third parties or any other matter he deems fit.

19 (1) Should any damage result to third party property or should there be any injury or death resulting from the construction activity, the onus of proof that the method statement was adhered to, or that the regulations were complied with rests with the site supervisor and the contractor.

Penalties

20 (1) Without prejudice to any other provisions under these regulations which the Director is entitled to enforce, the Director may impose an administrative fine in accordance with the provisions of this article in respect of any person who infringes any provision of these regulations, or who fails to comply with any directive or decision given by the Director ;

(2) Any person guilty of an offence against article 5 or article 6 shall be guilty of an offence in terms of these regulations and liable on conviction to a fine (*multa*) not exceeding €500 five hundred euros and in the case of a continuing offence, to a further fine of €100 one hundred euros for each day the offence continues, up to a maximum of €5,000 euros. (*no insurance or no method statement*)

(2) The submission of a method statement which, in the opinion of the Director, is significantly lacking when compared to the requirements as set out in section 7 shall be considered as an offence in terms of the proceeding article and shall be liable to the fines set out in Subarticle (2).

(3) Any person who acts in contravention to article 9 (2) shall be guilty of an offence in terms of these regulations and shall be liable to a fine (*multa*) not exceeding €2,400 and in the case of a continuing offence, to a further fine of €200 for each day the offence continues, up to a maximum of €10,000. (*non-adherence to enforcement notice*)

(4) Any person who makes a false declaration for the purposes of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding €1,500 (one thousand five hundred euros), without prejudice to any other punishment for which the applicant may have become liable under any other law.

(5) In all cases where the Director imposes an administrative fine in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

Provided that all the fines provided for in this article shall be due to the Government as a civil debt and following the service of a judicial act, shall constitute an executive title for all the effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.